

12-2013

# Jim Crow 2.0?: Why States Consider and Adopt Restrictive Voter Access Policies

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## Recommended Citation

Bentele, Keith Gunnar and O'Brien, Erin E., "Jim Crow 2.0?: Why States Consider and Adopt Restrictive Voter Access Policies" (2013). *Sociology Faculty Publication Series*. Paper 11.

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## **Jim Crow 2.0?: Why States Consider and Adopt Restrictive Voter Access Policies**

Forthcoming at *Perspectives on Politics*. Please do not cite or distribute without permission of corresponding author.

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We appreciate the valuable feedback we received from Joe Soss, David Kaib, Ian Vandewalker, and our anonymous reviewers at *Perspectives on Politics*. We also thank Amanda Colligan, Amanda Aykanian and Marija Bingulac for their excellent research assistance. Leila Farsakh, Luis Jimenez, and Zhang Wu provided very helpful, and much appreciated, guidance into an unfamiliar literature. We also owe a special debt of gratitude to Jeffrey Isaac for his exceptional guidance and support throughout.

## **Abstract**

In recent years there has been a dramatic increase in state legislation likely to reduce access for some voters, including photo identification and proof of citizenship requirements, registration restrictions, absentee ballot voting restrictions, and reductions in early voting. Political operatives often ascribe malicious motives when their opponents either endorse or oppose such legislation. In an effort to bring empirical clarity and epistemological standards to what has been a deeply charged, partisan and frequently anecdotal debate, this paper uses multiple specialized regression approaches to examine factors associated with both the proposal and adoption of restrictive voter access legislation from 2006-11. Our results indicate that proposal and passage are highly partisan, strategic, and racialized affairs. These findings are consistent with a scenario in which the targeted demobilization of minority voters and African Americans is a central driver of recent legislative developments. We discuss the implications of these results for current partisan and legal debates regarding voter restrictions and our understanding of the conditions incentivizing modern suppression efforts. Further, we situate these policies within developments in social welfare and criminal justice policy that collectively reduce electoral access among the socially marginalized.

In *The Right to Vote: The Contested History of Democracy in the United States* Alexander Keyssar notes that: “History rarely moves in simple, straight lines, and the history of suffrage is no exception.”<sup>i</sup> The trajectory of voting rights and electoral access in the U.S. is rightly seen as a story of the progressive extension of the franchise. However, often obscured by such broad narratives is the reality that electoral reforms have worked to both expand *and* restrict the franchise for particular categories of voters over time.<sup>ii</sup> Exclusionary reforms are nearly universally enacted for partisan advantage, a temptation enabled by state responsibility for the administration and regulation of elections.<sup>iii</sup> The struggle to shape access to the vote has intensified once again as the volume of legislation impacting electoral access has increased in recent years. In this article we focus on the increasing proposal and passage of state laws that place new restrictions on various aspects of both the voter registration process and the opportunity to actually cast a ballot. Required photo identification or proof of citizenship to vote, more stringently regulation of groups or individuals who aim to register new voters, shortened early voting periods, repeal of same-day voter registration, and increased restrictions on voting by felons exemplify the different types of policies that have been proposed and adopted in various states since the mid-2000s<sup>iv</sup>. Figure 1 illustrates the rise in the volume of proposed restrictive changes since 2006 and the dramatic increase in restrictive legislation that actually passed in 2011. These policies stand in sharp contrast to trends in the late 1990s and early 2000s where many states expanded voting by mail and early voting—usually under the assumption that these policies would increase voter participation.<sup>v</sup>

[Figure 1 goes about here]

Figure 2 illustrates which states have been the most active in proposing restrictive voter access policies. The geographic distribution of this activity is widespread and does not concentrate overwhelmingly in battleground states or any particular region. And while more restrictions were proposed in the South due to a couple of particularly active states, Southern states vary significantly in their rates of proposal. In short, the regional distribution of proposed bills makes clear that restrictive voter access legislation was

proposed with frequency nationwide from 2006 to 2011, but provides us little insight into why.

[Figure 2 goes about here]

Figure 3 presents the number of restrictive legislative changes that were actually passed by state legislatures between 2006-11. Consistent with the policy process<sup>vi</sup>, restrictive voter access policies are passed at rates far lower than they are proposed. And in contrast to legislative proposals, the geographic distribution of passed legislation is more suggestive of the conditions driving policy adoption in this arena. It is clearly the case that legislation passed more frequently in the South and in battleground states like Ohio and Florida.

Collectively, these figures show that the proposal of restrictive voter access legislation occurred in nearly every state between 2006-11 and that at least one restrictive change passed in half of all states. Policy diffusion at such a significant rate and reach is significant given the complexities and peculiarities of state-level policy making.<sup>vii</sup> The popular press has taken note of these activities surrounding restrictive voter access policies, but the explanations provided for such developments rely nearly exclusively on partisan accounts.<sup>viii</sup> In what follows, we provide a comprehensive analysis of these legislative developments by examining the state-level partisan, electoral, demographic, and racial factors most strongly associated with more frequent proposal and passage of these voter restrictions within states. We draw upon both current political discourse and social science research for explanations as to why states have been more likely to consider and adopt these new restrictions and offer each to empirical test. With findings from sound social science as our vehicle, our analysis moves well beyond the trading of partisan barbs and allows us to demonstrate the deficiencies in these conventional takes for understanding recent legislative developments.

Beyond the partisan debate, our research offers an enrichment of theoretical conversations concerning the roles played by political parties in American democracy, voter suppression, race and policymaking, and even the broader literature on democratization. For example, the classical view that political parties enhance democratic

incorporation under tight election margins is not borne out by the recent history of US politics. Rather, we argue that the Republican Party has engaged in strategic demobilization efforts in response to changing demographics, shifting electoral fortunes, and an internal rightward ideological drift among the party faithful. Far from historically unique, we situate the most recent round of electoral reforms among other measures trumpeted as protecting electoral legitimacy while intended to exclude the marginalized for a particular political party's advantage. In doing so, our research bolsters and adds contemporary nuance to our understanding of the political conditions that incentivize parties to engage in voter suppression.

Our finding that legislative developments in this policy area remain heavily shaped by racial considerations is strongly resonant with the historical relationships between race, voter restrictions and federalism often viewed as hallmarks of American political development.<sup>ix</sup> Further, we suggest that useful conceptual links may be drawn between contemporary voter restrictions and recent developments in criminal justice and social welfare policy. In all three of these policy areas racial threat and myths are particularly salient, and the character of state-level legislation is particularly responsive to the racial composition of states. As modern poverty governance and criminal justice policies are increasingly understood through an analytic frame that emphasizes discriminatory and disempowering impacts<sup>x</sup>, we view restrictive voter access legislation as an additional layer of barriers reducing electoral access for minority and lower income voters. While we focus on voter restrictions below, we highlight a broader suite of exclusionary policy developments occurring across multiple policy arenas that have produced significant, and increasing, variation in state-level access to the vote.

Theoretical links to the larger democratization literature are also in play here. Upon first blush, connections between our findings and this literature may seem a stretch because of the stability of U.S. democracy and absence of authoritarian traditions or contexts.<sup>xi</sup> The processes that result from contemporary democratic transitions certainly differ in magnitude from those involved in recent changes to American electoral policies. Nonetheless, we find it striking that our findings expose elements of American electioneering reminiscent of how actors in competitive authoritarian regimes manipulate election practices so that voters are drawn almost exclusively from their own

supporters.<sup>xii</sup> We thus compliment the work of Desmond King and colleagues by showing how one advanced democracy, the U.S., is actually changing voting procedures in a racialized and restraining fashion in the modern era – “de-democratization” along racial lines.<sup>xiii</sup> That this is true for the American case reinforces the incompleteness of most American narratives regarding citizenship and political development. Deeply racialized, exclusionary ideologies and corresponding practices have always accompanied the more readily acknowledged reality of liberal incorporation.<sup>xiv</sup> We find the exclusionary American tradition well represented today,<sup>xv</sup> a tendency bolstered, yet again, by the power and flexibility federalism grants to the states. Last, for advocates of electoral reform the developments examined here provide a cautionary reminder of the seemingly endless variation and creativity evidenced in efforts to repurposed electoral reforms and institutions to exclude voters and shape electoral outcomes.

[Figure 3 goes about here]

#### *Partisan and Academic Perspectives*

Those on the political left and political right have not been reticent to proffer accounts, or level accusations, for why restrictive voter access legislation has been proposed and adopted. On the left these policies are typically vilified as thinly veiled attempts by Republicans to depress turnout among constituencies deemed favorable to the Democratic Party: minorities, new immigrants, the elderly, disabled, and young.<sup>xvi</sup> Ari Berman summarizes this view well in reference to the 2012 presidential election:

Republican officials have launched an unprecedented, centrally coordinated campaign to suppress the elements of the Democratic vote that elected Barack Obama in 2008. Just as Dixiecrats once used poll taxes and literacy tests to bar black Southerners from voting, a new crop of GOP governors and state legislators has passed a series of seemingly disconnected measures that could prevent millions of students, minorities, immigrants, ex-convicts and the elderly from casting ballots.<sup>xvii</sup>

Left-leaning media echo this line of reasoning, as do prominent interest groups like the American Association of Retired People (AARP) and the National Association for the Advancement of Colored People.<sup>xviii</sup> Such perceptions are only reinforced by instances such as that of a Pennsylvania Republican state house majority leader who infamously stated that the passage of the state’s 2012 voter identification law would “allow Governor Romney to win the state of Pennsylvania.”<sup>xix</sup>

The Senate Judiciary Subcommittee on Constitutional, Civil Rights and Human Rights, led by Democrats, held hearings on restrictive legislation under the title “New State Voting Laws: Barriers to the Ballot?”.<sup>xx</sup> The Congressional Black Caucus, Congressional Hispanic Caucus, and Congressional Asian Pacific American Caucus joined forces in federal testimony and activism against the voter access policies’ alleged discriminatory intent.<sup>xxi</sup> The Department of Justice under the Obama Administration, citing Section 5 of the Voting Rights Act, worked to nullify or stay voter access legislation in Florida, Texas, and South Carolina arguing that the legislation would “deny or abridge.... the right to vote on the basis of race, color, or membership in a language minority group”.<sup>xxii</sup> It is clear that for Democrats, restrictive voter access policies are viewed as purposive efforts by Republicans to depress turnout amongst their core constituents.

Meanwhile, many Republican politicians and their allies assert that restrictive voter access legislation is intended to prevent or curtail rampant electoral fraud so as to preserve the legitimacy and integrity of the electoral process.<sup>xxiii</sup> Such discussions often emphasize the possibilities or invitation for fraud in voting rolls that include deceased individuals, “fraud friendly” registration laws like the Motor Voter Bill, and absentee ballots as a “tool of choice” for those attempting voter fraud.<sup>xxiv</sup> Further, some accuse Democrats of committing electoral high jinks with more frequency because their core constituents are more likely to commit fraud due to their economic insecurity.<sup>xxv</sup> As Larry Sabato and Glenn Simpson explain the right’s logic, “Republican base voters are middle-class and not easily induced to commit fraud, while ‘the pools of people who appear to be available and more vulnerable to an invitation to participate in vote fraud tend to lean Democratic... ..a poor person has more incentive to sell his vote than an upper class suburbanite’.”<sup>xxvi</sup> From this perspective, Democrats who oppose voter access regulations are working to continue their unfair and fraudulent advantages at the ballot box at the expense of democratic legitimacy. Kenneth Blackwell, former Attorney General of Ohio and current Republican operative, conveyed this while speaking on voter identification proposals:

What more than 30 states have tried to do is put in place a common-sense measure of voter ID so that people are assured that voters are who they purport to be, and



voter IDs are commonplace in our culture. You need [an ID] for a driver's license, for boarding an airplane, receiving a passport, purchasing alcohol or checking out a library book. So to use it to safeguard the integrity of the voting process at the voting station is pretty noneventful. ... We all know the horror stories of ACORN in 2008 and 2010. So there is enough evidence to suggest that we need to put things in place to protect this from going crazy. This is a reasonable safeguard to protect against voter fraud and ballot box stuffing when we have sufficient enough evidence that there are some people who would do just that if given the opportunity.<sup>xxvii</sup>

Right-leaning prestige media and blogs add further heat to this line of argument by pushing back on the ascription of racial motivations by many on the left. As the *National Review*'s Dennis Prager penned in 2011, and Fund and von Spakovsky similarly referenced in 2012, "it is hard to imagine a more demeaning statement about black America than labeling demands that all voters show a photo ID anti-black".

Rhetorically then partisans on both the right and left provide distinct explanations for the recent increase in restrictive voter access legislation.<sup>xxviii</sup> On the right, they are a necessary response to rampant electoral fraud perpetrated by Democrats and allied organizations. On the left, restrictive access legislation is seen as a strategic attempt to reduce turnout amongst Democratic-leaning voters. Thankfully, there is a large body of academic research that allows us to operationalize and empirically examine both these claims while situating current developments within the larger context of American electioneering, extending the franchise, and voter suppression.

Many who view recent restrictive efforts as attempts at voter suppression often draw parallels to the long history of suppression and demobilization of certain categories of voters. Such connections are not difficult to make as voter suppression is viewed by many researchers familiar with the history of American elections as a pervasive and consistent feature of U.S. political practice and institutions.<sup>xxix</sup> Suppression and demobilization tactics range from the legal to illegal, the local to the national, and have been adapted consistently to accommodate new legal, demographic, and strategic realities over the years. The wide range of tactics employed include: violence and intimidation, misinformation and deceptive practices, voter "caging" and challenging voters, and suppressive administration by partisan election officials.<sup>xxx</sup> In this context the types of

restrictive changes to electoral access we examine here represent a softer, legal form of voter suppression. In fact, some scholars<sup>xxx</sup> argue that in response to a changing legal environment modern suppression efforts have increasingly taken the form of changes to state election laws. That is, the legal regime that emerged following the passage of the 24<sup>th</sup> Amendment and the Voting Rights Act has made it more difficult to engage in the blunter forms of voter suppression utilized in the past. From this perspective, the recent policy changes examined here are analogous to the restrictive laws and practices in the Jim Crow era designed to achieve discriminatory impacts without violating the 15th Amendment.

Lorraine Minnite contends:

Today, vote-suppression strategies are pursued through subtle forms of intimidation and obstruction that take on the mantle of law and order. The strategy involves exaggerating the fraud threat to justify the complexity of the electoral system, a complexity created and compounded by the layering of more and more rules to deter fraud... .Administrative complexities justified as race-neutral necessities for deterring voter fraud are also opportunities for administrative error that have come to replace opportunities for vote suppression by other means. This is the context for the proliferation of unsupported fraud allegations today. The allegations shrewdly veil a political strategy for winning elections by tamping down turnout amongst socially subordinate groups. It is the most vulnerable voters, those with the least education or the least experience in operating the machinery of the electoral process, that are the most in need of the simplest rules and the easiest access. Thus, it is these voters who stand in for the criminal voters conjured up by the spurious voter fraud allegations and imagined by the U.S. cultural myth of voter fraud.<sup>xxxii</sup>

In the modern era, frontal attack on the right to vote is not politically acceptable, but targeting voter registration and access policies under the auspicious of “ballot security” continues to be quite viable.<sup>xxxiii</sup>

This academic work outlines the conditions under which parties are more likely to engage in suppression and demobilization. Francis Fox Piven and colleagues remind us of the simple reality that: “election contests can be won by bringing more voters to the polls or by deterring the voters who support the opposition from casting their ballots. In other words, by voter mobilization or by voter suppression”.<sup>xxxiv</sup> Consequently, a principal expectation is that political parties may mobilize or demobilize as is electorally efficacious.<sup>xxxv</sup> This perspective contrasts with a classical view that suggests that competition drives political parties to mobilize new constituencies in pursuit of untapped

resources that may shape electoral outcomes.<sup>xxxvi</sup> Due to their comparatively low turnout rates overtime, the poor, African Americans, ethnic minorities, and immigrants are argued to become particularly attractive for mobilization. The demobilization view counters by highlighting the historical tensions between the legal expansion of the franchise for these groups and the actual practices surrounding its access.<sup>xxxvii</sup> Further, political parties are argued to have heightened incentives, under certain condition, to engage in the suppression of their opponents' supporters. Suppression becomes especially attractive when rallying new voters to one's own party is viewed as costly, unpredictable, or potentially disruptive to the base.<sup>xxxviii</sup> In particular, appeals and policy positions crafted to appeal to lower income voters may conflict with political precedents and the interests of more well heeled supporters.<sup>xxxix</sup> Given such constraints suppressing the competition is incentivized, particularly when election margins are tight.<sup>xl</sup>

The take-away is that in a two-party system both parties have faced incentives to selectively suppress the vote and both have done so. In the 19<sup>th</sup> century and the first half of the 20<sup>th</sup> century, the Democratic Party engaged in multiple interlocking layers of suppression efforts to disenfranchise African Americans in the South, while in the North Republicans, albeit to a much lesser extent, made efforts to suppress Democratic-leaning low-income and immigrant voters.<sup>xli</sup> Since the 1960s, however, political conditions have aligned in a manner intensifying these incentives for the Republican Party. The civil rights movement and the Voting Rights Act transformed the racial character of party affiliation such that African-American voters came to overwhelming support Democratic candidates. Being perceived as African American then became a reliable marker for partisan preferences and an efficient guide for targeting suppression efforts. Lower income voters, of any race, have been similarly targeted as they disproportionately vote Democratic.<sup>xlii</sup> In response to a changing electoral environment, the GOP has become the central driver of restrictive changes to election laws and the primary perpetrators of a wide range of suppression efforts.<sup>xliii</sup> In short, this literature is explicit about which political party is more likely to engage in suppression in the current era; the groups likely to be targeted by such efforts; and the likelihood that voter demobilization will be "accomplished by legal and administrative subterfuge, with justifications that proclaim the rules and practices to be essential in safeguarding American democracy".<sup>xliv</sup>

### *An Empirical Approach*

These partisan and academic accounts ascribe vastly different motivations for the recent rise in the proposal and passage of restrictive legislation. The following analyses offer a unique empirical perspective in which we systematically examine which political, electoral, and contextual factors are associated with whether states proposed or passed restrictive voter access policies between 2006 and 2011.<sup>xlv</sup> Ours is *not* a treatment then that weighs in empirically on what the effect of passing and implementing such legislation has been or will be. Rather, we identify a constellation of conditions that may shape the policy making process in this area and subject them to empirical test. Restrictive legislation may be a response to strategic political calculation<sup>xlvi</sup>, rational determination of a problem<sup>xlvii</sup>, evidence of symbolic politics and fear<sup>xlviii</sup>, interplay between the structural, partisan, and cultural confines of policymaking<sup>xlix</sup>, or all of the above. These forces may be differentially relevant depending on whether proposal or passage is under examination. Passing legislation, for example, is more constrained by the specific political context within state legislatures than is a lawmaker's ability to propose legislation. Bills that are proposed, but are likely or expected to fail, may be motivated by a genuine effort by policymakers to achieve legislative change or by an interest in engaging in symbolic politics. Considering both provides multiple angles from which to build inferences as to what has motivated the pursuit of restrictive voter access policies. In doing so, we make a contemporary, empirical contribution to the larger body of work examining the conditions and historical moments in which parties engage in voter suppression efforts, and press the normatively important question of what role political parties play in securing access to the ballot. Further, we provide empirical footing for evaluating partisan claims regarding the motives driving contemporary restrictive access legislation. Today's widespread accusatory rhetoric is long on dramatic flair but short on evidence. This paper fills this much-needed evidentiary gap.

### **Independent and Control Variables**

Popular discourse, research on voter suppression, and general research on the policymaking process suggest a wide range of state-level factors that may increase or

decrease the likelihood that states adopt or consider restrictive voter access legislation. Below we identify the primary variables included in our analyses. Data sources and details of operationalization for all variables are available in Appendix A.

This first set of variables center around partisan control and electoral competition. It is widely acknowledged that in modern era electoral politics, “vote fraud is traditionally the type of election irregularity that Republicans focus on, while vote theft is often cited by Democrats”.<sup>l</sup> Further, empirical research consistently suggests that restrictive legislation of the kind considered here will disproportionately deplete turnout among potential low-income voters and minorities, two groups that skew heavily towards the Democratic Party.<sup>li</sup> Given this, and the fact that party lines are influential in determining policy outcomes<sup>lii</sup>, we expect restrictive voter access policies will be considered and passed more often where Republican officials exercise more control. To examine the influence of *Republican party control* we include multiple factors that should capture the relative ease or difficulty Republicans have in getting their policy proposals adopted: Republican legislative strength, the presence of a Republican Governor, and whether or not the state has a divided government.

As discussed above, the voter suppression literature suggests that parties have more incentive to engage in suppression in the context of tight elections. We expect the *difference in the party vote share in the previous presidential election* to impact the likelihood of a state to propose and pass restrictive voter access legislation. If a state has a smaller value on this measure, meaning the state was more competitive in the Electoral College, the potential pay off for suppression efforts increases dramatically. However, the incentives for suppression are not symmetrical for the two major parties. In the context of highly competitive elections, Democratic legislators are presumably less inclined to pursue or enact changes that are likely to depress turnout among their own supporters. This suggests that the impact of competitiveness may be conditional, a possibility we explore below with interaction effects.

We also examine the role of *local interparty competition* understanding that state legislators may be motivated more by local partisan concerns rather than national electoral outcomes. State legislators in chambers closely divided along party lines may seek the passage of such legislation in the hopes of advantaging their own party. However, we also

expect it may be more difficult to pass such controversial legislation in the context of smaller majorities. The variable is a simplified version of the Ranney index<sup>liii</sup> so that higher values indicate more competitive scenarios (more evenly divided parties in each house) and total party control (100% of seats) would produce a value of 0.<sup>liv</sup>

Registering to vote, maintaining registration after a move, and the logistics involved in actually casting a ballot are more cumbersome in the United States than other advanced democracies.<sup>lv</sup> It is well known that these hurdles are more burdensome for those of lower socio-economic status, individuals of color, new citizens, and the elderly.<sup>lvi</sup> For those concerned about voter suppression, recent legislative developments introducing new requirements are but the modern continuation of purposeful efforts to selectively suppress the vote via procedural means.<sup>lvii</sup> If this is the case, all else being equal, we should see restrictive voter access legislation considered and adopted in states where historically vulnerable Democratic constituencies turnout at higher rates, have increased their levels of turnout in recent elections, or both.

We examine whether states with higher rates of *minority turnout*, and those that saw *increases in minority turnout* between the 2000 and 2004 and the 2004 and 2008 Presidential elections experienced an increase in the frequency of proposal or passage of restrictive legislation.<sup>lviii</sup> Similarly, if legislators are sensitive to the level of turnout among the less affluent in ways consistent with targeted voter suppression, states where low-income individuals turnout at rates that more closely approximate that of wealthier voters should see restrictive voter legislation proposed and passed with increased frequency. This is especially apt as levels of upper class turnout bias have decreased between the Presidential election years examined here. Our variable replicates James Avery and Mark Peffley's<sup>lix</sup> ratio of affluent voter turnout (over 75K) to that of lower income (under federal poverty line) for years 2000, 2004, and 2008 respectively. Larger values mean greater upper-class bias. The class bias change variable is the difference in the turnout ratio between the previous two Presidential elections. Positive values on this measure indicate that class bias has decreased.

We also explore the possibility that restrictive legislative activity may be a response to overall turnout. Gains in voter turnout at the federal level are usually drawn disproportionately from lower-income individuals who are disproportionately people of

color.<sup>lx</sup> Aggregate gains in turnout are often read as increases among constituencies favorable to Democrats. Reliable and valid real-time voting/polling data for all 50 states is notoriously difficult to gather, let alone data on specific subgroups of voters. Consequently, political professionals and elected officials who aim to strategically deplete turnout amongst Democratic constituencies may reasonably rely on aggregate turnout as a proxy for electoral shifts unfavorable to them. To explore this we include a measure of *overall turnout in the previous Presidential election*.

Proposing and passing restrictive voter access legislation in response to minority and lower-income electoral participation is a retrospective response—one that may involve initial electoral setbacks. Strategic politicians may then support restrictive policies *prior* to election season relying on purely demographic indicators deemed troubling for their re-election or party. We test for this motivation behind restrictive voter access legislation with the inclusion of the *percentage of African-Americans, non-citizens, and the elderly* within states. The logic is simple in each case. Of all racial and ethnic groups, the battle for the franchise is most interwoven with the African American experience in the U.S.. Historically, the larger the percentage of African Americans in a state the more difficult it is for African Americans to realize the right to vote.<sup>lxi</sup> If the proposal or passage of restrictive legislation is associated with state racial composition, this is supportive of a voter suppression narrative. The same pattern may hold for states with larger numbers of non-citizen residents. Many in this population will eventually acquire citizenship and new immigrants are more likely to vote Democratic – especially given the increasingly harsh immigration rhetoric in the Grand Old Party.<sup>lxii</sup> Last, if targeted demobilization drives restrictive legislation the opposite expectation holds for the percentage of elderly in a state. The elderly go to the polls at higher rates than other age groups and, increasingly since the 2008 election, disproportionately support Republican candidates.<sup>lxiii</sup> As many of the restrictive policies examined here may also suppress participation by elderly voters, we expect these policies may be pursued with less vigor in states with larger proportions of elderly residents.

Republicans typically contend that voter IDs, proof of citizenship to vote, and similar policies are necessary to curtail election fraud in the wake of reforms that have made it easier to vote.<sup>lxiv</sup> Examples cited as representative and uncontested include

phantom voters registered under “Motor Voter Laws”, non-citizen voting, and the disenfranchisement of military voters. In addition, myths abound alleging massive voter fraud in Florida during the 2000 election and similar accusations involving ACORN in more recent elections.<sup>lxv</sup> A historical perspective certainly provides colorful examples of fraudulent electoral activities.<sup>lxvi</sup> Today, however, the largely uncontested conclusion within social science circles is that deliberate, systematic electoral fraud is extremely infrequent.<sup>lxvii</sup> Nonetheless, *reports of actual voter fraud* may predict the consideration and adoption of restrictive voter access policies. Our measure of fraud comes from the American Center for Voting Rights<sup>lxviii</sup> and Lorraine Minnite’s<sup>lxix</sup> exhaustive accounting of all fraud allegations in the 2004 election cycle.

Interest group mobilization is also central to understanding agenda setting and policy outcomes. The American Legislative Exchange Council (ALEC) is one such interest group uniquely active in creating and disseminating model voter identification legislation. This organization coordinates task forces charged with drafting model legislation, and such legislation for voter identification provisions has been promoted by ALEC.<sup>lxx</sup> Given the purported influence of ALEC, and its work at the state level, we expect that state delegations who have higher percentages of *ALEC-affiliated members* may be more likely to pass restrictive voter access legislation.<sup>lxxi</sup>

Our third attempt to tap into perceptions of electoral fraud is a measure of political culture among a state’s citizens. If liberals see fraud as infrequent and diversionary, and conservatives view fraud as frequent and threatening to democracy, then it follows that states with more liberal political cultures should be less interested in considering and adopting restrictive voter access legislation. We use updates of William Berry, Evan Ringquist, Richard Fording, and Russell Hanson’s<sup>lxxii</sup> measure of *citizen ideology* to empirically characterize this dimension of state political culture.

We also examine the contribution of *policy diffusion*. Simply put, states tend to adopt the policies that their neighboring states do.<sup>lxxiii</sup> The processes by which this occurs remains contested but there is little doubt that policy diffusion happens between U.S. states and that it occurs with neighboring states most frequently. Consequently, states may be more likely to consider and adopt restrictive voter access legislation as surrounding states do so.



Last, all of our analyses below contain a number of control variables. First, if a state has *already passed a photo identification or proof of citizenship requirement* then we would expect there to be less proposal and certainly less passage of such legislation. Second, we control for whether a state currently makes available either *early or no-excuse absentee voting* or both. If voter suppression motivates the proposal and passage of voter access legislation, we expect states with more accessible election practices may be more likely to pass restrictive legislation. Finally, states with fewer economic resources may be less likely to create new regulations, restrictions, or procedures, as such innovations may be perceived as too costly.<sup>lxxiv</sup> This factor is included in the form of *real state revenue per capita*.

### ***Measuring Restrictive Voter Legislation***

Our dependent variables take the form of the annual count of restrictive changes to voter access proposed or passed within state legislatures between 2006 and 2011.<sup>lxxv</sup> As noted, we focus on five different types of legislation: photo identification requirements, proof of citizenship requirements, laws which introduce restrictions on voter registration, restrictions on absentee and early voting, and restrictions on participation by felons. Table 1 provides a breakdown of which states have passed these different types of laws and in which year. For the years 2006-2010 these data are drawn from the National Conference of State Legislatures' Database of Election Reform Legislation.<sup>lxxvi</sup> For 2011, we draw upon an exhaustive report from the Brennan Center for Justice, *Voting Law Changes in 2012*, which details legislative developments in these categories of laws in 2011.<sup>lxxvii</sup>

[Insert Table 1 here]

The passed legislation in Table 1 all have the potential to reduce voter access at various points in the registration and voting process. Perhaps most well known are new laws requiring photo identification to cast a ballot and proof of citizenship in order to register to vote. The category of registration restrictions includes policies that impact both voters directly and third party organizations involved in registering voters. The former include reductions in the window for registration, such as eliminating Election Day registration, or increasing state residency requirements. Restrictions on voter registration drives vary, but most commonly involve: requiring registration groups to register with the

state, mandatory training for anyone registering voters, special disclosure procedures, and short deadlines for the submission of voter registration forms. Failure to comply is often paired with newly established fines or criminal penalties. Restrictions on absentee voting include reducing the time during which absentee ballots can be applied for or accepted and restrictions preventing civic or political organizations from delivering absentee ballots. Last, early voting restrictions primarily involve reducing the number of days or hours during which early voting is available.

In addition, we examine proposed legislation that would restrict voter access. This includes all proposed legislation along the lines described above, but also legislation that increase requirements or restrictions on either registration or the voting process *relative* to existing state law. For example, in a state with no voter identification requirements a bill to introduce identification requirements, even if these requirements do not require a photograph, is considered a restrictive proposal.<sup>lxxviii</sup> Similarly, bills to increase the requirements for registration or the receipt of absentee ballots are considered restrictive. Last, while no state passed new legislation related to the voting rights of felons in the period under examination, it was proposed in many states.<sup>lxxix</sup> Most common was legislation banning felons (or those convicted of particular categories of felony offenses) from voting for life. Other such bills included increasing the criminal penalty for registering to vote if one is an ineligible felon, extending a felon's period of ineligibility to include parole or probation if state laws does not already prevent this, or requiring that all fines imposed by sentence and court costs must be paid before the restoration of voting rights.

### ***Determinants of Proposal and Passage***

In our analyses, we use specialized regression techniques that allow assessments of the relative strength and significance of each explanation for passing and proposing restrictive access legislation between 2006 and 2011 while controlling for other independent variables. These approaches follow the logic of classic multiple regression while accommodating the particular structure of, and specific issues within, our data.<sup>lxxx</sup> Below we briefly introduce the reasons for selecting each modeling approach before discussing the results of each set of models. All models were run using Stata version 11.2.

### *Proposed Legislation: GMM Analyses*

First, we examine which state-level factors are associated with a higher annual count of proposed restrictive voter access legislation between 2006 and 2011. The cross sectional nature of our dataset and the fact that the dependent variable is a count (the number of restrictive legislative changes proposed in a state each year) would lead normally to the use of a pooled Poisson modeling approach. Unfortunately, one of our central variables of interest violates an assumption required for the use of a pooled Poisson approach. The “percentage of the state legislature Republican” variable is related to the error term in the model which can bias estimates.<sup>lxxxix</sup> This problem, referred to as endogeneity, requires that accommodations be made in order to address the presence of such endogenous variables.<sup>lxxxix</sup> We use a generalized methods of moments (GMM) modeling approach because it allows one to directly address the presence of endogenous variables through the use of instrumental variables.<sup>lxxxix</sup> An instrument variable, a variable that stands in for an endogenous factor, must be correlated with the variable they are replacing but not with the error term. Three variables in our analyses meet these criteria: our ALEC variable, the Republican Governor variable, and the citizen ideology measure. For the following GMM analyses, these three variables are included in place of the problematic percentage of the state legislature Republican variable.

[Insert Table 2 here]

Table 2 contains the results of 4 GMM models examining the state-level factors associated with higher annual counts of *proposed* voter restriction legislation.<sup>lxxxix</sup> Models 1 & 2 examine the factors associated with the proposal of all types of restrictive legislative changes identified above and these two models differ in only respect. The measures of minority turnout in the previous presidential election and state % African American are highly correlated and either variable is highly significant in the absence of the other. Models 1 & 2 introduce each of these variables individually. Both larger proportions of African American residents and higher levels of minority turnout in the previous presidential election are significantly associated with more proposed legislation. While such results make it difficult to adjudicate precisely between the contributions of these correlated but distinct factors, it is clear that *the racial composition of a state is strongly*

*related to the proposal of changes which would restrict voter access.* The minority turnout variable suggests that concern about the electoral consequences of minority, and especially African-American, turnout is a primary driver of the broader effect of state racial composition. Reinforcing this interpretation is the fact that in both Models 1 & 2 larger *increases* in minority turnout between the previous two presidential elections are associated with greater frequency of proposed legislation. All of this is consistent with minority voter suppression and electoral considerations being central motives for the proposal of voter restrictions.

Only two additional factors are found to increase the proposal of restrictive legislation. First, larger increases in class-biased turnout, indicating higher turnout among lower income voters relative to wealthy voters, is significantly associated with a larger volume of proposed legislative changes. Low-income individuals vote less frequently than the affluent in every state but where this gap has been closing in recent years, restrictive access legislation is more apt to be proposed. Second, states with larger proportions of non-citizens also saw restrictive legislation proposed more frequently. In sum, *where African-Americans and poor people vote more frequently, and there are larger numbers of non-citizens, restrictive access legislation is more likely to be proposed.*

It is noteworthy that within Models 1 & 2 none of our measures of partisan control or electoral competition are significant. In particular, a larger proportion of Republicans in the state legislature is not associated with a higher frequency of proposed bills. This could be due to multiple factors. A legislator does not need to be in the majority party to propose legislation. Further, multiple bills that have little chance of passing may be proposed by Republicans in the minority for partisan or symbolic reasons. For example, a number of (disproportionately Republican) legislators in Massachusetts have introduced dozens of restrictive bills, none of which have passed during this period. On the other hand, a legislature that is dominated by Republicans may be able to pass a larger proportion of a smaller number of proposed bills. Further, it is possible that Republican legislators in solidly Republican states may have less electoral incentive to pursue such restrictive legislation at all. All of these considerations may complicate a simple linear relationship between the percentage of Republican legislators and the proposal of restrictive legislation.

In order to explore whether the forces driving the proposal of identification and proof of citizenship requirements differs from the proposal of registration, absentee, and early voting restrictions, Models 3 and 4 examine the count of these proposed legislative changes separately. The factors associated with more frequent proposal of these different types of restrictions are largely the same, appearing to be primarily a response to either levels of or change in minority turnout, levels or change in class-biased turnout, and the proportion of non-citizens.

From all this a striking story emerges: the proposal of restrictive voter access legislation has been substantially more likely to occur where African-Americans are concentrated and both minorities and low-income individuals have begun turning out at the polls more frequently. Given that we are examining the years 2006-11, we can specifically attribute these developments to the significant increases in voter turnout among these groups in the 2008 election. States where these developments were felt more intensely were correspondingly more likely to propose legislation. While we can only infer motivation, these results strongly suggest that the proposal of these policies has been driven by electoral concerns differentially attuned to demobilizing African-American and lower-income Americans. Such patterns of association are strongly consistent with the expectations derived from the literature on voter suppression.

#### *Passed Legislation: Pooled Poisson Analyses*

In this second set of analyses we turn our attention to the actual passage of legislative changes that reduce voter access. As in our analysis of proposed legislation, a pooled Poisson approach is appropriate, but we again have a problem with the presence of endogenous variables. However, in this case it is not possible to use the GMM estimation technique for these analyses primarily because the new outcome of interest, passed legislation, occurs too infrequently. A fixed effects modeling approach is a commonly used technique to address this specific issue, the presence of endogenous factors, but this approach is not without some costs. Fixed effects approaches only utilize within-group, in our case within-state, variation over time. This significantly impacts both the cases involved in the analyses and the interpretation of the results. First, only cases that exhibit variation on the dependent variable and only variables that exhibit variation over time can

be included in such analyses. Consequently, only states that actually passed a piece of legislation during our 2006-2011 time period are included, resulting in a total of 150 state-year observations. Time-invariant variables, citizen ideology and voter fraud cases, are unavoidably dropped from all models. Second, it is important to stress that these analyses reveal only the *within* state developments associated with the increased likelihood of passage of legislation.<sup>lxxxv</sup>

[Insert Table 3 here]

Table 3 contains the results of 2 pooled-Poisson fixed effects models examining state level factors associated with the annual count of restrictive changes to voter access passed in each state. Beginning with the impact of the balance of partisan power within state governments, the proportion of the legislature Republican, the presence of a Republican Governor, and the degree of competitiveness between the parties within state legislatures are all significantly associated with the passage of restrictive changes. In the context of a fixed-effects framework, these results indicate that *within* states over time a larger proportion of Republicans in the legislature and the presence of a Republican Governor are associated with a higher annual count of passed legislation. These effects are most likely driven by the substantial increase in restrictive changes passed following the Republican “wave” election of 2010 where the GOP picked up 11 governorships and gained control of 57 state legislative chambers (up from 36 in 2009). Of the 41 adopted voter restrictions considered here, 34 restrictive changes (83%) passed in Republican controlled state legislatures. Further, of the bills requiring either photo ID or proof of citizenship (the policies that are the most unambiguously expected to disproportionately burden likely Democratic voters), *all* were passed in legislatures under Republican control (see Table 1). Given that the reductions in voter participation and access potentially resulting from these policies would overwhelmingly benefit Republicans, we are not surprised to see such a strong influence of party control on passage. The effect of the simplified Ranney index is negative indicating that states where the partisan balance of power has become more evenly divided are less likely to pass restrictive legislation. This likely reflects the reality that passing controversial legislation with obvious partisan

consequences is more difficult to accomplish in the context of more closely divided legislatures.

Our second measure of electoral competition captures a state's degree of competitiveness in national political contests: the difference in the party vote share in the previous presidential election. This variable is insignificant in Model 1. However in Model 2 it becomes significant upon the inclusion of an interaction effect testing whether the effect of a state's competitiveness on the passage of restrictive legislation depends upon the degree of party control exercised by state Republicans. This significant interaction effect indicates that increases in competitiveness within presidential contests translates into more restrictive changes in states with larger Republican majorities and fewer restrictive laws in states with larger Democratic majorities. Considerations of national electoral outcomes, especially the presidency, appear central to passing restrictive changes – especially in states where both the motivation and means converge.

After accounting for the variation in passage explained by party control and electoral competition, only three additional factors emerge as significant in Model 2. Consistent with our findings for proposed legislation, states where minority turnout has increased since the previous presidential election were more likely to pass restrictive legislation. Second, the variable capturing the proportion of the state population over 65 years old is negative and significant, indicating that states where the elderly population is growing are less likely to pass restrictive changes. Last, these results suggest that states where election accessibility has increased through the introduction of early or no-excuse absentee voting were more likely to pass restrictive legislation. We do not want to overemphasize this last finding though as the number of states who experienced such increased accessibility during this time period is extremely small.

#### *Passed Legislation: 2011 Poisson Analyses*

As stated above, fixed effects approaches only make use of within state-variation, but what of the effects of stable state characteristics that do not vary much within states over time but do vary substantially *between states*? For example, a demographic factor like the percentage of a state's population that is African-American will not fluctuate dramatically year-to-year, and we are not looking for an effect of such changes. Rather,

we are primarily interested in whether states with larger numbers of African-American residents are more likely to pass such legislation. In order to explore the impact of such cross-state differences, our last set of models present the results of multiple (traditional) Poisson regressions examining the determinants of the total count of restrictive changes to voter access passed in 2011. In 2011 state legislatures passed 22 provisions restricting voter access. The highest national count in the previous 5 years was 8 restrictive changes passed in 2006. 2011 was a year of dramatically increased legislative activity in this issue area and one that we suspect was influenced by a unique confluence of conditions and pressures that are unique to the post-2008 (and pre-2012) election years.

[Table 4 goes about here]

Table 4 presents the results of 4 Poisson analyses examining state-level determinants of the count of restrictive changes to voter access passed in 2011. Model 1 presents the results of a reduced model containing only our measures of partisan control. It indicates that states with Republican governors were more likely to pass such legislation, but the percent of the legislature Republican is insignificant and even bears a negative sign. This indicates that simply holding a majority of seats does not guarantee that the majority party can actually pass this controversial legislation. The presence of a Democratic Governor's veto will reduce the chance of a voter restriction bill becoming law even if passed by a Republican controlled state legislature. Additionally, in the context of divided government an opposition party, in this case usually the Democratic Party, may check the passage of legislation even if that party holds a strong majority of seats in one chamber. These combinations of conditions likely modify the direct effect of the percentage of Republican legislators on the count of restrictions passed. To examine this conjunctural effect more directly, we constructed a variable indicating the presence and strength of an *unencumbered Republican majority* in the state legislature.<sup>lxxxvi</sup> This variable simply takes the value of the percent of Republican legislators *unless* the Republicans are in the minority, the state has a divided government, or a Democratic governor. Under these conditions the variable takes a value of zero. Model 2-4 include this new variable and the variables which comprise it are dropped from the models. This



variable is both highly significant and is an extremely influential factor in these analyses indicating that the presence and size of an unencumbered Republican majority are positively associated with a larger volume of passed restrictive changes in 2011.

In these models we do not use the difference in party vote share variable in the previous presidential election, our measure of the competitiveness of the state in presidential elections used previously. Rather, we created a dummy variable for states that were identified in journalism published in 2010 as potential swing states in the 2012 election. For this list we drew primarily on outlets specializing in political reporting (e.g. *Roll Call* and *POLITICO*). Ten states were the most frequently discussed: Colorado, Florida, Iowa, New Hampshire, Nevada, North Carolina, Ohio, Pennsylvania, Virginia, and Wisconsin. Whether these states were actually considered highly competitive swing states in the actual run-up to the 2012 election is not as important as the perception among lawmakers in 2011 that their state could play a decisive role in the upcoming presidential election. This potential swing state variable is insignificant in Model 3, but becomes significant when interacted with the unencumbered Republican majority variable in Model 4. The negative direct effect of being a potential swing state indicates that it is more difficult on average to pass such restrictive changes in potential swing states than in non-swing states, presumably due to heightened political consequences making such changes more hard fought. The significant interaction effect captures the fact that potential swing states with an unencumbered majority Republican were more likely to pass restrictive changes in 2011. However, in the absence of an unencumbered Republican majority potential swing states were significantly less likely to enact such legislation. In other words, Democrats appear to have been extra vigilant in 2011 to prevent the passage of such changes in potential swing states.

The second most influential individual factor in these analyses is a state's racial composition as captured by either the percentage of the state population that is African American or minority turnout in the 2008 election. Both factors are associated with a larger number of passed restrictive changes and are highly significant in the absence of one another. Model 3 includes minority turnout in 2008 and omits the % African American variable; Model 4 provides the converse. *As was the case in both previous analyses of proposed and passed changes, controlling for a wide range of factors states*

*with larger proportions of minority voters and African American residents were more likely to pass restrictive voter legislation in 2011.*

In the remainder of this discussion we will focus on the results produced by Model 4, which takes into account both the highly influential impact of state racial composition and the swing state interaction effect discussed above. A number of additional factors emerge as significant. In contrast to our findings in the analyses of proposed changes, it appears that states with larger increases in minority turnout between 2004 and 2008 are less likely to pass restrictive changes in 2011. So states where minorities make up a larger proportion of those casting a ballot are more likely to pass restrictive legislation, but if that state experienced a surge in minority turnout in 2008 the likelihood of passage of such legislation is reduced. This could be indicative of a different political calculus confronting legislators in the context of states with larger shares of mobilized minority voters. Specifically, the possibility of public anger, attention, or backlash might undermine, or even reverse, any electoral benefits of actually passing restrictive legislation. Indeed, numerous journalistic reports have suggested the passage of restrictive voter legislation in a few states galvanized minorities and especially African American voters to participate in the 2012 election.<sup>lxxxvii</sup> Concerns about such a backlash effect strikes us a plausible explanation for the negative influence of increased minority turnout in 2008 on the passage of restrictive legislation in 2011.

Second, it also appears that states with larger levels of overall turnout in 2008 were *less* likely to pass restrictive legislation in 2011, but this is true only when controls for state racial composition or minority turnout are in place. Once the fact that states with more African-American voters and residents are more likely to pass restrictive legislation is accounted for, this variable captures the corresponding reality that higher levels of *white* turnout are associated with a reduced likelihood of the passage of such legislation. This simply underlines the centrality of racial considerations to the passage of restrictive voter legislation. Third, we find that states with larger proportions of elderly residents are less likely to enact restrictive changes. We interpret this as potentially reflective of a strategic, partisan recognition that restrictive policies likely to suppress lower-income and minority voters may also impede participation by elderly, and Republican-leaning, voters as well. Fourth, our measures characterizing the previous state of election accessibility indicate

that states that have already passed a photo identification or proof of citizenship law passed a smaller number of changes in 2011. On the other hand, states with highly accessible elections, as indicated by the presence of both no-excuse absentee and early voting, were more likely to pass restrictive changes in 2011. All of these findings are consistent with a voter suppression narrative.

Lastly, the number of reported cases of voter fraud is significantly associated with higher rates of passage of legislation in 2011. We are skeptical that this variable represents any true measure of actual voter fraud and find it more reasonable to consider it an indicator of selective, and in some cases explicitly partisan, efforts to raise concerns about voter fraud. That said, some may read this as evidence that restrictive legislation has passed, in part, in response to actual fraud. While it is not possible to adjudicate between these two interpretations here, it is important to stress that in the big picture the impact of this factor is minor compared to the influences of the partisan, electoral, and racial factors identified in these analyses. Figure 4 attempts to provide exactly this, a sense of the respective impacts of the central factors identified as significant in these analyses. It displays the change in the predicted count of restrictive provisions passed in 2011 given a one standard deviation increase in each factor while holding all other variables at their mean values. For example, a hypothetical state with a proportion of African American residents one standard deviation above the mean and average values on all other variables would be expected to pass over 2.5 more restrictive provisions in 2011 than a state with average values on all variables (including % African American). As this figure makes clear, partisan control and state racial composition are overwhelmingly the two most influential factors associated with the passage of restrictive legislation in this year.

[Figure 4 goes about here]

In sum, these findings suggest that over the 2006-2011 period states that increased their share of Republican legislators, elected a Republican Governor, or became more competitive in the electoral college *in the presence of* a Republican majority in the state house were more likely to pass restrictive voter legislation. States experiencing increasing minority turnout were also more likely to pass restrictive legislation. Focusing on legislation passed in 2011, we find that more restrictive changes passed in states with

unencumbered Republican majorities, larger proportions of minority voters or African American residents, more reported cases of voter fraud, and more accessible election systems.

### ***Voter Restrictions as Strategic Voter Suppression***

Zooming out, a straightforward picture emerges. Our analyses identify a very substantial and significant association between the racial composition of a state's residents or active electorate and both the proposal and passage of voter restriction legislation. This association is robust across multiple modeling approaches and controlling for a wide variety of relevant factors. Further, these findings demonstrate that the emergence and passage of restrictive voter access legislation is unambiguously a highly partisan affair, influenced by the intensity of electoral competition. The fact that in the context of heightened competition Republican control increases, while Democratic control reduces, the rate of restrictions passed underlines the highly strategic nature of these efforts. It also appears that demobilization efforts are not a blunt practice. Passing restrictive voter legislation (in noteworthy contrast to proposal) is shaped by an apparent sensitivity to the *net* impact of restrictive policies. That is, the electoral benefits of reforms with disproportionate suppression effects appear to be weighed against the risks of galvanizing turnout among groups targeted for demobilization or accidentally suppressing supporters. In combination, these findings are strongly consistent with a scenario in which minority voter suppression is a central driver of recent legislative developments restricting voter access.<sup>lxxxviii</sup> Indeed, we find that the best available measure of actual voter fraud is not associated with the proposal of legislation and is only a minor contributing factor to the passage of restrictive changes in 2011. This is not a particularly surprising finding as serious empirical attempts to quantify the extent of voter fraud have consistently found such fraud to be exceedingly rare in modern U.S. elections.<sup>lxxxix</sup> These findings are relevant to current partisan and legal debates regarding voter restrictions, our understanding of the conditions that incentivize suppression efforts, and broader developments across multiple policy arenas that have reduced electoral access among the socially marginalized.

### *The 2012 Election and Beyond*

A typical cable news night surrounding election 2012 featured barely civil exchanges between Democratic operatives decrying how restrictive legislation aims to keep their constituents from the polls and Republican pundits scoffing at the allegation, making their own case that such legislation protects the legitimacy of the electoral process by combating fraud. Our findings confirm that *Democrats are justified in their concern that restrictive voter legislation takes aim along racial lines with strategic partisan intent*. But if that is the case, how do we interpret the President Obama's decisive victory in 2012? Some may read this as clear evidence that either reforms have not suppressed voters or that voter suppression efforts did not work. This narrow focus on the outcome in the presidential race both obscures the impacts of these policies and misreads the extent to which the 2012 election represented a true test of the effects of these laws.

Most importantly, many of the most onerous restrictive changes were not in effect for the 2012 election.<sup>xc</sup> While we have focused above on the proposal and passage of restrictive legislation, these developments have provoked a wide-ranging pushback in defense of voter access. In 11 states laws were blocked, weakened, or postponed by courts or the Department of Justice and in two states, Maine and Ohio, restrictive laws were repealed by citizens.<sup>xci</sup> Further, the effects of some of these laws can be subtle, difficult to discern, and most influential at the margins. For example, the results of a wide range of studies indicate that most registered voters do possess the forms of identification required by voter ID laws.<sup>xcii</sup> Consequently, such laws may do little to suppress routine voters, but may serve to reduce participation among the eligible unregistered population who are much more likely to lack basic forms of required identification. It has been suggested that “[t]he real value of restrictive voter ID may be in what we might call ‘surge protection’ against the kind of mobilization of new, first-time voters who very likely handed Obama his election [in 2008].”<sup>xciii</sup> Such effects may be consequential, but are difficult to measure empirically.

That said, the impacts of other restrictive changes have been much less subtle. Most infamously in Florida, one study estimates that roughly 200,000 voters were discouraged from voting in the 2012 election due to long lines<sup>xciv</sup> and another study found

that racial and ethnic minorities as well as Democrats were more likely to experience significantly longer waits.<sup>xv</sup> These long lines were, in part, a direct result of a reduction in the number of early voting days passed by the Florida legislature in 2011. The estimates from these studies in Florida alone underline the sobering reality of the potential impact of these laws in the context of a tight election. Since the 2012 election, thus far restrictive laws have been passed or proposed by Republicans in Arkansas, Missouri, Montana, and Virginia. Republicans appear undeterred in their pursuit of these restrictive policies and this most recent presidential defeat may only serve to galvanize suppression efforts.

In addition, the Supreme Court recently decided to consider a constitutional challenge to Section 5 of the Voting Rights Act. Section 5 requires that states and localities determined to have a history of undermining the franchise get preclearance from the Department of Justice or the U.S. District Court in D.C. before enacting electoral changes to ensure these alterations do not have an adverse effect on racial or linguistic minorities. This is what allowed the Department of Justice to block or weaken restrictive access legislation in states like Florida, Texas, and South Carolina in the run-up to the 2012 election. Currently, in jurisdictions covered by Section 5 the burden of proof lies on state or local governments to demonstrate that electoral changes do not have a discriminatory or retrogressive impact on minorities *before* legislation goes into effect. If overturned, challenges may still be brought but these suits will be a response to new laws after they have been adopted and the burden of proof will lie with those bringing the challenge. Further, final rulings could come after relevant elections. A central argument made against the constitutionality of Section 5 is that it is outdated – covered states no longer intend to discriminate or do so. Our findings call such assertions into question and, more broadly, suggest that challenges to the implementation and passage of restrictive access legislation are merited on the grounds of racial bias.

#### *Why the Recent Intensification of Suppression Efforts?*

Overall, we find strong empirical support for the position that recent legislative efforts to restrict voter access are usefully conceptualized as yet another wave of election reforms, in a long history for such reforms, pursued in order to demobilize and suppress

particular categories of voters for partisan gain. But what is it about the current political moment that has lead to the recent increase in the proposal and passage of legislation? A widely acknowledged broad contextual factor is certainly the competitiveness of presidential elections and the tight balance of congressional power in recent decades. Tighter election margins incentivize not just voter suppression efforts, but a wide range of tactics, including redistricting and legal challenges intended to shape election outcomes.<sup>xcvi</sup> In the context of somewhat long-standing pressures to demobilize Democratic opponents, why the efforts to reduce electoral access in the mid-to-late 2000s? The marriage of our findings and the voter suppression literature suggest Republicans may have done so for a number of reasons: changing demographics; recent Republican electoral losses; an unforgiving internal shift within the party to the ideological right; and the party faithful's response to vote fraud mythology.

Immediately following the 2012 election a specific narrative emerged highlighting the manner in which the changing demographic composition of the United States and the heavy skew of minority groups towards the Democrats both provided an advantage for President Obama and potentially spelled trouble for the future prospects of the GOP. Our findings regarding the influence of race and minority turnout suggest that many Republicans were not unaware of these realities in the years preceding the 2012 election. This is understandable as the 2008 election was a particularly instructive experience in this specific regard. The historic magnitude of Republican losses in the 2008 election are hard to overstate.<sup>xcvii</sup> Minority turnout and Democratic vote margins among minority voters increased substantially in 2008 and this boost is widely viewed as critical to Obama's election.<sup>xcviii</sup> Republican upsets at the presidential level in the South, (Florida, North Carolina and Virginia) were particularly painful and alarming to many Republicans. "These three southern victories can be ascribed to two factors: unified bloc voting by black voters combined with some crossover support by a minority of whites... the Obama-Biden ticket received almost unanimous support from black voters."<sup>xcix</sup>

Given these realities, it has been argued that the accelerated proposal and passage of restrictive election reforms represent a backlash against both the broader demographic changes widely viewed as troublesome for Republicans and strong minority turnout and support for the first non-white major party presidential nominee. Our findings are entirely

consistent with such a backlash narrative or even that of a strategic elite-driven “frontlash” in response to political setbacks as conceptualized by Velsa Weaver.<sup>c</sup> Weaver describes a “frontlash” as:

“the process by which losers in a conflict become the architects of a new program, manipulating the issue space and altering the dimension of conflict in an effort to regain their command of the agenda. Frontlash hinges on the presence of winners and losers of a recent political conflict.... .The dissatisfied parties seek openings to mobilize a new issue, alter the dimensions of the conflict, or, in the terminology of social movement theorists, “shift the locus of attack.”<sup>ci</sup>

In contrast to a traditional conception of a political backlash, exemplified perhaps in a process where resentment among white voters with racial progress shapes electoral outcomes, “[f]rontlash is preemptive, innovative, proactive, and, above all, strategic.”<sup>cii</sup> Further, while the political momentum in backlash narratives are often a bottom-up account focused on the behavior and preferences of dissatisfied voters from the bottom up, a frontlash is conceptualized as an elite countermovement in response to some type of political defeat. We consider this a useful conceptual frame for understanding the rise of restrictive voter legislation, given the elite-driven nature of increased attention and policy responses to the issue of voter fraud, and both the timing and strategic pattern of these legislative efforts.

Also potentially at play in the recent GOP pursuit of restrictive legislation are the unintended ramifications of the declining proportion and influence of moderates within the party. As we have detailed, a voter suppression perspective argues that parties have an incentive to suppress their opponents, as opposed to mobilizing new voters, when these new voters bring demands or positions that conflict with their existing base of supporters. In recent decades the Republican Party has both become more conservative on average and more ideologically homogenous.<sup>ciii</sup> As Republicans in recent election cycles have found themselves needing to increasingly move to the political right to win their primaries, they have increasingly alienated particular groups of voters such as Latinos and women. We suspect that when a party’s platform or rhetoric reduces the possibility of building electoral coalitions and bringing in new voters, while representing the interests of a demographically shrinking base, this alone increases the incentive to engage in voter suppression. In a two party system, when mobilizing supporters is insufficient,



demobilizing opponents may provide the only route to victory. The increasing effort put into voter suppression by the GOP in recent years may then be a reflection, in part, of these internal ideological and practical constraints on mobilizing new voters.

Finally, the steady amplification of voter fraud mythology since the 2008 election has undoubtedly contributed to the increased rate of restrictive legislative activity. The historical deployment of fraud charges reminds that doing so is often a valuable political tool for both explaining electoral losses and mobilizing supporters. Minnite goes as far as to argue that the voter fraud myth has come to represent a “new Southern strategy” in which the Republican base is “energized by the tarring of Democrats as cheaters and the association of Democrats with a racialized crime-prone underclass.”<sup>civ</sup> For many conservatives, fraud is now genuinely believed to play an influential role in American political life. We find this unfortunate as such outsized concern will undoubtedly serve to both justify and prompt continuing pressure for restrictive reforms while obscuring attention to the very real problems that riddle our electoral institutions and practices.

*Cumulative Voter Exclusion: Felon Disenfranchisement, Modern Poverty Governance, & Restrictive Access Legislation*

Our findings are deeply troubling in their own right. This is compounded by the fact that we view this legislation as yet an additional layer of exclusionary policy practices which work to reduce political participation and electoral access by the socially marginalized. The manner in which these restrictions have unfolded bear a number of similarities with modern developments in other policy arenas, especially criminal justice policy and poverty governance.<sup>cv</sup> First, they are race, gender and class neutral on paper, but have disparate political impacts in practice. Second, much of this exclusionary policy action has occurred at the state-level where policymakers are less encumbered by federal oversight. Third, the resulting variation in the accessibility to rights and benefits across states is strongly shaped by considerations of race and social control. The net effect of these policy regimes is to reduce, to varying degrees, full political incorporation among the socially marginalized.

We have described recent legislative efforts to reduce electoral access, efforts that have been pursued more aggressively in states with more minority voters. These

developments rest on top of and interact with institutions and policies shaped by previous struggles over who deserves access to the full benefits and rights of citizenship. Massive increases in incarceration since the 1970s have combined with state-level variation in felon disenfranchisement laws so that 1 in 13 African American men were ineligible to vote in 2010 – compared to 1 in 40 of all Americans.<sup>cv</sup> Differences in state disenfranchisement laws produce a situation where disenfranchisement rates are the highest in 7 Southern states and most potent in Florida, Kentucky, and Virginia where 1 in 5 African Americans legally cannot vote.<sup>cvi</sup> Felon disenfranchisement laws are an enduring legacy of previous suppression efforts shaped directly by considerations of racial impacts and social control. The increased punitiveness of the American criminal justice system has dramatically increased the proportion of Americans currently disenfranchised by this legacy, with African-Americans, the economically insecure, and minorities disproportionately affected. This is the most direct of exclusionary policies regarding access to the vote: *legally limiting* who is eligible to vote along racial and class lines.

Electoral participation is also impacted by access to basic economic security and support.<sup>cvi</sup> Since the mid-1990s Republicans have successfully led the charge, often with Democratic complicity, to dramatically decrease the receipt of means-tested social welfare support while subjecting those who continue to receive support to harsh, supervisory, and paternalistic policies.<sup>cix</sup> The centrality of states in crafting their poverty policies under relatively weak federal guidelines has allowed for racial considerations and social control to continue to define this new poverty governance.<sup>cx</sup> African-Americans are more likely to live in states and localities that provide less generous benefits and are more likely to be punitively sanctioned than their white counterparts in the same state.<sup>cx</sup> These disempowering policy experiences deplete political efficacy and participation beyond the already lowered participatory expectations stemming from low socio-economic status.<sup>cxii</sup> For our purposes, the negative impact on voting is most important. Felony disenfranchisement means one cannot vote. For the socially marginalized who can vote, existing poverty governance may undermine the political efficacy to do so for many through direct policy learning in punitive programs and by often failing to alleviate economic insecurity. As Joe Soss, Richard Fording, and Sanford

Schram argue, current poverty governance “deepens the political marginality of the poor, channeling them into positions of civic inferiority and isolation.”<sup>cxiii</sup>

Viewed in the context of these intersecting policy developments, recent restrictive voter access policies introduce still additional hurdles to those that already exist for minorities, African-Americans, and lower-income citizens. In their current practice, felony disenfranchisement, means-tested social welfare programs, and restrictive access legislation make having the franchise, a welcoming path to accessing it, and the desire to use it less likely for the poor and minorities in the United States. From this vantage, recent passage of restrictive voter policies is an important prong in a broader suite of policies expanding a form of conditional and exclusionary American citizenship.<sup>cxiv</sup> In silent concert these policies work to undermine democratic voice for the most vulnerable.

The news then is not good for the inclusiveness of American democracy, but the trend we have examined does not represent a foregone conclusion. The recent wave of restrictive access legislation is rooted in long-standing racial and classist motivations revived for modern deployment. While we consider our findings consistent with this historical perspective on these developments, we also recognize the discursive and political power of the voter fraud narrative and the effectiveness of those who have vigorously purveyed this narrative. Simultaneously, the multifaceted political and legal *pushback* that has emerged to counter recent efforts to reduce voter access underlines that it is not only the advocates of restriction that have been exercising their political agency, but also the supporters of inclusive voting rights.<sup>cxv</sup> As a result, the issue is currently a matter of serious contestation. Supporters of voting rights can also take heart from the fact that the Democratic party, as an enduring political institution (as opposed to a social movement), has a strong and consistent electoral incentive to fight and attempt to reverse recently enacted restrictive policies. On the other hand, given the internal dynamics within the GOP and the current political landscape facing this party, we expect the incentives to engage in suppression and other electoral manipulations to remain heightened and to pose a continuing and significant threat to full electoral participation in the years to come<sup>cxvi</sup>. The future of voting rights in the US will be determined by the ongoing political contest between the Republican and Democratic parties. And at the

same time, this contest itself will be influenced by the continuing political and legal struggles over access to the ballot.

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<sup>i</sup> Keyssar 2000, 43.

<sup>ii</sup> Wang 2012; Keyssar 2009.

<sup>iii</sup> Wang 2012; Valelly 2004.

<sup>iv</sup> These specific types of policies have been considered and adopted at the state level with the most frequency in recent years. This assessment is based upon various reports that review state legislative activity in this policy area: National Conference of State Legislatures' Database of Election Reform Legislation and the Brennan Center for Justice's *Voting Law Changes in 2012* by Weiser & Norden 2011.

<sup>v</sup> Stewart 2011; Cain, Donovan, and Tolbert 2008; Fortier 2006; Gronke, Galanes-Rosenbaum, and Miller 2008; also see Burden et al. 2009.

<sup>vi</sup> Peters 1999.

<sup>vii</sup> Karch 2007; Mooney 2011; Stream 1999; Brooks 2007.

<sup>viii</sup> Berman 2011; Cooper 2011; Davenport 2011.

<sup>ix</sup> Smith 1999; King et al. 2009; Tuck 2009

<sup>x</sup> Soss, Fording, and Schram 2011.

<sup>xi</sup> See Stephan and Linz 2011 for fruitful discussion of the need for a comparative lens in examining American political development.

<sup>xii</sup> Schedler 2002, 2006; Levitsky and Way 2010.

<sup>xiii</sup> King, Lieberman, Ritter, and Whitehead 2009; see Stephan and Linz 2011.

<sup>xiv</sup> Smith 1999.

<sup>xv</sup> Jacobs and King 2009.

<sup>xvi</sup> Mahanta 2011; Jealous 2011; American Association of Retired People 2012.

<sup>xvii</sup> Berman 2011, 43.

<sup>xviii</sup> Maddow 2011a, 2011b, 2011c, 2011d; Sharpton 2011a, 2011b, 2012; Martin 2012; AARP 2012; Dilday 2011; Greenwald 2011.

<sup>xix</sup> Seitz-Wald 2012.

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<sup>xx</sup> <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=2072649339b2bb3b19d320ce62f6c1b8> (download date March 24, 2012)

<sup>xxi</sup> Burke 2012; also <http://www.c-spanvideo.org/appearance/600750999> (download date March 24, 2012).

<sup>xxii</sup> Isreal 2012; Yost 2012.

<sup>xxiii</sup> Fund and von Spakovsky 2012; Fund 2008: 7, 12; Hawkins 2012; Bloom 2012; Brown 2012.

<sup>xxiv</sup> Fund and von Spakovsky 2012.

<sup>xxv</sup> Fund and von Spakovsky 2012, 9.

<sup>xxvi</sup> Sabato and Simpson 1996 cited in Fund 2008, 10.

<sup>xxvii</sup> Meyers and Walter 2011.

<sup>xxviii</sup> See Kellogg 2012 for more complete review with emphasis on Article 5.

[http://www.dcb.org/for\\_lawyers/resources/publications/washington\\_lawyer/september\\_2012/vote.cfm](http://www.dcb.org/for_lawyers/resources/publications/washington_lawyer/september_2012/vote.cfm) (download date May 25, 2013)

<sup>xxix</sup> e.g. Piven & Cloward 2000; Piven, Minnite, Groarke 2009; Wang 2012.

<sup>xxx</sup> Wang 2012.

<sup>xxxi</sup> Piven, Minnite, Groarke 2009 and Minnite 2010.

<sup>xxxii</sup> Minnite 2010, 88-89.

<sup>xxxiii</sup> Piven, Minnite, Groarke 2009, 11, 21, 164; Frymer 1999, 6; Keyssar 2011.

<sup>xxxiv</sup> Piven, Minnite and Groarke 2009, 16.

<sup>xxxv</sup> Shefter 1984; Piven and Cloward 1988; Keyssar 2011, 2012; Overton 2007.

<sup>xxxvi</sup> Key 1949; Schattschneider 1942, 1960, 59, 95; Rosenstone and Hansen 1993.

<sup>xxxvii</sup> Keyssar 2012, 2009; Piven and Cloward 1988.

<sup>xxxviii</sup> Piven, Minnite, Groarke 2009; Cohen 2009.

<sup>xxxix</sup> Piven and Cloward 1988; Piven, Minnite, Groarke 2009.

<sup>xl</sup> Shefter 1984.

<sup>xli</sup> Wang 2012.

<sup>xlii</sup> Wang 2012.

<sup>xliii</sup> Wang 2012; Piven, Minnite, Groarke 2009; Hasen 2012.

<sup>xliv</sup> Piven et al 2009, 20, 11.

<sup>xlvi</sup> This timeframe is advantageous as it captures a period during which the rate of introduction of this legislation increased. In addition, this period brackets the 2008 election allowing potential prospective or retrospective responses to this election to be captured.

<sup>xlvi</sup> Kingdon 2002.

<sup>xlvi</sup> Weimer and Vining 2004; Mayhew 1974.

<sup>xlvi</sup> Stone 2002; Edelman 1964, 1988; Glassner 1999.

<sup>xlvi</sup> Jacobs 1992; True, Jones, and Baumgartner 2007.

<sup>i</sup> Fund 2008: 3; Hasen 2012.

<sup>li</sup> e.g. Weiser and Norden 2011.

<sup>lii</sup> Jenkins 2008; Battista 2011; Battista and Richman 2011; Wright and Schaffner 2002.

<sup>liii</sup> There are many versions of the Ranney index most of which include the party of the governor and are operationalized differently. We use the simplified version above, following Berkowitz & Clay 2011, in order to focus specifically on competitiveness within the state legislature.

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- <sup>liv</sup> A quick note on the Nebraskan legislature, which is officially nonpartisan and unicameral, and is usually dropped from such analyses. While Nebraska state senators do not have official party affiliations most are endorsed by, register with, and have unofficial affiliation with either the Nebraska Democratic or Republican parties. We use various editions of the *Nebraska Blue Book* to identify the party with which each legislator is affiliated. We use this data to construct the % Republican variable and an adjusted version of the Ranney Index that accommodates the unicameral nature of this legislature.
- <sup>lv</sup> Teixeira 1987; Brady and McNulty 2011.
- <sup>lvi</sup> Cain, Donovan, and Tolbert 2008; Verba, Schlozman and Brady 1995; Piven and Cloward 1988; Rosenstone and Wolfinger 1978; Verba and Nie 1972.
- <sup>lvii</sup> Keyssar 2012.
- <sup>lviii</sup> The Census Bureau's Current Population Survey is the best available survey that allows for state-level estimates of voting behavior overtime. Sample sizes for some states are too small to produce reliable individual estimates for African Americans, Hispanics, and other racial and ethnic groups respectively by state. Hence, we measure aggregate minority turnout as a percentage of the state's total electoral turnout. This captures the relative differences to whites and the notion of white electoral threat central to the logic behind minority voter suppression.
- <sup>lix</sup> Avery and Peffley 2005.
- <sup>lx</sup> Fenton 1979.
- <sup>lxi</sup> Piven, Minnite, and Groarke 2009; Musgrove 2012.
- <sup>lxii</sup> Gimpel 2010; Judis and Texiera 2002; Campbell 2008; Green, Palmquist, and Schickler 2002.
- <sup>lxiii</sup> Shields 2010.
- <sup>lxiv</sup> Fund and von Spakovsky 2012; Fund 2008.
- <sup>lxv</sup> Dreier and Martin 2010.
- <sup>lxvi</sup> Campbell 2006; Gumbel 2005. Dreier and Martin 2010.
- <sup>lxvii</sup> Waldman and Levitt 2007; Minnite 2010.
- <sup>lxviii</sup> American Center for Voting Rights 2005.
- <sup>lxix</sup> Minnite 2010, 159-200.
- <sup>lxx</sup> Underwood and Mead 2012.
- <sup>lxxi</sup> We constructed this estimate of the percentage of ALEC-affiliated legislators using information provided by the Center for Media and Democracy's ALEC Exposed project. This project catalogs individual state legislators that have been members of ALEC, have been reported to be members, or have received awards from ALEC. Most commonly, membership is ascertained based on ALEC's own materials or from the biographies of individual legislators. As there is no publicly available comprehensive list of members, we cannot evaluate the reliability of this measure that we know is based on a partial list of members. Any evaluation of the impact of this measure should bear this caveat.
- <sup>lxxii</sup> Berry, Ringquist, Fording, and Hanson 1998.
- <sup>lxxiii</sup> Berry and Berry 1990; Mooney and Lee 1995; Mintrom 1997; Karch 2007; Boehmke and Winter 2004.
- <sup>lxxiv</sup> Nice 1994.
- <sup>lxxv</sup> In nearly all cases this count corresponds to the number of bills proposed or passed, but in a handful of instances a single bill contained multiple significant restrictions to

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different aspects of the voting process. While our dependent variables provide a count of the number of proposed or passed restrictive changes, not the number of bills, in practice these two slightly different measures are very highly correlated.

<sup>lxxvi</sup> <http://www.ncsl.org/legislatures-elections/elections/2001-2010-database-of-election-reform-legislation.aspx> (Download date March 12, 2012)

<sup>lxxvii</sup> Weiser & Norden 2011.

<sup>lxxviii</sup> However, if such a bill were passed it would not be included among our passed bills unless it required a photo identification.

<sup>lxxix</sup> Although, it is worth noting that in both Florida and Iowa previous executive orders that made it easier for felons to restore their right to vote were reversed by Republican Governors, both of whom were elected in 2010.

<sup>lxxx</sup> For example, these approaches are appropriate for situations where the dependent variable takes the form of a count, which in our case ranges from 0 to 3 legislative changes passed and 0 to 22 legislative changes proposed in any year. While Poisson regression is used in situations where a count dependent variable is examined across, for example, a set of states in a single year, pooled Poisson approaches are appropriate when count outcomes are observed in the context of a cross-sectional time series, that is, across states, but also over time.

<sup>lxxxi</sup> Specifically, this variable is related to the unobserved panel level component of the model.

<sup>lxxxii</sup> Mundlak 1978; Wooldridge 2001.

<sup>lxxxiii</sup> In addition, the GMM approach does not assume strict exogeneity.

<sup>lxxxiv</sup> There are 49 states observed over this 6-year period; consequently all of these models are based on a set of 294 state-year observations. Hawaii was identified as an unduly influential outlier and dropped from all models. It was dropped for the same reason in the examination of legislation passed in 2011 that is forthcoming.

<sup>lxxxv</sup> In addition, within these models we use cluster robust standard errors in order to control for the effects of both overdispersion and the correlation that arises naturally from repeated observations on the same state over time. The use of cluster robust standard errors substantially increases the standard errors of the estimates, correspondingly reduces t-statistics, and thus markedly raises the threshold for achieving statistical significance. The use of such standard errors is appropriate for these analyses. We only mention this here to stress that the results below represent a set of *very conservative* tests of the predictors of passed legislation. While such an approach unavoidably reduces the number of factors that will achieve statistical significance, the tradeoff is that we can have strong confidence in significance of the few factors that meet this stringent test.

<sup>lxxxvi</sup> We initially attempted to model such a conditional effect using a series of interactions. High collinearity between the component variables and the interaction effects in the context of the small  $N$  in these analyses made this approach unwieldy.

<sup>lxxxvii</sup> Timberg & Parker 2012; Wirzbicki 2012.

<sup>lxxxviii</sup> We recognize that some may view these associations as reflective of a necessary respond to widespread voter fraud committed disproportionately by racial and ethnic minorities. While there is literally no evidence to support such claims, right-wing narratives about voter fraud are often highly racial in nature. For example, one prominent conspiracy theory attributes President Obama's electoral victory in 2008 to a massive



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voter fraud campaign orchestrated by the Obama campaign, the Democratic Party, and ACORN. While such conspiratorial beliefs may motivate some legislators, we categorically reject such narratives as a plausible explanation for these legislative developments overall.

<sup>lxxxix</sup> Levitt 2007; Waldman & Levitt 2007; Minnite 2010.

<sup>xc</sup> Weiser and Kasdan 2012.

<sup>xc<sup>i</sup></sup> Weiser & Kasdan 2012.

<sup>xc<sup>ii</sup></sup> see Streb 2012 for a review.

<sup>xc<sup>iii</sup></sup> Streb 2012, 105.

<sup>xc<sup>iv</sup></sup> Powers & Damron 2013.

<sup>xc<sup>v</sup></sup> Herron & Smith 2012; Herron & Smith forthcoming.

<sup>xc<sup>vi</sup></sup> Piven & Cloward 2000; Wang 2012; Hasen 2012.

<sup>xc<sup>vii</sup></sup> Bullock & Gaddie 2009.

<sup>xc<sup>viii</sup></sup> Dougherty 2009; Bullock & Gaddie 2009; Frey 2012.

<sup>xc<sup>ix</sup></sup> Bullock & Gaddie 2009, 367.

<sup>c</sup> Weaver 2007.

<sup>ci</sup> Weaver 2007, 236.

<sup>c<sup>ii</sup></sup> Weaver 2007, 238.

<sup>c<sup>iii</sup></sup> Hacker & Pierson 2011; McCarty et al. 2008.

<sup>c<sup>iv</sup></sup> Minnite 2012, 90.

<sup>c<sup>v</sup></sup> Soss, Schram, and Fording 2011; Katzenstein et al. 2010; Beckett and Western 2001.

<sup>c<sup>vi</sup></sup> Uggen, Shannon, and Manza 2012. See Katzenstein et al. 2010

<sup>c<sup>vii</sup></sup> Uggen, Shannon, and Manza 2012.

<sup>c<sup>viii</sup></sup> Bartels 2012.

<sup>c<sup>ix</sup></sup> Greenberg et al. 1996; Soss, Fording, Schram 2011.

<sup>c<sup>x</sup></sup> Bentele and Nicoli 2012; Soss, Fording, Schram 2011; Soss, Schram, Vartanian, and O'Brien 2001; Noble 1997.

<sup>c<sup>xi</sup></sup> Soss, Fording, Schram 2011.

<sup>c<sup>xii</sup></sup> Soss 2000; Schneider and Ingram 1993; Mettler and Soss 2004; O'Brien 2009.

<sup>c<sup>xiii</sup></sup> Soss, Fording, Schram 2011, 16. See Isaac 2012.

<sup>c<sup>xiv</sup></sup> Katzenstein et al. 2010.

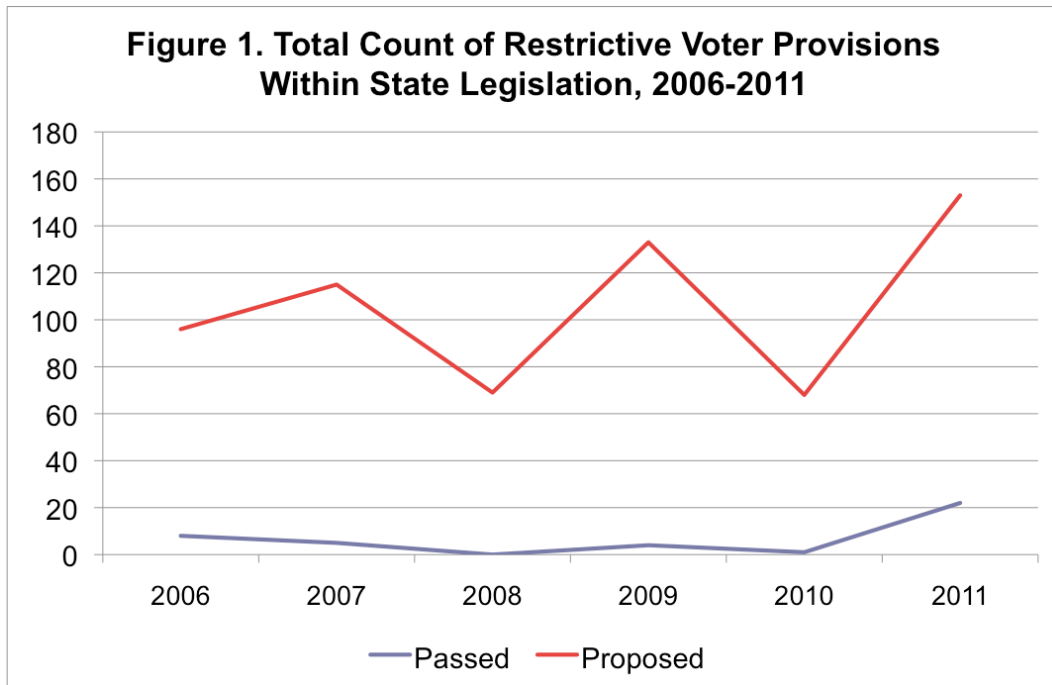
<sup>c<sup>xv</sup></sup> Moreno and Riccardi 2013.

<sup>c<sup>xvi</sup></sup> For a detailing of recent efforts see Hauser 2013.

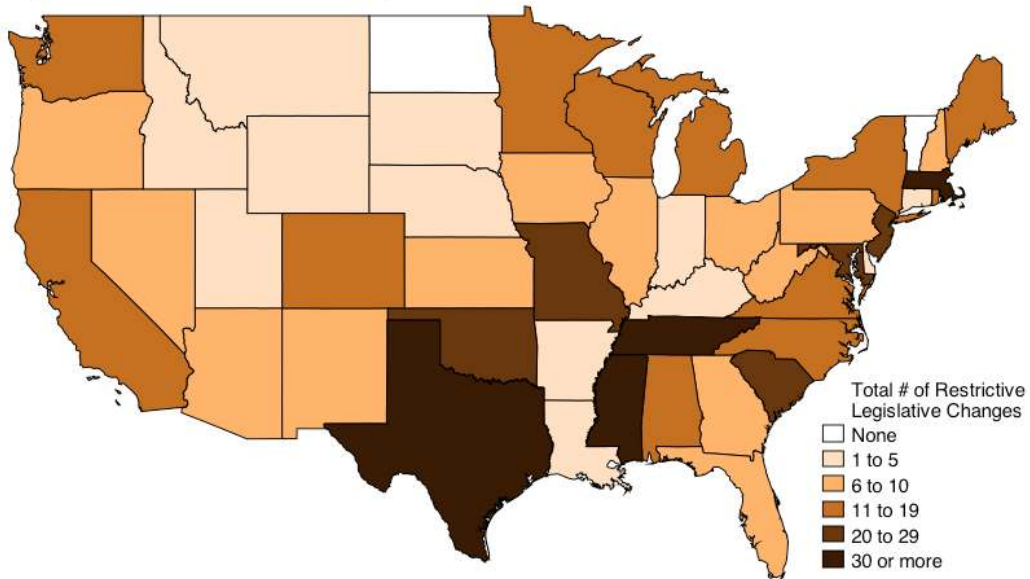
**Appendix A. Definitions and Data Sources**

Variable	Definition	Source
<b>Dependent Variables</b>		
Proposed Voter Restriction Legislation	The number of restrictive changes to voter access in proposed legislation in each year.	National Conference of State Legislatures's Database of Election Reform Legislation 2006-2010 & The Brennan Center for Justice 2011
Passed Voter Restriction Legislation	The number of restrictive changes to voter access in passed legislation in each year.	Ibid.
<b>Independent Variables</b>		
<b>Political Control &amp; Competition</b>		
% of State Legislature Republican	Average of % Republican in each chamber of the state legislature*.	Statistical Abstract of the U.S.*
Republican Governor	Dummy variable indicating presence of Republican Governor.	Statistical Abstract of the U.S.
Divided State Government	Dummy variable indicating a state has a divided government.	Statistical Abstract of the U.S.*
Difference in Party Vote Share in Previous Presidential Election	Difference in state vote share between the Republican and Democratic parties in the previous presidential election.	Statistical Abstract of the U.S.
State Party Competition	A simplified version of the Ranney index containing only partisan seat shares: $100 - (\text{abs}[(\% \text{ Democrats in upper house}) + (\% \text{ Democrats in lower house} - 100)])^*$	Statistical Abstract of the U.S.*
<b>Voter Behavior &amp; Suppression</b>		
Minority Turnout in Previous Presidential Election	$\{[(\text{citizen vote total by state}) - (\text{white citizen vote total by state})] / \text{citizen vote total by state}\} * 100$	U.S. Census Bureau, Current Population Survey, Voting and Registration in the Election of November 2000, 2004, 2008
Change in Minority Turnout between Previous Presidential Elections	minority turnout 2004 - minority turnout 2000 minority turnout 2008 - minority turnout 2004	U.S. Census Bureau, Current Population Survey, Voting and Registration in the Election of November 2000, 2004, 2008
Class-biased Turnout in Previous Presidential Election	% of upper class (individuals with family income over 75k) who voted in respective previous Presidential election year / by the % of the lower class (individuals with family income under federal poverty line) who did so, multiplied by 100. Higher values indicate more upper-class bias (Avery and Peffley 2004: 53, 62).	United States Census Bureau's Current Population Survey, Voter Supplement File for 2000, 2004, 2008
Change in Class-biased Turnout b/w Previous Presidential Elections	Class-bias turnout (CBT)2004 - CBT2000 CBT2008 - CBT2004	United States Census Bureau's Current Population Survey, Voter Supplement File for 2000, 2004, 2008
Total State Turnout in Previous Presidential Election	VEP (vote for highest office rates) in 2000, 2004, and 2008	Michael P. McDonald. 2012. "Presidential Voter Turnout Rates, 1948-2008. United States Elections Project. October 2011.
<b>Perceptions of Voter Fraud</b>		
Reported Cases of Voter Fraud	Count of all allegations of voter fraud formally brought in the 2004 Election Cycle	Lorraine Minnite's (2010: 159-200) complete description of voter fraud in 2004; American Center for Voting Rights compiled the original allegations filed
% of ALEC-affiliated State Legislators	Percentage of state legislators who either identify or have been identified as members or affiliates of the American Legislative Exchange Council.	The Center for Media and Democracy's ALEC Exposed project
Liberal Citizen Ideology	Based on interest groups' ratings of Congresspersons and their vote shares. See Berry et al. (1998) for details.	Berry et al. (1998) & Richard Fording
<b>Demographic</b>		
% African-American	Number of African-Americans divided by total population	U.S. Census Bureau Population Estimates
% Non-citizens	Number of non-citizens divided by total population	U.S. Census Bureau Population Estimates
% Over 65	Number of state residents 65 years and older divided by total population	U.S. Census Bureau Population Estimates
<b>Policy Diffusion</b>		
<b>Previous Relevant Policy &amp; Control Variables</b>		
Per capita Revenue (2008\$)	Total real state revenue divided by total population	U.S. Census Bureau
Already Passed a Photo ID or Proof of Citizenship Requirement	This variable takes a value of 1 if a state has already pass a photo identification or a proof of citizenship requirement, and takes a value of 2 if a state has passed both.	National Conference of State Legislatures
No-excuse and/or Early Voting currently available	If a state offers early voting this variable takes a value of 1, if the states offers early voting and no-excuse absentee voting then this variable takes a value of 2.	National Conference of State Legislatures

\*Except Nebraska

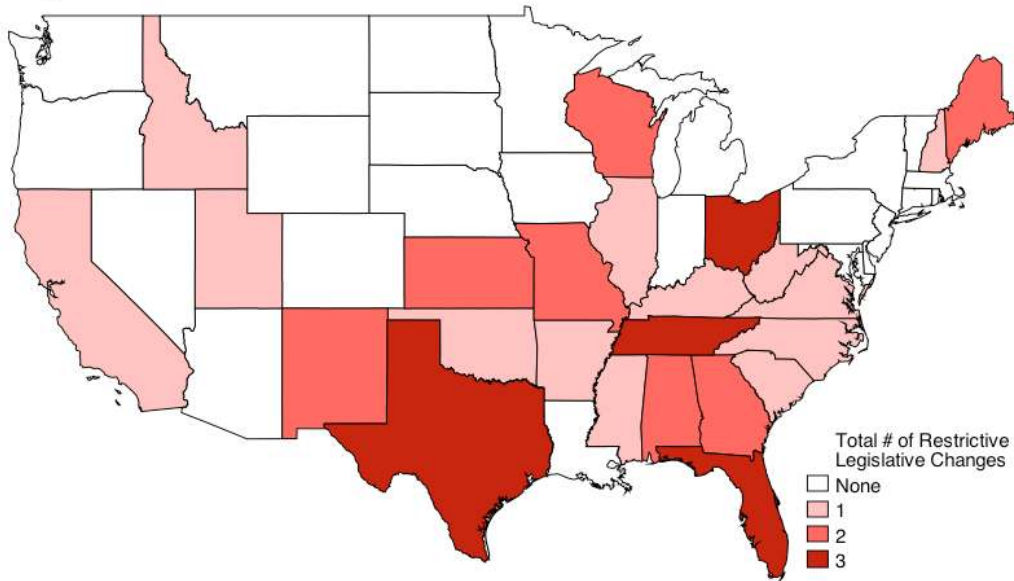


**Figure 2. Total Count of Proposed Restrictive Voter Provisions: 2006-2011**



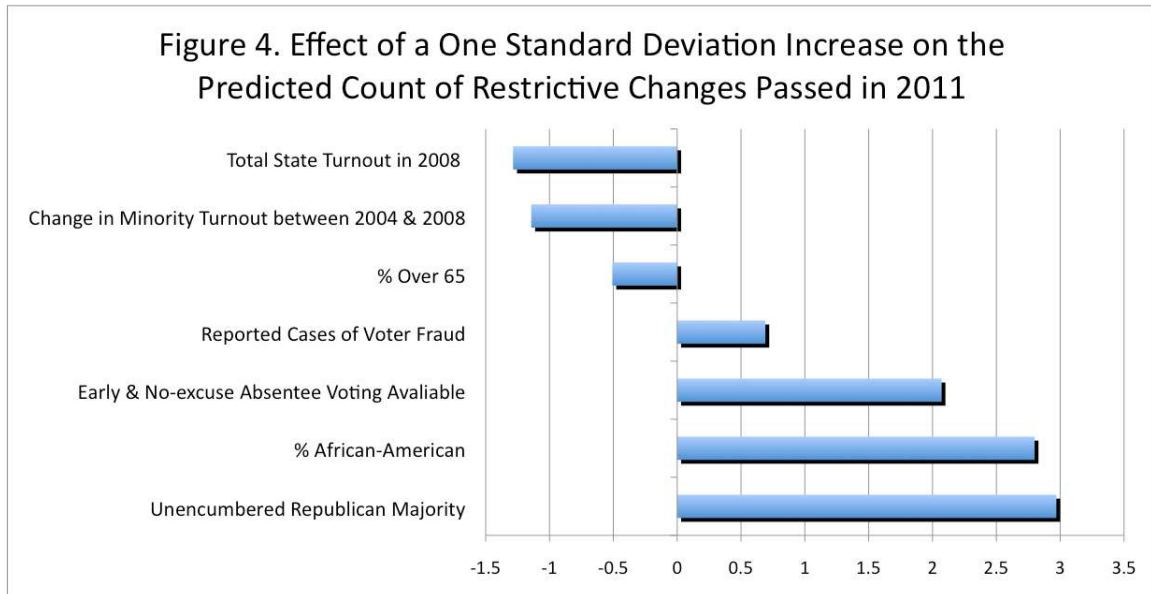
2 pieces of legislation were proposed in Alaska and 1 in Hawaii

Figure 3. Total Count of Restrictive Voter Provisions Passed: 2006-2011



One bill was passed in Alaska; Hawaii did not pass any such legislation

Figure 4. Effect of a One Standard Deviation Increase on the Predicted Count of Restrictive Changes Passed in 2011



**Table 1: States Passing Voter Restriction Laws, 2006-2011**

<b>Type of Law</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Photo ID Required</b>	Missouri	None	None	Oklahoma*	Idaho	Alabama, Kansas, Mississippi, South Carolina, Tennessee, Texas, Wisconsin
<b>Proof of Citizenship Required</b>	None	None	None	Georgia	None	Alabama, Kansas, Tennessee
<b>Registration Restrictions</b>	California, Missouri, Ohio, Kentucky, New Hampshire	North Carolina, Florida	None	None	None	Florida, Illinois, Maine, Ohio, Texas (2), Wisconsin
<b>Absentee &amp; Early Voting Restrictions</b>	Alaska, Virginia	Maine, New Mexico (2)	None	Utah, Arkansas	None	Florida, Georgia, Ohio, Tennessee, West Virginia
<b>Felon Restrictions</b>	None	None	None	None	None	None

Shading indicates states where the Democratic Party held a majority of seats in the state legislature in that year.

\*Oklahoma voters may present a voter identification card (without a photo) in lieu of a photo id. This is the only exception and most voters present photo id in practice.

**Table 2. GMM Analysis of Total Annual Proposed State Voter Restrictions: 2006-2011**

	Model 1	Model 2	Model 3	Model 4
	All Proposed Legislation		ID & Proof of Citizenship	Registration, Early, & Absentee Restrictions
<b><i>Partisan Control</i></b>				
% of State Legislature Republican Instrument Variable	1.356 (1.125)	1.148 (1.048)	1.732 (1.955)	-0.138 (1.346)
Divided State Government	0.128 (0.194)	0.166 (0.202)	0.281 (0.304)	0.283 (0.271)
<b><i>Electoral Competition</i></b>				
State Party Competition	-0.008 (0.011)	-0.011 (0.010)	-0.013 (0.017)	0.004 (0.010)
Difference in Party Vote Share in Previous Presidential Election	-0.009 (0.014)	-0.008 (0.013)	-0.010 (0.020)	<b>-0.028*</b> <b>(0.013)</b>
<b><i>Voter Behavior &amp; Voter Suppression</i></b>				
Minority Turnout in Previous Presidential Election		<b>5.37***</b> <b>(1.12)</b>	<b>6.66***</b> <b>(1.45)</b>	1.41 (0.99)
Change in Minority Turnout between Previous Presidential Elections	<b>0.130***</b> <b>(0.032)</b>	<b>0.103***</b> <b>(0.029)</b>	0.073 (0.045)	<b>0.103**</b> <b>(0.033)</b>
Class-biased Turnout in Previous Presidential Election	-0.005 (0.008)	-0.003 (0.007)	-0.000 (0.008)	<b>-0.012*</b> <b>(0.006)</b>
Change in Class-biased Turnout between Previous Presidential Elections	<b>0.011**</b> <b>(0.004)</b>	<b>0.011**</b> <b>(0.004)</b>	<b>0.011*</b> <b>(0.005)</b>	<b>0.014***</b> <b>(0.004)</b>
Total State Turnout in Previous Presidential Election	0.001 (0.020)	0.007 (0.021)	0.001 (0.022)	-0.014 (0.023)
<b><i>Demographic</i></b>				
% African American	<b>4.46***</b> <b>(1.08)</b>			
% Non-citizens	<b>0.082**</b> <b>(0.028)</b>	<b>0.072*</b> <b>(0.029)</b>	<b>0.061^</b> <b>(0.043)</b>	<b>0.095**</b> <b>(0.023)</b>
% Over 65	-0.039 (0.078)	-0.011 (0.076)	-0.059 (0.099)	-0.033 (0.080)
<b><i>Incidence &amp; Perceptions of Electoral Fraud</i></b>				
Reported Cases of Voter Fraud	0.049 (0.037)	0.058 (0.041)	<b>0.079^</b> <b>(0.043)</b>	0.006 (0.056)
<b><i>Policy Diffusion</i></b>				
Total passed similar legislation in contiguous states (t-1)	0.099 (0.112)	0.119 (0.113)	-0.038 (0.218)	-0.028 (0.171)
<b><i>Previous Relevant Policy &amp; Control Variables</i></b>				
Already Passed a Photo ID or Proof of Citizenship Requirement	<b>-1.237**</b> <b>(0.371)</b>	<b>-1.142**</b> <b>(0.351)</b>	<b>-2.364***</b> <b>(0.564)</b>	
No-excuse Absentee and/or Early voting currently available	<b>-0.187^</b> <b>(0.106)</b>	<b>-0.231*</b> <b>(0.107)</b>		-0.205 (0.152)
Per Capita State Revenue	-0.034 (0.044)	-0.039 (0.044)	-0.069 (0.043)	-0.031 (0.043)
Constant	1.38 (2.97)	0.52 (2.99)	0.40 (4.72)	1.44 (2.75)
<b>N</b>	294	294	294	294

^p &lt; .1 \* p &lt; .05 \*\*p &lt; .01 \*\*\*p &lt; .001

**Table 3. Pooled Fixed Effects Poisson Analysis of Total Annual Passed State Voter Restrictions: 2006-2011**

	Model 1	Model 2
<b><i>Partisan Control</i></b>		
% of State Legislature Republican	<b>15.08**</b> (5.34)	<b>31.08***</b> (6.13)
Presense of Republican Governor	<b>1.94**</b> (0.71)	<b>2.58***</b> (0.71)
Divided State Government	-0.36 (2.09)	-0.069 (1.71)
<b><i>Electoral Competition</i></b>		
State Party Competition	<b>-0.061*</b> (0.024)	<b>-0.057*</b> (0.028)
Difference in Party Vote Share in Previous Presidential Election	-0.039 (0.067)	<b>0.563*</b> (0.245)
Difference in Party Vote Share X % of Legislature Republican		<b>-1.069*</b> (0.419)
<b><i>Voter Behavior &amp; Voter Suppression</i></b>		
Minority Turnout in Previous Presidential Election	<b>92.68^</b> (52.94)	<b>143.7**</b> (52.42)
Change in Minority Turnout between Previous Presidential Elections	-0.215 (0.17)	-0.326 (0.267)
Class-biased Turnout in Previous Presidential Election	0.048 (0.049)	0.085 (0.058)
Change in Class-biased Turnout between Previous Presidential Elections	-0.013 (0.030)	-0.018 (0.030)
Total State Turnout in Previous Presidential Election	<b>-0.329^</b> (0.187)	<b>-0.324^</b> (0.187)
<b><i>Demographic</i></b>		
% African American	145.9 (281.9)	382.8 (279.1)
% Non-citizens	2.04 (1.11)	2.61 (1.83)
% Over 65	-1.59 (1.00)	<b>-2.48*</b> (0.97)
<b><i>Perceptions of Electoral Fraud</i></b>		
% of ALEC-affiliated State Legislators	4.14 (5.99)	-2.74 (6.20)
<b><i>Policy Diffusion</i></b>		
Total passed legislation in contiguous states (t-1)	-0.554 (0.342)	-0.662 (0.425)
<b><i>Previous Relevant Policy &amp; Control Variables</i></b>		
Already Passed a Photo ID or Proof of Citizenship Requirement	-3.50 (3.97)	-2.96 (2.28)
No-excuse Absentee and/or Early voting currently available	<b>17.67***</b> (2.61)	<b>16.38***</b> (2.57)
Per Capita State Revenue	17.67 (2.61)	-0.073 (0.225)
<b><i>Log likelihood</i></b>		
<b>N</b>	-35.01 150	-31.51 150

^p < .1 \* p < .05 \*\*p < .01 \*\*\*p < .001

**Table 4. Poisson Analysis of Count State Voter Restrictions Passed in 2011**

	Model 1	Model 2	Model 3	Model 4
<b><i>Partisan Control</i></b>				
% of State Legislature Republican	-0.43 (1.98)			
Precense of Republican Governor	<b>1.98**</b> <b>(0.71)</b>			
Divided State Government	-1.18 (0.91)			
Unencumbered Republican Majority		<b>2.69***</b> <b>(0.72)</b>	<b>7.29***</b> <b>(1.72)</b>	<b>8.64***</b> <b>(2.42)</b>
<b><i>Electoral Competition</i></b>				
State Party Competition			0.016 (0.024)	0.017 (0.024)
Potential Swing State in 2010			0.005 (0.704)	<b>-4.01**</b> <b>(1.33)</b>
Potential Swing State X Unencumbered Republican Majority				<b>4.54*</b> <b>(2.28)</b>
<b><i>Voter Behavior &amp; Voter Suppression</i></b>				
Minority Turnout in 2008 Presidential Election			<b>24.43***</b> <b>(3.24)</b>	
Change in Minority Turnout between Previous Presidential Elections			<b>-0.418*</b> <b>(0.184)</b>	<b>-0.564*</b> <b>(0.234)</b>
Class-biased Turnout in 2008 Presidential Election			-0.025 (0.054)	0.012 (0.041)
Change in Class-biased Turnout between Previous Presidential Elections			<b>0.041**</b> <b>(0.015)</b>	0.022 (0.015)
Total State Turnout in 2008 Presidential Election			<b>-0.308*</b> <b>(0.143)</b>	<b>-0.232*</b> <b>(0.106)</b>
<b><i>Demographic</i></b>				
% African American				<b>28.99***</b> <b>(7.01)</b>
% Non-citizens			<b>-0.347*</b> <b>(0.143)</b>	-0.168 (0.106)
% Over 65			-0.198 (0.176)	<b>-0.306*</b> <b>(0.155)</b>
<b><i>Incidence &amp; Perceptions of Electoral Fraud</i></b>				
Reported Cases of Voter Fraud			<b>0.334*</b> <b>(0.151)</b>	<b>0.329*</b> <b>(0.144)</b>
% of ALEC-affiliated State Legislators			0.205 (5.19)	-0.692 (4.69)
Liberal Citizen Ideology			<b>0.120^</b> <b>(0.064)</b>	0.097 (0.065)
<b><i>Previous Relevant Policy &amp; Control Variables</i></b>				
Already Passed a Photo ID or Proof of Citizenship Requirement	<b>-1.01^</b> <b>(0.59)</b>	<b>-1.17^</b> <b>(0.65)</b>	<b>-2.74***</b> <b>(0.68)</b>	<b>-3.05***</b> <b>(0.70)</b>
No-excuse Absentee and/or Early voting currently available	-0.03 (0.23)	-0.05 (0.22)	<b>2.49***</b> <b>(0.70)</b>	<b>2.82**</b> <b>(1.00)</b>
Per Capita State Revenue	<b>-0.41^</b> <b>(0.23)</b>	<b>-0.38^</b> <b>(0.20)</b>	<b>-0.83**</b> <b>(0.25)</b>	-0.23* (0.20)
Constant	0.89 (2.27)	0.79 (1.34)	14.31 (13.81)	1.36 (10.45)
<b><i>Log likelihood</i></b>	-35.48	-35.11	-22.21	-20.95
<b><i>N</i></b>	49	49	49	49

^p < .1 \* p < .05 \*\*p < .01 \*\*\*p < .001