Photo Identification Laws:  
A Failed Attempt to Address the Myth of Voter Fraud While Stripping Citizens of the Right to Vote

Meghan Brinkley
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Abstract

For over a century, America has been battling over who has the right to vote. In the past decade, state legislatures around the country have placed voter ID laws as a top priority in order to reduce the prevalence of voter fraud. Currently, photo ID laws are the most popular policy initiatives in which many states force a registered voter to present a photo ID in order for their vote to count. In this paper I will show how the current legislation aims to fix a problem that does not currently pose a threat to the electoral system. Studies have shown that voter fraud is more a myth than an actual occurrence and if it does occur, it is more likely to be found through the use of absentee ballots and registration drives than by voter impersonation at the polls. This legislation is extremely divided along party lines where Republicans are strong proponents arguing that the legislation is necessary in order to maintain the integrity of the electoral system and Democrats resisting, declaring that the legislation will only disenfranchise minorities, the elderly, the disabled, and low-income voters. By enforcing these laws, legislatures are disenfranchising a segment of the population by virtually denying them access to the polls and turning our nation away from the democracy that it is.
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Introduction

Our nation is one that is deeply rooted in the belief of a democracy and the right to vote. However, over the past year alone, rapid efforts have been set in motion to change that belief of every citizen having the right to vote to that of only a limited few. In December the Justice Department stated that South Carolina’s voter ID laws were discriminatory and would make it harder for low-come and minority voters to cast their ballot and thus rejected their laws. This marked the first time in 20 years that the Justice Department would reject a voter ID law. (“Justice Dept Opposes Texas Voter ID Law” 2012, para. 12). Again, on Monday, March 12, the Justice Department’s civil rights division once again intervened, blocking a new photo ID requirement in the state of Texas. Photo identification laws are a way for the Republican party to suppress voters in the name of increasing the integrity of the ballot box. Ironically, additional efforts to promote photo ID laws skyrocketed following the record voter turnout of the 2008 Presidential election. Paul Weyrich, co-founder of the Heritage Foundation even stated he does not “want everyone to vote...as a matter of fact leverage in the elections quite candidly goes up as the voting populace goes down” (“Protecting the Vote” 2012).

Those supporting stricter legislation believe “that identification requirement[s] are necessary to prevent in-person voter fraud” and that these laws “are necessary to address voter fear” of actual fraud that is occurring (Heller 2009, 1872). Although some voters may support stricter legislation to protect the validity of elections, the question that is presented is what is the proper balance between protecting the ballot box and protecting the inherent right to vote. Through looking at the events which triggered the influx of voter identification laws, the perceived threat of voter fraud, various initiatives in the state legislature, the implementation of legislation which has already passed, and the consequences this legislation poses now and for the
future, it is clear that protecting the ballot box has taken priority over protecting the individuals right to it.

I will first examine the history of the right to vote in the United States and the disenfranchisement that outlines our nation’s past. Next I will discuss the focal point that brought national attention back to the current voting requirements and the legislation that was originally put into place. Following this will be the sides taken by both political parties and the arguments they presented. Next I will explain how voter fraud is rather a myth then a problem plaguing our nations elections. In conclusion, I will outline the risks associated with the current legislation and provide an alternative policy recommendation.

History of the Right to Vote

For the past hundred years the United States of America has made tremendous steps in enfranchising all citizens, regardless of sex or color, with the right to vote. While our nation has made progress, there were many stumbles along the way. Since our nation’s founding this has been a country of have and have nots where many of our citizens were systematically denied the right to vote, a fundamental right. Our framers also created a Constitution that no longer adapts to current times. During the time the Constitution was written elections had a much different meaning than they do today. For the framers elections were “an opportunity for the voters to ratify, to acclaim, the natural leaders of the community” (Guinier 2006, 1). Unlike Europe where the leaders where chosen by divine right the leaders in America were the natural leaders who would take office and the election portion was a means to verify it. For our founders “these elections were supposed to be...more leisurely affairs, not partisan, not tempestuous, and not widely participatory” (Guinier 2006, 1). Another problem that our founders created was the fact that nowhere in the Constitution is the explicit right to vote.
Instead, the founders placed this burden on the states. The states in turn have the power in selecting who can vote and what methods they use in determining who these people will be. Prior to the Civil War there were no provisions in the Constitution that specified voter eligibility. Instead of guaranteeing the right to vote for all citizens, our Constitution only provides amendments that tell states what they cannot do instead of providing the right to vote for all.

At the time when the framers were drafting the Constitution times were much different then they are today. Slavery was considered acceptable and those running for office were general males and whites and those were considered the individuals who would be voting in the first place. Although the Constitution now provides protection for voters, it is at best limited. The current provisions still do not guarantee the right to vote but only put in place loose provisions that states can easily get around. With widespread slavery, few Blacks had access to the ballot box and the right to vote was virtually limited to white males ("Introduction to Federal Voting Rights Laws"). The end of the Civil War marked the beginning of changes for those disenfranchised by the inability to vote. In 1868 the 14th Amendment was ratified and stated in part that “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside” ("Joint Resolution" 1919). This amendment formally recognized that all individuals born or naturalized in the United States were to be considered citizens.

Two years later the 15th Amendment was ratified which stated that “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude” ("Joint Resolution" 1919). When this amendment was ratified, African Americans “compromised outright or near majorities of the eligible voting population” and “hundreds of thousands—perhaps one million—recently-freed
slaves registered to vote” (“Introduction to Federal Voting Rights Laws”). This did not go over well in the south action began to be taken against the newly eligible voting population. Violence and intimidation were the main forms used to keep Blacks from the ballot box and turned as well as methods to undo votes cast. Another method the White state legislatures used was “gerrymandering of election districts to further reduce black voting strength and minimize the number of black elected officials” (“Introduction to Federal Voting Rights Laws”). By 1910 very few of the newly enfranchised African-American population was voting because of tactics such as “poll taxes, literacy tests, vouchers of ‘good character,’ and disqualification for ‘crimes of moral turpitude’” (“Introduction to Federal Voting Rights Laws”). Although these lines did not directly stop African-Americans from voting explicitly, they did allow whites to apply new standards and provisions in a way that would disenfranchise the minority. This damage would take years to reverse.

The Voting Rights Act, which was initially adopted in 1965 and then again in 1970, 1975, and 1982, “is generally considered the most successful piece of civil rights legislation ever adopted by the United States Congress” (“Introduction to Federal Voting Rights Laws”). Even though the 15th amendment guaranteed that no citizen would be denied access to the ballot box on the basis of color or race, states were still finding ways around this in order to limit certain groups right to vote. This act successfully ended the use of literacy tests in the Southern states. The Voting Rights Act also created terms which stated that the state could not make any voting changed until “approved either by a three-judge court in the District of Columbia or by the Attorney General of the United States” (“Introduction to Federal Voting Rights Laws”). Because of this, recent changes to voter identification laws have been blocked by the Attorney General as being against the terms specified in the Voting Rights Act.
Women also faced a hard fought battle, which took decades, in order to gain the right to vote. The push for women’s suffrage began in the mid 1800’s with marches, letters, and lobbying. In 1878, the amendment giving women the right to vote was first introduced in Congress. In the meantime, by the 1912 nine states had passed and adopted their own legislation giving women the right to vote. On the path to women’s suffrage, women picketing, on hunger strikes, and other forms of protest were often jailed, beaten, or taunted. In 1916, almost all of the major suffrage organizations were rallied behind the cause in the support of a constitutional amendment. In 1917, then President Woodrow Wilson changed his stance on the issue after New York passed and adopted women’s suffrage legislation. This marked the shift in the right to vote for not only people of color but also women. In 1920, Tennessee became the thirty-sixth state to ratify the amendment, giving it three-fourths agreement among the states. (“Joint Resolution” 1919).

Returned Attention to Voting Legislation

Over the past decade voter ID laws have “gained increasing popularity in the aftermath of the hotly contested 2000 election” (De Alth 2009, 185). In the 2000 election, George W. Bush was in a closely contested race against the Democrat Al Gore in which the winner of Florida’s electoral votes would become the next president. At the time, Katherine Harris was both the Florida Secretary of State as well as the chair of the Bush election committee and was at the center of scandal. Surrounding Harris were allegations of including the following:

Pre-election voter purges direct at African-Americans, the random opening and closing of polls, the intimidation of minority voters, the use of faulty and different voting technologies across the state, bad ballot designs, and outright allegations of ineligible voters falsely identifying themselves in order to vote. (Schultz 2008, 493)
The race was determined by less than 1800 votes and “concern soon surfaced on many fronts about the fairness and accuracy of the voting procedures and counting” (Schultz 2008, 493). When the Supreme Court addressed Bush v. Gore, no discussion of the voter fraud element took place as it focused on methods of vote counting. Many were still very heated over the issue and contested that the “Motor Voter Act, which permitted mail-in and same-day voter registration, would enable voter fraud” (Schultz 2008, 493). Allegations of severe disenfranchisement were alleged to have occurred and yet state legislatures picked up on another part of the story. That part was voter fraud. Allegations of mail-in, same-day voter registration, and false impersonation fraud at the polls led state legislatures to once again turn to the issue of voter fraud, even though limited, if any, data was available to prove it had occurred. (Schultz 2008, 493).

The Impact of the Help America Vote Act

Stemming from the 2000 Election and Florida allegations Congress began the swarm of controversy with the Help America Vote Act (HAVA). HAVA primarily was created in order to improve voting; which Florida showed was clearly needed. The act also “established numerous federal requirements for state and local election administration in exchange for a promise of $3.97 billion in federal funding (Commission of Federal Election Reform 2005, 2). According to the 2005 Report of the Commission on Federal Election Reform, “HAVA sough to lower barriers to voting while establishing somewhat tighter controls on registration and voter identification” (2005, 2). With HAVA also came some unexpected consequences such as the need for photo identification in order to vote. HAVA’s mandates also focused on four main requirements:

(1) Statewide computerized voter lists; (2) voter ID for individuals who register by mail but do not provide it when registering; (3)
provisional ballots for voters whose names are missing from the registration rolls on Election Day; and (4) measures to make voting accessible for voters with disabilities. (Commission of Federal Election Reform 2005, 2)

HAVA, brought voter ID laws to the forefront as it “required first-time registrants to provide a driver’s license or Social Security number” and “required some form of ID, such as a photo ID, current utility bill, bank statement, paycheck, or governments document” to verify mail-in registrations (De Alth 2009, 187). Since the enacting of HAVA, states have continued to build on the requirements and have become more and more strict on the type of ID permitted in order to vote. All states must follow HAVA’s basic requirements which apply to both local elections and those for federal office. HAVA has proven to be a springboard for additional voter identification laws across the country.

One problem that emerged from HAVA revolved around the requirement that those whose names were missing from the registration rolls on Election Day must present identification. According to Wendy Weiser, director of the Democracy Program at the Brennan Center for Justice at NYU School of Law, “study after study demonstrates that match failures are almost always the result of typos and list flaws...in other words, an unsuccessful match is not in any way a reliable indicator of a person’s ineligibility to vote” (Weiser and Agraharkar 2010, 5). The Report of the Commission on Federal Election Reform builds on Weiser’s statement by claiming that the “voter registration lists [are] often riddled with inaccuracies because Americans are highly mobile, and local authorities, who have maintained most lists, are poorly positioned to add and delete names of voters who move within or between states” (2005, 9). To further clarify the inaccuracies of the lists, which often force registered voters to present identification they may not have thus making them ineligible to vote, is that the following:
During the last decade, on average, about 41.5 million Americans moved each year. Of those, about 31.2 million moved within the same state, and 8.9 million moved to a different state or abroad. Young Americans (aged 20-29) ... moved to a different state at almost three times the rate of the rest of the population. (Commission of Federal Election Reform 2005, 9)

These facts alone show just how inaccurate these lists can be without even factoring in clerical errors such as typos, which could possibly disenfranchise registered voters who may not be able to afford identification, may have an expired form of identification, or may not have the ability to go and get one.

States Take Action

Following Congress’ passage of HAVA, many states also looked to strengthen their voter ID laws in order to increase the security of the ballot box, even though evidence of voter fraud was still rare and there were many negative outcomes associated with these new laws. This combination of the 2000 and 2004 elections combined with the enactment of HAVA began the trend of states reevaluating and reshaping their current voter identification laws. This attention to voter ID laws by state legislatures around the country was quickly apparent.

In 2002, fourteen states required some form of ID when a voter went to the polls. By the 2006 general election, twenty-four states required ID and several additional states had passed such laws that were held up in litigation. ID requirements varied from allowing any form of identification with the voter’s name and address—such as a utility bill or paystub as allowed under HAVA—to requiring government-issued identification with a photograph and valid expiration date. (De Alth 2009, 187)

This theme continues today as debates heat up around across the country and legislators question whether the right to vote or the integrity of the system should take priority.
The Debate

This shift also marked the beginning of a new divide between Republicans and Democrats who sided along party lines in regards to the new legislation with Republicans supporting tighter ID laws that would “prevent voter fraud and restore voter confidence in elections” and Democrats opposed stating that the laws would “disenfranchise the poor, minorities, and the elderly and are unnecessary because voter impersonation fraud is rare” (De Alth 2009, 185-186). When looking at figure 1 from the National Conference of State Legislatures, most of the stricter identification laws, and voter identification laws in general, are located among southern states, which generally are found to be more conservative.

Figure 1
De Alth makes another point along this line in stating that “every state that passed a stricter voter ID law did so under a Republican-controlled legislature, with Democratic legislators uniformly opposed (2009, 187).

The Republican Argument

In state legislatures, the debate regarding voter identification legislation remains extremely contested and divided along party lines with Republicans favoring stricter legislation. On the floors of many state legislatures have been heated debates with wide arguments in support of and opposing the presented legislation.

Proponents of stricter voter identification requirements argue that it is a commonsense law that would protect the integrity of the electoral process. Judge Richard Posner states in his Seventh Circuit Crawford v. Marion County opinion that “it is exceedingly difficult to maneuver in today’s America without a photo ID” (De Alth 2009, 188). Supporters also claim that having a photo ID should not be a roadblock to casting ones ballot as most people already have one because of the modern day need. Another reason for support by lawmakers is the fact that American registered voters as a whole fear voter fraud. According to a Rasmussen Poll, “fifty-nine percent of voters believe there is a lot or some fraud in American elections, and eighty-five percent of voters favor a photo ID requirement” (De Alth 2009,188). Although registered voters may believe fraud is occurring may not be the strongest argument for proponents of stricter identification to take as it is still very uncertain as to what level voter fraud is occurring if in fact it even is occurring at all. However, the Federal Election Reform Commission has “confirmed that while elections fraud is difficult to measure, it occurs” and that “between October 2002 and September 2005 the Commission cited fifty-two convictions after the Department of Justice
made voter fraud a top priority” (De Alth 2009, 188). Even though this proves that fraud is occurring, it does strengthen the arguments of those opposed to stricter photo ID laws as there is now a very uneven balance between protecting the integrity of the electoral system versus protecting the right of registered voters to not only cast their ballot but to have their vote counted.

The Democratic Argument

On the other side of the aisle, those against new forms of voter identification state that requiring a photo ID will eliminate a large amount of individuals who are registered voters but cannot vote because of a lack of the proper documentation. The proposed stricter voter ID laws “are more likely to affect Democratic segments of the electorate, including the poor minorities, elderly, highly-mobile, and urban voters” who are “less likely to drive, may lack up-to-date ID, and may not have the money or resources to obtain ID” (De Alth 2009, 189). In fact, “11% of citizens—and an even greater percentage of low-income, minority, young, and older citizens—do not have state-issued photo IDs” (Weiser and Nordon 2011, 4). According to De Alth (2009, 189), “this percentage is higher for seniors (eighteen percent), African Americans (twenty-five percent), and low-income Americans (fifteen percent)”. In fact, as an example of how many registered voters would be affected by such laws, an Indiana phone survey in 2007 showed that “thirteen percent of registered voters and sixteen percent of all voting-eligible adults lacked a photo ID” (De Alth 2009, 189). Ironically, all of these disenfranchised voters would probably not even be the ones responsible for the alleged voter fraud. All of the proposed voter identification laws require voters to show identification at the polls, where voter fraud is least likely to occur, instead of looking into identifying voters who cast an absentee ballot or those
registering at voter registration drives where voter fraud is most likely to occur. (De Alth 2009, 189).

As noted previously, over the past decade legislation regarding voter identification laws has become more and more prominent although not always successful. In last years legislative sessions across the United States a major shift took place as the laws proposed became both increasingly more restrictive and were a higher priority. Up until the 2011 sessions, there was a strong push for voter ID bills even though they rarely advanced very far. One shift that was noticed in last year’s session was that the states that had been pushing for more restrictive voter ID laws without results were finally beginning to see them. By looking at figure B and figure C comparing voter ID laws prior to and after the 2011 legislative session one can see the dramatic changes that took place. In fact, “previously only two states (Indiana and Georgia) had ever implemented a photo ID requirement for voters [and] between 2006 and 2011, no state passed a photo ID law” (Weiser and Nordon 2011, 9). In 2011, twelve states passed strict voter ID bills signaling a dramatic change in voter ID laws that will continue to sweep through legislatures over the coming years.

Debate was extremely heated in all states with proposed photo ID legislation and was strongly divided along party lines. Republicans continued to be strong proponents of stricter legislation while Democrats vehemently opposed stating that stricter photo ID laws would only serve to disenfranchise segments of the voting population. Helping the Republicans was the fact that in 2010’s general election, they picked up “675 state legislative seats across the country…therefore controlling both legislative chambers in twenty-six states, up from fourteen earlier in 2010” (Weiser and Nordon 2011, 10). This shift allowed Republicans to finally make progress after years of failed legislation. Many of the Republicans who assumed office after the
2010 general elections focused their campaigns on making photo ID legislation a priority giving them a base of support from constituents to push for reform. Wisconsin served as the host of the most heated debate in state legislatures across the country where “Republican legislators considered passing the hotly contested photo ID bill while the Democrats were absent, boycotting the legislature to block the bill that eliminated collective bargaining rights for public employees (Weiser and Nordon 2011, 12). Although that did not happen, the Republicans continued to push and the State Senate passed the voter ID bill quickly without even allowing time for debate on the issue (Weiser and Nordon 2011, 12). Similar instances of denying debate on the bills occurred in legislatures across the country.

The debate also began to take an accusatory turn when the Democrats began to claim that the Republicans were only pushing for the legislation in order to limit the pool of voters for electoral gains as many of those that would become disenfranchised would be considered more likely to vote democratic. Even former President Bill Clinton spoke out against state legislators last year about their attempts to limit voters during the 2012 election in the following statement:

There has never been in my lifetime, since we got rid of the poll tax and all the other Jim Crow burdens on voting, the determined effort to limit the franchise that we see today. This is not rocket science. They are trying to make the 2012 election look more like the 2010 election than the 2008 election. (Lavender 2011, para. 2-3)

Debbie Wasserman Schultz, chair of the Democratic National Committee agreed calling the photo ID legislation an effort to “literally drag us all the way back to Jim Crow laws and literally—very transparently—block access to the polls to voters who are more likely to vote for Democratic candidates than Republican candidates” (Roff 2011, para. 6 1). The rhetoric of these individuals may be extremely exaggerated and over the top, however, they do make a point. While Republicans may not be aiming to eliminate a portion of the voter pool, by enacting and
passing such photo ID legislation they are ultimately eliminating a portion of the electorate that generally would vote democratic, allowing Democrats to create a very strong, and partially valid, argument in their favor. However, Republicans can also form a similar argument based on the fact that in some cases in the past Democrats may have used fraud in order to increase turnout.

Peter Roff, contributing editor for U.S. News and World Report and senior fellow at the Institute for Liberty and at Let Freedom Ring, a non-partisan public policy organization states that Democrats may be against photo ID laws "because voter ID does get at the problem of voter fraud which—for some Democrats—is not so much a theory as a turn out model, a key to winning close elections" (2011, para. 11).

Adoption of Photo ID Legislation

State legislatures have taken several different routes in adopting legislation aimed to deter voter fraud. According to the National Conference of State Legislatures (figure 1), “Thirty-one states require all voters to show ID before voting at the polls. In 15 of these, the ID must include a photo of the voter; in the remaining 16, non-photo forms of ID are acceptable” ("Voter Identification Requirements" 2012). Currently, there are three options for states in regards to their voter identification policy: strict photo ID, photo ID, and non-photo ID. Strict photo ID’s require that voters show a photo ID in order to be able to vote. If a voter does not present a photo ID on election day they are only allowed to vote a provisional ballot that will only be counted if the voter returns to election officials within one week with a photo ID. The second asks voters to present a photo ID, however, the voter can still vote if other information can be provided. For example, if the voter is able to provide their personal information. Finally, the third requires that the voter show ID at the polling location. This does not have to be photo identification and could even be a billing statement that has the individuals name and address on
it. ("Voter Identification Requirements" 2012). According to the NCSL, in 2011 voter identification laws were the most popular laws in the area of elections in state legislatures across the country “with legislation introduced in 34 states. There were just three states--Oregon, Vermont and Wyoming--that didn't have a voter ID law and didn't consider voter ID legislation that year” ("Voter Identification Requirements" 2012). Out of the 34 states, 8 states passed laws that either created new voter identification laws or strengthened ones that were currently existing. For several states the legislation was carried over into the current 2012 session. Figures 2, 3, and 4 from the Brennan Center for Justice show how there was a significant increase in not only the amount of legislation introduced across the country but also the amount of states that strengthened their current laws between the years of 2010 and 2011.
States Where Voter ID Legislation Was Introduced


Figure 3-States Introducing Voter ID Legislation in 2011
Voter ID Requirements After the 2011 Legislative Session

Updated August 2011

No vote without photo ID
Alabama, Georgia, Indiana, Kansas, South Carolina, Tennessee, Texas, Wisconsin

Photo ID requested but not required
Arkansas, Connecticut, Delaware, Hawaii, Idaho, Louisiana, Michigan, Rhode Island, South Dakota, Virginia

No regular ballot without photo ID, provisional ballots counted if voter eligible
Florida, Oklahoma

No vote without non-photo ID
Arizona, Colorado, Missouri

No regular ballot without ID (photo or non-photo), but provisional ballots counted if voter eligible
Alaska, Kentucky, Montana, North Dakota, Ohio, Utah, Washington

HAVA ID requirements

Notes
- Alabama, South Carolina, and Texas voting laws are subject to preclearance by the Department of Justice.
- Alabama Law goes into effect Jan. 2013
- Idaho Law becomes restricted to only photo IDs starting Jan. 2014
- South Carolina, Tennessee, Alabama and Texas, have some form of affidavit alternatives to a photo ID

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Figure 4

In multiple states, such as Virginia, several pieces of legislation were proposed relating to voter identification laws, however, they all failed to become enacted.

State Variation

Although photo ID laws are gaining increasing popularity, different states have adopted various laws over the past five years. All states must at least follow the HAVA ID requirements which are noted in the white states in figure 4. Those states that have adopted stricter than the HAVA requirements fall on one of the following categories, which can be noted in figure 1:

strict photo, photo, or non-photo.
According to figure 1, states with a strict photo ID law currently include Kansas, Tennessee, Indiana, Georgia, and Pennsylvania. According to the NCSL, “Mississippi, South Carolina and Texas have new strict photo ID laws which may take effect before November 2012” (2012) however, the likelihood of this is very slim right now due to Eric Holder’s firm stance against stricter voting laws. States with this requirement are extremely strict and selective about the forms of ID permitted. In these instances, all ID must be government issued and must be one of the following:

- ID card issued by the state or the federal government, free voter ID
- card issued by the state or county, [a] U.S. passport, valid employee ID card containing a photograph from any branch, department, agency, or entity of the U.S. Government, the state, or any county, municipality, board, authority or other entity of this state, [a] valid U.S. military identification card, [or a] valid tribal photo ID. (“Voter Identification Requirements” 2012)

In states with a strict photo ID law, voters may only vote a provisional ballot if they do not have the proper form of identification. If this occurs, the voter has three days to present proper identification at the local registrar for their vote to count.

The second category of photo ID legislation are states with a basic photo ID requirement. States with this legislation are Michigan, Idaho, South Dakota, Louisiana, and Florida. In these states a voter must present a form of photo identification that contains a signature. If the photo ID does not contain a signature then the voter must show another form of identification. In these states the ID does not have to be government issued. Forms of identification that are acceptable include:

- [State issued] driver's license, ID card issued by the Dept. of Highway Safety and Motor Vehicles, U.S. passport, debit or credit card, military identification, student identification, retirement
center identification, neighborhood association ID, [or] public
assistance identification

In these states, if a voter cannot present the necessary identification they are also allowed to vote
a provisional ballot and have three days to return to the registrar with the necessary
identification. ("Voter Identification Requirements" 2012).

Out of all the state legislation in place regarding voter ID laws, states adopting non-photo legislation are the weakest. They majority of states fall into this category and include Alaska, Washington, Montana, North Dakota, Utah, Arizona, Colorado, Oklahoma, Texas, Arkansas, Missouri, Alabama, Kentucky, Ohio, South Carolina Virginia, Delaware, Rhode Island, and Connecticut. These states do not require a photo ID in order to vote. In these states acceptable forms of identification include:

[A] voter registration card, Social Security card, driver’s license, any other identification card issued by a government agency, one of its political subdivisions or the United States, a copy of a current utility bill, bank statement, paycheck, or government check or other government document [or an] employee identification card containing a photograph. (NCSL 2012).

Similar to previously listed states, an individual can only vote a provisional ballot of they are unable to provide the necessary and required identification.

The Burden on the Voter

Jenny Browser, a senior fellow at the NCSL, noted how unusual it was for a single issue to appear as a hot topic across the United States when she states that she “very rarely sees one single issue come up in so many state legislatures in a single session” (Weiser and Nordon 2011, 5). A key component of the recent photo ID legislation is that it places a greater burden on the individual voter by narrowing down the acceptable forms of identification that are allowed to be
presented at the polls. The main changes that have occurred in state legislatures are the following:

(1) the types of photo ID that voters are permitted to show for voting; (2) whether the requirement to provide ID applies only to in-person voters or to those who vote by mail as well; (3) whether there are any exemptions from the requirement to provide ID; and, most importantly, (4) whether there is an alternative way for a voter who does not have an accepted form of photo ID to cast a ballot that counts. (Weiser and Nordon 2011, 5)

In the states that passed voter identification laws during the 2011 session, only one state, Rhode Island does not require that the identification be government issued. All of the states accept “an unexpired driver’s license, non-driver’s ID issued by a motor vehicle department, U.S. passport, or U.S. military photo ID” (Weiser and Nordon 2011, 5). This measure places a huge burden on the voter because, as mentioned earlier, the elderly, low-income, and African American voters are less likely to have an acceptable form of identification.

Within the past 2 years, many changes have occurred regarding photo ID laws and more and more attention is continuing to go on the issue. According to the NCSL, the following summarized the 2011 legislative session:

Voter ID was the hottest topic of legislation… with legislation introduced in 34 states. There were just three states—Oregon, Vermont and Wyoming—that didn't have a voter ID law and didn't consider voter ID legislation that year. The voter ID legislation under consideration fell into two general categories: proposals for new voter ID laws in states that didn't already require voter ID at the polls (considered in 20 states), and proposals to strengthen existing voter ID requirements in order to require photo ID at the polls (considered in 14 states). (para. 15)

The NCSL noticed a similar trend in this year’s legislative sessions as voter ID requirements continued to be a high-profile topic of debate. Currently, “legislation is pending in 32 states so far. That includes new voter ID proposals in 13 states, proposals to strengthen existing voter ID
laws in 11 states, and bills in nine states to amend the new voter ID laws passed in 2011” (para. 14).

Allegations of Voter Fraud

The current photo ID laws pose a huge threat not only to the voter but also to the electoral process of our nation. Legislation formation, debate, and implementation has been clearly divided over party lines and serves as a way for Republicans to limit the pool of voters in the name of securing the integrity of the electoral system and protecting the ballot box to ensure fair elections. Republicans have namely based their support on the fact that photo ID laws will serve to help eliminate voter fraud and help restore voter confidence in elections. Although this may be a valid claim, there is hardly any support for it as evidence of widespread voter fraud in the United States is very unclear and unsubstantiated. In addition, much of the voter fraud that would even take place is that through voter registration drives and absentee ballot submission which none of the current photo ID laws would even address. This leaves multiple questions for proponents because if the main goal is to eliminate fraud and secure elections, why is the attention turned to the polling place where fraud is least likely to occur instead of looking at the source of fraud in general? The problem with addressing voter fraud is the fact that it is not an actual problem plaguing our electoral process.

In order to look at the actual evidence of voter fraud occurring one must first define what exactly voter fraud is. According to the United States Department of Justice, election fraud can be defined as “conduct that corrupts the process by which election results are canvassed and certified; or the process by which voters are registered” and voter fraud as a subcategory defined as the “intentional corruption of the electoral process by voters” (Schultz 2008, 12). In itself, voter fraud is extremely rare and is myth only used to persuade the voting population that stricter
regulations are needed. There are also many other issues that are often improperly included under voter fraud. These include the following problems:

Technological glitches... for example, voting machines may record inaccurate tallies due to fraud, user error, or technical malfunction... honest mistakes by election officials or voters: for example a person with a conviction may honestly believe herself eligible to vote when the conviction renders her temporarily ineligible, or an election official may believe that certain identification documents are required to vote when no such requirement exists. And some irregularities involve fraud or intentional misconduct perpetrated by actors other than individual voters: for example flyer may spread misinformation about the proper locations or procedures for voting; thugs may be dispatched to intimidate voters at the polls; missing ballot boxes may mysteriously appear. (Levitt 2007, 9).

These umbrella terms for “fraud” are important to note because none of these are what the average person would consider fraud. In other words, none of these are the intentional action of a voter in order for their vote to be falsely casted and counted. All of the above listed examples of problems resulting for errors of our election administration system, not our voters. Thanks to our media, inaccurate misrepresentations take place in which any time there is a problem with an election it automatically must be because voter fraud is taking place. Because of this the overall population has a false interpretation of how prevalent voter fraud actually is.

Headlines most quickly turn to a recurring set of “voter fraud” claims which again rarely have evidentiary support. These categories include double voting, dead voters voting, votes cast by individuals with felony convictions, and noncitizens voting. (Levitt 2007, 12-22).

The most common form of alleged voter fraud is often termed double voting and is frequently seen in media headlines. Although this is the most frequently alleged form of voter fraud it is actually extremely rare and there are only a few number of cases in which an individual has actually voted twice. Part of the reason for its scarcity is that the cost greatly
outweighs the benefits. An individual that is caught double voting faces extreme consequences of high fines and criminal prosecution. All of those penalties for one extra vote, which have little impact in the long run, do not make sense. On the other hand, it is often the case that error by the election officials leads to cries of double voting. When comparing various lists it sometimes happens that an individual, with the same name and birthday, is found on two separate voter lists. While many are quick to cry foul and report that double voting has occurred, it is usually the case that they are in fact two different individuals who happen to same the same name and birthday. As with any sample, the likelihood increases as the sample size goes up which was the case in 2000 when nationwide lists resulted with “3,273 alleged double voters...based on the assumptions that two people with the same name and birthdate were the same individual” (Levitt 2007, 12). Other cases in which “double voting” is alleged to have occurred are cases in which clerical errors show individuals voting twice or when an eligible voter follows poll worker’s instructions such as the case of Cynthia Alicea from Wisconsin who registered on election day. In her cases “poll workers found an error on the form, and asked Alicea to fill out another...the poll workers, however, never discarded the first form” (Levitt 2007, 13). This case resulted in Alicea being charged with voter fraud although the ordeal was eventually cleared. Cases like these occur all the time and it is extremely rare that an individual will vote twice on purpose and more likely that the allegations of fraud will arise out of clerical or staff error at the polls. (Levitt 2007, 12-13).

Another frequently used voter fraud term revolves around “dead voters” voting. These are also headlines for the media adding shock value and making the typical voter question what is going on with our electoral system and adding more fuel to the belief that voter fraud actually exists. Similar to the double voting claims, instances of this actually happen are virtually non-
existence. It is far more common for the voter lists to be at the root of the problem when election officials fail to take into account that there are in fact two separate individuals and the one that did cast the ballot is actually alive and well. Take this example:

Despite having died in 1997, Alan J. Mandel was alleged to have voted in 1998. On further investigation, Alan J. Mandell (two “l”s), who was very much alive and voting at the time, explained that local election workers simply checked the wrong name off the list. In other cases it has been recorded that an individual did in fact die, however, they died after they had already cast their ballot. (Levitt 2007, 14).

This same instance occurred in Missouri when there were 100 allegations of “dead voters” and every single case resulted from a clerical error from false matching on the voter lists. Cases like this have been apparent across the country and are frequently falsely represented by the media. In reality, the idea that votes are being cast in the name of dead voters is not supported by any evidence and is instead often the fault of voter lists and clerical error. (Levitt 2007, 12).

When elections get close many are quick to blame those with felony convictions for changing the outcome of the election. It is very rare, again, that those with felony convictions vote while knowing that they are ineligible. In most cases these convicted felons vote because they do not realize that they are ineligible because of confusion over voter restoration standards. This confusion goes past the felons themselves and also transcends to voter officials who sometimes do not realize the laws regarding voter restoration rights where they live. Again this is an example where fraud is not the fault of the individual but a fault of the institution. Along this same line also come allegations of noncitizens voting. Although this claim has been made there are no “documented cases in which individual noncitizens have either intentionally registered to vote or voted while knowing they were ineligible” (Levitt 2007, 18). Case after case it becomes clear that actual cases of voter fraud are unsubstantiated. (Levitt 2007, 12-18).
Even when looking at selected case studies it is clear that voter fraud, at least the type that photo ID laws are looking to eliminate, is in fact a problem challenging the integrity of our nations' elections. Take Missouri for example. After the 2000 election state legislatures turned attention back to the voter fraud debate without any evidence that it was a problem in their state. Since then there have been six cases of voter fraud, in this case double voting. Out of these cases only four individuals were at fault. This produced a 0.0003% voter fraud rate in the state of Missouri. In New Jersey there were similar instances of voter fraud allegations in which there were eight voters who double voted. In New Jersey this breaks down to a 0.0004% voter fraud rate. Similarly in Wisconsin seven individuals with felony convictions knowingly cast a vote in the 2004 election giving Wisconsin a voter fraud rate of 0.0002%. In all of these cases there was extremely limited voter fraud and none of these instances would have been prevented through the use of a photo ID. (Levitt 2007, 23).

According to the Department of Justice, Criminal Division, Public Integrity Section, “Election Fraud Prosecutions and Convictions, Ballot Access and Voting Integrity Initiative Report” published in 2005, there were 42 cases of voter fraud between October 2002 and September 2005. Out of all of these cases not one would have been prevented if the convicted individuals had produced photo identification. This also proves that voter fraud is not as widespread an issue as the press makes it out to be. Because of the rarity of fraudulent behavior during elections, there is no justification for intensifying voter identification laws that will only serve to disenfranchise a large segment of the voting population while doing nothing to address the rare fraud that occurs.

Surprisingly, for such dramatic and prevalent claims that voter fraud exists is the lacking of any such information proving that it does. Aside from partisan books, claims in the news,
both in print and on television, there has been no published information that provides reliable statistics showing evidence that all the claims of rampant voter fraud are actually occurring.

Lorraine C. Minnite, Ph.D., an Assistant Professor of Political Science at Barnard College and Columbia University, makes the following argument about the myth of voter fraud:

The claim that voter fraud threatens the integrity of American elections is itself a fraud. It is being used to persuade the public that deceitful and criminal voters are manipulating the electoral system. No available evidence suggests that voters are intentionally corrupting the electoral process, let alone in numbers that dilute and cancel out “the lawful votes of the vast majority of Americans.” (2007, 5)

In 2005, the U.S. Senate Republican Policy Committee stated “voter fraud continues to plague our nation’s federal elections, diluting and canceling out the lawful votes of the vast majority of Americans” (Minnite 2007, 8). Ironically, the committee made these claims without providing any empirical evidence or statistics on the prevalence of voter fraud making their claims far from credible and at best skeptical. In fact, from a study by the United States Department of Justice in 2002 titles the Ballot Access and Voting Integrity Initiative (BAVII) there were only “24 people convicted of or pleaded guilty to illegal voting between 2002 and 2005” which included “19 people who were ineligible to vote, five...for felony convictions...14 who were not U.S. citizens; and five people who voted twice in the same election” (Minnite 2007, 8).

In reality, fraud is not something that is neither frequently occurring nor skewing the results of elections. Part of the reason there has been public support for the backing of stricter voter identification laws is the misrepresentation by the media. These false claims are often dramatized and make it appear that voter fraud is running rampant on election day. The truth is that if voter fraud were to occur, the sort of legislation that is currently going through state legislatures does nothing to address it. Instead, the current legislation only seeks to
disenfranchise rightful voters while doing nothing to solve the actual problem. The policies formulated by state legislatures are not even addressing the issue of deterring any possible voter fraud, as the legislation does not aim to fix the problem. These stringent laws only focus on impersonation at the polls, which is extremely rare and comes with very severe consequences, as it is a felony. Another reason it is not common is because “it is not cost-effective; the perpetrator can change only one vote out of many, and the criminal penalties for such an act are very high” (Hall and Wang 2008, 104). For many states, they are creating legislation not out facts but because of a possibility. This is extremely dangerous as instead of actually addressing the problem, states are crafting bills that instead disenfranchise those that already are the minority. In many states they “frankly admit there has been no such fraud in the state’s entire history, but claim that the possibility that such an event could occur are enough to justify the law” (Hall and Wand 2008, 104). These laws are extremely unjust and are hard to support without any evidence that what they are trying to prevent is even occurring. What photo ID laws aim to fix is already nonexistent. In fact “it is statistically more likely to be struck by a bolt of lighting than to have his or her vote canceled by someone posing as another to cast a ballot” (Hall and Wang 2008, 104). Without enough evidence backing that photo ID laws will fix a current issue plaguing American democracy, it is impossible to weigh that risk over the right to vote held by American citizens.

Policy Evaluation

The consequences of new photo ID laws are detrimental to the future of the American political system. United States elections already see a lower level of participation than other countries around the world and as a nation the US should be doing everything possible to encourage participation in the political system instead of deterring individuals by making it
harder to vote. These current and proposed pieces of photo ID legislation would make it harder for African-Americans, the elderly, low-income individuals, and minorities to vote by providing identification requirements that many registered voters could not meet. According to the United States Census report following the 2008 general election, voter turnout was 64%. (Census).

Also, in the 2008 elections, African Americans had the highest voter turnout in history. As visible in figure 5 from the US Census, historically voter turnout rates are consistently lower for minorities with Asians having the lowest voter turnout, followed by Hispanics, then African Americans with White alone, non-Hispanic consistently having the highest levels of voter turnout.

Figure 2.

**Voting Rates by Race and Hispanic Origin: 2008**

(Citizens 18 and older, in percent)

<table>
<thead>
<tr>
<th>Year</th>
<th>Hispanic (any race)</th>
<th>Asian alone</th>
<th>Black alone</th>
<th>White alone, non-Hispanic</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>44.0</td>
<td>45.0</td>
<td>53.0</td>
<td>60.7</td>
</tr>
<tr>
<td>2000</td>
<td>56.8</td>
<td>43.3</td>
<td>61.8</td>
<td>69.0</td>
</tr>
<tr>
<td>2004</td>
<td>60.0</td>
<td>47.2</td>
<td>67.2</td>
<td>54.7</td>
</tr>
<tr>
<td>2008</td>
<td>66.1</td>
<td>49.9</td>
<td>54.7</td>
<td>66.1</td>
</tr>
</tbody>
</table>


Figure 5

Voter turnout has a positive correlation with the level of education that one attains. According to figure 6, in the 2008 elections, as well as historically, those that have attained a higher level of education are more likely to participate in elections.
Figure 6

In many cases, the level of education can also have a positive correlation with income showing that there is a high probability that those with a low-income are less likely to vote while those with a higher income may be more likely to participate. Future and current photo ID laws will only serve to increase these disparities between low and high-income voters and well as increase the gap between White voter turnout and that of minorities.

Another detriment of the current and proposed photo ID laws is the fact that most of the strictest laws are concentrated in the South. (Table from Brennan page 14). Ironically, “the South has consistently lower turnout than other regions of the country (De Alth 2009, 193). When looking at the figure 4, one can tell that the strictest voter ID requirements after the 2011 session requiring voters to present an ID in order to vote were enacted in Alabama (goes into affect in 2013), Texas, Georgia, South Carolina, and Tennessee. According to the US Census Bureau data following the 2008 election, voter turnout was as followed in the previously listed states: Alabama 63.2%, Texas 57.1%, Georgia 56.8%, South Carolina 63.2%, and Tennessee 54.6%. If southern states continue to enact stricter photo ID laws they will most likely see a
decrease in voter turnout in the future, especially from low-income and minority voters. A Harvard Law study proved this theory in 2009 when they can come the conclusion that “people in photo ID states were 2.9% less likely to have voted than people in states without an ID requirement” (De Alth 2009, 193). The percentages are even higher for those with a lower level of education (5.1%) and racial minorities (6%-10%). (De Alth 2009, 193). Another study from the California Institute of Technology found similar results that stated that there was “a significant negative relationship between more stringent ID laws and voting and a stronger negative effect on less education and low-income workers” (De Alth 2009, 193).

The right to vote is a central right to being an American citizen and is afforded to all individuals eighteen and older regardless of income, race, or gender. Photo ID laws are a slippery slope back into our country’s past where individuals sought to limit access to the ballot box for political gains. The right to vote is even more important by those already marginalized and disenfranchised by the society as “such citizens may be less likely to be able to pursue other avenues of participation in politics or the public sphere” (Fishkin 2011, 1353). In addition, the above listed citizens “may not have the resources to contribute to political campaigns or to engage in persuasive forms of speech” (Fishkin 2011, 1353). Most importantly, for many, the right to vote is the bare minimum for the amount of involvement in the political process they may ever have and becomes worth much more. Without the ability to vote, individuals will not be able to have their voice heard or voice their opinion on a variety of other issues as the ability to vote goes far beyond the ballot box and is a fundamental right. To take away that right from individuals who may not have any other opportunities is crime and many steps back from the progress our nation has made over the past decade.
Photo ID laws are inherently unequal as they treat “minorities, the poor, the young, the elderly and the disabled” much differently as they are “much less likely to have the requisite identification” (Hall and Wang 2008, 106). Out of the members of the previously listed groups “more than 3 million Americans with disabilities do not possess a driver’s license or state-issued photo ID” (Hall and Wang 2008, 106). The numbers are also staggeringly high for elderly American’s who no longer drive and may only possess an expired drivers license if they even have one at all. Native Americans also face similar challenges as many have religious objections to government-issued ID’s and do not possess them. (Hall and Wang 2008, 106). In Tennessee, the Republican Governor Bill Haslam even had doubts and fears about signing new photo ID requirements into place but did so any way. In a press conference following the photo ID bill into law requiring that all residents of Tennessee provide a photo ID prior to voting he stated that it would make voting “unnecessarily hard” for certain citizens (“Governor Haslam Raising Concerns About Voter ID Law 2011, para. 2). Governor Haslam was also concerned about the strain it may put on elderly voters because “Given human nature, people tend not to address things until the last minute...I'm concerned about that last minute, when seniors say, 'I really want to vote, I want to vote at the polling place, I don’t want to vote absentee. Oh, I need to get a photo ID!” (“Think Getting “Free” ID Is Easy?” 2011, para. 2). For many, access to a Department of Motor Vehicles location is hard and many times, in rural areas, transportation for those who cannot drive themselves may be hard. Cost also could become a problem as many states charge for government issued ID’s which may form a barrier to the ballot box for those who cannot afford it. These laws also are a direct violation of the Voting Rights Act of 1965 which states:

No person acting under color of law shall . . . in determining whether any individual is qualified under State law or laws to vote
in any election, apply any standard, practice or procedure different from the standards, practices or procedures applied under such law or laws to other individuals in the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote. (Hall and Wang 2008, 107)

This is a direct violation because it creates two different requirements for voters. In states with photo ID laws, they only apply to those who are voting at the polls. These photo ID laws do not apply to those who are voting absentee and “treat equally eligible voters unequally” (Hall and Wang 2008, 107). There are also major racial differences between those who are voting in person versus those who are voting absentee. Studies have shown that “one in nine white voters nationally voted by absentee ballot, compared to only one in twenty-one black voters” (Hall and Wang 2008, 107). The Final Report of the 2004 Election Day Survey submitted to the U.S. Election Assistance Commission showed that “non-Hispanic White jurisdictions reported a rate of 10.9 percent” rate for the request of absentee ballot compared with “5.7 percent” for non-Hispanic Blacks (Final Report of the 2004 Election Day Survey 2005, 97). The survey also showed that there was a positive correlation between the level of income and the request rate of absentee ballots in jurisdictions. (Final Report of the 2004 Election Day Survey 2005, 97). This only further proves that there are two standards created for those that vote absentee versus at the polls that often apply to different segments of the population. One standard applies to those with higher incomes that are non-Hispanic whites and the other being non-Hispanic blacks and those with lower incomes.

Policy Recommendations

The current photo ID laws are unnecessary and do not address the problem which legislators are aiming to solve. Part of our American culture is that we function on a democracy, meaning that everyone has vote and say in our political system. By creating standards that
eliminate certain citizens from participating in the political process, we are denying our country of a democratic system. In a nation also plagued by low voter turnout, in comparison to international standards, we our only doing a disservice to our country by creating laws that will only continue to lower voter turnout and deter certain members of the electorate from participating. The first recommendation is the adoption of an automatic voter registration system in which, at the age of 18, all legal citizens are registered to vote, and the system would automatically register all new citizens. This system would be automatic and reduce the need for voter registration drives which are often the sources of the voter fraud that is know to exist. Another major and necessary change is a system that improves the voter registration lists. In many cases, individuals are denied the right to vote or must vote on a provisional ballot because accurate records are not kept or, individuals have moved, etc. In order to make these lists as accurate as possible, all states should have an identical system that is used among the states to make it easier to track movement of registered voters from state to state. This would also help to avoid any voter fraud in which duplicate voting could occur because of a voters move to another state. One reason that so much legislation is being brought up is because of an actual public demand for it. According to a 2011 Rasmussen poll, 75% of Americans were supportive of voters showing a photo ID before voting. (75% Support Showing Photo ID at the Polls 2011, para. 1). In 2008, respondents in a Gallup poll regarding the concern about ineligible voters admitted that only 18% of them were very confident with the current system, an 11% decrease since 2004 (figure 7).
How confident are you that, across the country, the votes will be accurately cast and counted in this year’s election – very confident, somewhat confident, not too confident, or not at all confident?

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Very confident</td>
<td>29</td>
<td>18</td>
</tr>
<tr>
<td>Somewhat confident</td>
<td>43</td>
<td>41</td>
</tr>
<tr>
<td>Not too confident</td>
<td>21</td>
<td>30</td>
</tr>
<tr>
<td>Not at all confident</td>
<td>6</td>
<td>11</td>
</tr>
</tbody>
</table>

GALLUP POLL

Figure 7

This shows that Americans have a false opinion on voter fraud. Although voter fraud is virtually non-existent, the average voter believes that it is taking place and that showing a photo ID can help to stop it. Both of these ideas are false. American’s need to be informed about the actual accounts of voter fraud and what forms take place. By informing voters that photo ID laws will not help to address the perceived problem of voter fraud and that absentee and registration systems are at the heart of the problem, legislators will have less of a foundation to create similar legislation. In order to do this, states should be required to publish, in a very transparent manner, an annual report on voter fraud including the frequency and type of fraud committed. Each individual should be asked for identification at the polls, however, there should be much broader than just a government issued ID. For instance, having the voter state their name and address. It should be the burden of the state, not the voter, to be sure that the identification is valid. Voters should not have to vote a provisional ballot if they cannot produce the required identification and return the next day in order for their vote to count. Instead, the state should carry the burden and
be able to identify any voters whose identification may be in question. Additional steps must be put into place to make sure that absentee ballots and registration drives are also done in the correct fashion if any steps to reduce voter fraud are needed.

Conclusion

Photo ID laws are inherently split along party lines and in no way increase the security of ballot box. Instead, they return our nation to its status of disenfranchising minorities, the elderly, and the poor in order to limit their right to vote. In order to maintain a democratic system, we must maintain that every American citizen of age has equal access to the ballot box. To do so, photo ID requirements must not be put in place as they place a heavy burden on those who are unable to present them. Instead, lawmakers must focus on maintaining the integrity of the system without compromising the rights of the voters. Lawmakers must also focus on the legal encouragement of voter participation. If photo ID laws continue to go into effect, more and more voters will not only lose the right to vote but also the desire to vote. Because of this, photo ID laws are inherently unequal and work against the openness to the American Political System.
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