

FAIR ELECTIONS --- LEGAL NETWORK

The Impact of 2014's Biggest Voting Changes and Reform Moving Forward

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The days leading up to the 2014 midterm election proved to be contentious, not only for candidates and issues on the ballot, but also for newly implemented voting laws in various states. In all, 21 states had some form of new voting restrictions in place for the 2014 election that were proposed and implemented between the 2010 and 2014 elections.¹ The newly implemented voting restrictions in states throughout the country included a range of changes, like new identification rules, limits on early voting, and repeals of same day registration.

The full effect of these voting law changes remains to be seen as more data on the problems on Election Day is collected and analyzed, and more personal stories come forth from voters in states with these changes. Some of these effects, however, were clear not only going into the election, but were reinforced on Election Day.

To that end, this paper seeks to accomplish four goals:

1. Analyze the 2014 midterm election turnout and general problems observed on Election Day.
2. Identify five states that had major changes or restrictions implemented in the days leading up to Election Day 2014, along with what those changes or restrictions entailed.
3. Analyze how or if these changes impacted the voting experience, in addition to other issues that arose in these five critical states during early or absentee voting and on Election Day.
4. Look at a few effective and popular reforms to address general problems in election administration throughout the country, to ensure more Americans have access to the ballot preceding the 2016 presidential election.

Turnout and Election Day 2014

In many ways, Election Day 2014 met expectations for a midterm election. Other aspects of the election results and process cannot necessarily be quantified by turnout numbers.

Turnout in the midterm election was just 36.4%, down from 40.9 % in 2010 (the last midterm election) and 40.4% in 2006.² Even by standards of midterm elections (which historically have lower turnout than presidential elections), the turnout rates throughout the country were at all-time lows in 2014.³ States with competitive gubernatorial or senate races, like Wisconsin and Colorado, saw higher numbers than the national average, but even with some high profile races statewide, no singular state managed to achieve turnout over 60%.⁴

Low turnout in the 2014 election may be attributed to many factors, including voters' general dissatisfaction with Congress and the President – even though President Obama was not on the ballot.⁵ Another important consideration that may have played a factor is the passage and implementation of a number of restrictive voting laws in states throughout the country. From repeals of early voting to stricter photo ID requirements, newly enacted voting laws in many states created an inconvenience or served as a deterrent entirely for voters who would have otherwise showed up to the polls.⁶ According to one estimate, comparing states with photo ID, non-photo ID, and no ID law at all, on average, states with photo ID laws had turnout that was 4.4% lower than states without photo ID requirements in the November 2014 election.⁷

Wisconsin

I. Background

In 2014, Wisconsin's voter ID law was set to take effect after it was blocked in several lawsuits by state and federal courts since its passage in 2011. A last minute Supreme Court order barred the state from implementing the strict ID law for the 2014 general election.⁸

The law requires all voters in Wisconsin appearing to vote in person to show photo identification before they can cast their ballots. Per the requirements of the law, forms of acceptable ID include: 1) Wisconsin driver's license; 2) ID card issued by a U.S. uniformed service; 3) Wisconsin non-driver ID; 4) U.S. passport; 5) certificate of naturalization issued no more than two years before the election; 6) tribal ID; and 7) student ID card with signature, issue date, and expiration no more than two years after the election. In addition to providing a valid photo ID, under the Wisconsin law, voters must also present proof of residence.⁹

The timeline for the court decisions on Wisconsin's ID law was not only confusing and left voters unsure of when they would have a final ruling on the matter. It also resulted in multiple changes in the months leading up to the election. In late April 2014, the Wisconsin ID law, which is considered one of the harshest in the country, was blocked by Federal District Court Judge Lynn Adelman, who said that the law would "deter or prevent a substantial number of the 300,000-plus registered voters who lack ID from voting." The U.S. Supreme Court's decision striking down the Wisconsin ID law came on October 9, 2014 – just three days after the 7th Circuit Court of Appeals upheld the law as constitutional.¹⁰ The final order from the U.S. Supreme Court was issued just eleven days before the early voting period began, and came on the heels of two lower court opinions that resulted in changes at each step of the way. The multiple layers of changes made it difficult not only for civic engagement organizations to educate voters about their rights, but also proved confusing for voters, who may not have understood the details of each of the changes and how they impacted their right to vote.

II. Effect of changes on voting

While the strict photo ID law in Wisconsin was hotly contested leading up to the 2014 election, equally, if not more contested, was the state's gubernatorial race. Even with the multiple changes to the implementation of the ID law in the election, the gubernatorial race had a historic turnout, with 2.4 million Wisconsin voters casting ballots for the race.¹¹ Early post-election estimates indicated that about 54.25% of eligible voters cast ballots for the gubernatorial race, higher than the previous gubernatorial election turnout record of 52.4% in 1962.¹²

Various factors may have come into play for the record turnout in Wisconsin. First, unlike most other midterm races, the race between Mary Burke and Scott Walker for the governorship in the state was one of the most contentious races in the country, and it garnered a good deal more attention from voters in the state than most other races in other states in the country. Second, unlike other states with major changes in election law last year, Wisconsin was one of the only places where a restrictive voting law was blocked by the Supreme Court. For Wisconsin voters not paying attention to the litigation battle, there was no change in the status quo, and the ID requirements were no different from what they were used to in previous years. This also meant that civic engagement organizations looking to turn out the vote ultimately did not have to warn voters about specific ID requirements. Even though there was ultimately no change in the ID law, after every court decision, groups scrambled to educate voters about the change in rules. Moreover, these groups couldn't wait to educate voters because the decisions were in flux until the last minute.

Texas

I. Background

Texas' newly implemented voter identification law faced, and endured, a challenge last year in federal court. Texas' voter ID law, which passed in 2011 and is considered by many as the strictest ID law in the country, has been in effect for two smaller elections since 2013. Last year's midterm election served as the first major test of the ID law since its enactment.

The law requires Texans voting in person to present one of several forms of ID: 1) Texas driver's license issued by the Texas Department of Public Safety (DPS); 2) Texas Election Identification Certificate issued by DPS; 3) Texas personal identification card issued by DPS; 4) Texas concealed handgun license issued by DPS; 5) U.S. military ID card with photo; 6) U.S. citizenship certificate with photo; or 7) U.S. passport. With the exception of the citizenship certificate, each of the other forms of ID have to be current or expired no more than 60 days at the time of voting.¹³ Voters without an acceptable form of ID can obtain an Election Identification Certificate (EIC), which is issued by DPS, but to do so, must present documentation of both citizenship and identity.¹⁴ These underlying documents include a passport, birth certificate, or citizenship certificate, all of which are difficult and expensive to obtain for voters of limited means.¹⁵

The Texas voter ID law proved to be unique and particularly problematic, even in a year when there were many other new voting restrictions. Not only does the law specify only a limited number of acceptable IDs, but in order to obtain the alternative – an Election Identification Certificate (EIC) – a voter has to present other forms of identification and proof of citizenship to be able to cast a ballot. Moreover, the underlying forms of identification or citizenship alone are not enough to vote, but are sufficient to obtain an EIC, which can in turn be used as proper identification to cast a ballot. Another particularly problematic aspect of the law is the types of ID that are acceptable for voting purposes. Among the forms of acceptable ID voters can use, a concealed handgun permit as ID is on the list, but not a student ID issued by an institution of higher education within Texas or a Native American tribal ID. Other states with ID requirements, including Wisconsin, allow both student IDs and tribal IDs as acceptable forms of identification for voting purposes.

In early October 2014, less than two weeks before the start of early voting, Federal District Court Judge Nelva Gonzalez ruled that the law, SB 14, was an unconstitutional violation of the Voting Rights Act. In a 147-page opinion, Judge Gonzalez further found that the law was intentionally discriminatory and constitutes an impermissible poll tax.¹⁶ On Saturday, October 18, just two days before early voting was to begin in Texas, the Supreme Court issued an order allowing Texas to implement the strict ID law for the election in 2014, without ruling on the merits of the law.¹⁷

II. Effect of changes on voting

With the final decision coming down just two days before the start of early voting and roughly two weeks before Election Day, the Texas case left many voters unsure of whether or not they were required to bring photo ID to vote, and gave little time for voters to remedy if they did not already possess an acceptable form of identification. This last minute change in Texas was particularly problematic because it imposed a greater burden on voters. Had the Supreme Court ultimately decided to block the law's implementation for this election, many eligible voters who were affected by the strict ID requirements, would have otherwise been able to cast ballots.

The full effect of Texas' ID law in this election may never be known. It is impossible to quantify how many voters may have stayed at home because they did not have one of the acceptable forms of ID or the proper underlying documentation to obtain an EIC. Prior to the election, however, the U.S. Department of Justice estimated that some 600,000 Texans, mostly black and Hispanic, lacked requisite ID.¹⁸

Turnout numbers were also abysmal in the state. Texas, already among the states with the lowest turnout in past elections, had even lower turnout numbers in 2014 than previous years. More than 14 million Texans were registered to vote in last year's election, up from 13.3 million in 2010. However, turnout in 2014 was only 33.6%, down from 36.5% in 2010.¹⁹ While turnout in Texas probably did not solely turn on the implementation of the new ID requirement, even a national Senate race and a high-profile governor's race did not seem to bolster votes in the state.

Ohio

I. Background

At the center of voting rights in Ohio in the 2014 election, were various cutbacks to the early voting schedule, including the elimination of the first week of early voting, evening hours, and some weekend hours.

In a series of legislative actions and executive directives issued by the Secretary of State's office, early voting was restricted to almost exclusively business days and hours in Ohio last year. On June 1, 2014, the state legislature enacted legislation which effectively eliminated Golden Week – the only time during which Ohioans could register and vote in person at the same time. Throughout the course of 2014 leading up to the election, Secretary of State John Husted also issued directives related to early voting, which effectively eliminated weekend and evening voting hours and established uniform early voting hours in all counties across the state.²⁰

On September 4, 2014, Federal District Judge Peter Economus granted a preliminary injunction to restore the eliminated early voting hours, in a suit brought forth by the ACLU on behalf of the League of Women Voters, NAACP, and several African American churches.²¹ After appeals from Secretary Husted, the Supreme Court ultimately decided to allow the cutbacks to early voting to stay in place. The U.S. Supreme Court's decision was issued the day before Golden Week and early voting was set to begin in Ohio. Ultimately, as a result of the U.S. Supreme Court's ruling, early voting in the state was shortened by one week, evening hours were eliminated, and weekend hours were limited for last year's midterm election.²²

In person early voting was implemented in Ohio in 2006, primarily to address problems observed on Election Day in earlier years (including the 2004 presidential election).²³ Though turnout in the state has not been much affected by the implementation of early voting, the percentage of voters taking advantage of the early voting option has remained significant. Early ballots requested and cast in person comprised about 10% of the vote total in 2012.²⁴ And in 2008, African Americans consisted over 77% of those who voted early in the state.²⁵

II. Effect of changes on voting

Since its enactment in 2006, early voting has become integral to the culture of voting in Ohio. Voters of many different backgrounds have made use of the extensive and flexible early voting schedule, and it has proven to be a convenience for both voters and election officials. Over the years, campaigns have adapted accordingly, and now conduct their voter outreach and get out the vote efforts to reflect the early voting period.²⁶

Though, generally speaking, no-excuse absentee or early voting alone have not conclusively been proven to increase voter participation, it nevertheless makes voting more convenient for those whose schedules may not align well with voting times on Election Day.²⁷

African Americans were particularly impacted by the changes to Ohio's early voting schedule. Since the adoption of early voting, pastors of many predominantly African American churches in the state have made use of the Sunday early voting days to conduct efforts called "Souls to the Polls." Souls to the Polls drives allow churches to gather their congregations after Sunday services to go to the polling place to vote. These drives are rooted in as much tradition, as they are about convenience. By organizing rides for their congregations to go together to polls after services on Sunday Souls to the Polls eases the burden on voters who may otherwise not have cars or easy access to public transportation to get to the polling place on Election Day. Moreover, for the African American community, the right to vote is deeply rooted in

historical significance, and being able to exercise this right, which has not always been afforded to them, alongside others in their community, is an important practice for many church-going African Americans.

In 2012, roughly 157,000 Ohio voters cast their ballots on the days that were cut by the changes to early voting.²⁸ Last year, despite the rollbacks in early voting, some limited hours were offered on the Sunday before Election Day. And though the turnout numbers were not especially impressive, many churches nevertheless organized drives to ensure that their congregations had the opportunity to vote at times that were most convenient for them.²⁹

North Carolina

I. Background

North Carolina's omnibus voting legislation, enacted in 2013, presented a host of problems from the outset. It proved to be particularly problematic in the 2014 midterm election because of confusion about which aspects of the law were effective for this election, and which aspects are set to go into effect in future elections.

The North Carolina law, as enacted, includes an ID requirement, elimination of same-day registration, invalidation of ballots cast in the correct county but incorrect precinct, shortening the early voting period from 17 days to 10 days, prohibition on local election boards from keeping the polls open on the final Saturday afternoon before elections, and elimination of preregistration for 16- and 17-year olds. While the ID provision was not set to go into effect until 2016, other portions of the law were scheduled to be in place in 2014.

In early August, Federal District Court Judge Thomas Schroeder upheld the contested provisions of the law, and issued a decision on the merits of the case.³⁰ The circuit court went on to overrule the district court's holding on the two contested provisions of the law - elimination of same-day registration and banning of out-of-precinct ballots.³¹ When the Supreme Court issued its order upholding these two provisions of the North Carolina law, it was already October 8 – just fifteen days before early voting was set to begin on October 23, 2014 in the state.³²

II. Effect of changes on voting

In a preliminary post-election report released by Democracy North Carolina, the group analyzed its collection of data and observations from the field on Election Day, noting that several factors resulted in a confused electorate and in some cases, voters being disenfranchised altogether. Furthermore, the Democracy North Carolina report suggested that the problems on Election Day were caused by two major problems: 1) many changes to the election rules leading up to Election Day; and 2) confusion and lack of adequate training amongst poll workers.³³ The report also noted that the three changes that created the most problems were the repeal of: 1) same-day registration; 2) out-of-precinct voting; and 3) straight party voting.³⁴

The 2013 law called for multiple layers of changes to North Carolina's election law. Even provisions of the law that did not take effect in 2014 – like the strict photo ID requirement – caused unnecessary confusion at the polls. There were reported examples all over the state of poll workers asking voters to provide ID from the list of photo ID that will not be implemented until 2016.³⁵ In addition, the provisions that did go into effect last year, created uncertainty and left many voters unable to cast a ballot. Some voters, who had moved between counties and had not updated their voter registration to their new counties, were unable to vote because of the elimination of same day registration.³⁶ Other voters were turned away from their polling place because of the elimination of out-of-precinct voting.³⁷

It will take some time yet to determine the full effects of the North Carolina law, as not all of its provisions have been implemented yet. Examples and stories from this election, nevertheless, are telling. In all, it is estimated that roughly 50,000 voters were unable to vote in the general election last year because of the provisions of the state's new comprehensive voting law.³⁸

Arkansas

I. Background

In Arkansas, the big issue at play leading up to the 2014 election was the state's ID law, which was struck down by the state's supreme court just a couple of weeks before the November election. On May 4, 2014, Arkansas' Pulaski County Circuit Judge Tim Fox, ruled the law unconstitutional, just before the primary was to be held on May 20. The law nevertheless remained in place for the May primary when the state's Supreme Court stayed Judge Fox's ruling, but did not rule on the merits of the ID law.

Arkansas' Supreme Court ruled that the law would set an impermissible new requirement for voting beyond what is mandated in the state's Constitution. The state supreme court's ruling found that the law went beyond the four qualifications listed for voting in the state's constitution – that a voter must be a US citizen, a resident of the state, at least 18 years old, and lawfully registered to vote in the election.³⁹

The Arkansas strict photo ID law, passed in 2013, requires voters to show one of the acceptable forms of photo ID outlined by the state. IDs can be a voter ID card issued by the Secretary of State or a document or ID that shows the name and photo of the voter, is issued by the federal or Arkansas state government or an accredited college or university, and is current or expired no more than four years before Election Day. A full list of acceptable IDs includes: 1) driver's license; 2) photo ID card; 3) concealed handgun carry license; 4) U.S. passport; 5) employee ID; 6) U.S. military ID card; 7) student ID; 8) public assistance ID; and 9) voter ID card. Under the Arkansas strict photo voter ID requirement, voters without an acceptable ID can only vote by a provisional ballot.⁴⁰

II. Effect of changes on voting

While the invalidation of Arkansas' ID law just shortly before the general election was welcome news for voting rights advocates and Arkansas voters alike, it nevertheless came too late to impact the primary election in May 2014. Though a lower court judge earlier in May 2014 found that the law was unconstitutional, he did not block it from enforcement, suggesting that there was not enough time to do so before the May primary, and at the time, the state supreme court stayed the lower court's decision, without itself ruling on the constitutionality of the law.⁴¹

Not only did Arkansas voters face a great deal of confusion leading up to Election Day, but they also dealt with different ID requirements in the primary than they did in the general election, which was just six months later. Ultimately, the changes in Arkansas were less prohibitive than those in Texas, where the state's ID requirement was upheld just days before the election. Though the Arkansas changes were not ideal, at the very least, voters did not bear the burden of presenting ID in order to vote during the general election.

Solutions and Reforms Moving Forward

In light of the restrictive laws that impacted the 2014 election, states and municipal leaders have a wide array of positive election reforms available at their fingertips; however, there are a few reforms that have gained widespread popularity and have proven successful track records in many states throughout the country. These reforms include early voting, online voter registration, improved poll worker training, and same day registration.

I. Early voting

One of the universally agreed-upon reforms for making voting more convenient for voters and easing the Election Day burden on election officials, is the implementation of early voting. In-person no-excuse absentee or early voting allows voters to cast a ballot at times that are most convenient for them, be it on weekend hours, weeknights, or simply on a more convenient weekday before Election Day.

To date, 33 states and the District of Columbia have implemented some form of early in-person voting.⁴² Different states have varying implementation of early voting – ranging in days, hours, and locations offered to voters. Early voting begins in some states as early as 45 days before Election Day, and as late as the Friday before Election Day. The average starting time for early voting is 22 days before the election, and average early voting period across the states is 19 days.⁴³ Some states offer weekend hours, others do not; some offer early voting up through the day before Election Day, others end their early voting period the week before Election Day; some states provide evening hours, and others do not. States also offer a range of locations for early voting purposes. Among the states offering early voting, there is a wide range in the forms of early voting offered.

Though early in-person voting has not conclusively proven to increase voter turnout, it is a valuable contribution to election administration and has a demonstrable positive impact on voters' experience.⁴⁴ For states that have yet to adopt early voting, it is a fairly simple, bipartisan reform that ultimately seeks to improve the overall voting experience, by allowing voters flexibility in when they can cast a ballot.

II. Online voter registration

Over the years, online voter registration has become another electoral reform that has garnered broad support across the political spectrum. Even in this hugely contentious election year, it was championed in states controlled by Democrats and Republicans alike, and it is seen by many as a rare bipartisan effort that can bring election administration into the 21st century.

Online voter registration was first introduced in Arizona in 2002, and has been implemented in a total of 20 states.⁴⁵ Four other states have also enacted legislation authorizing online voter registration and are in the implementation process. In Arizona, online voter registration now accounts for over 70% of Arizona's registrations.⁴⁶

Online voter registration is both convenient for voters and is hugely cost-effective. Voters are accustomed to completing a variety of important tasks online, including banking and interacting with state agencies like Departments of Motor Vehicle. Making voter registration available online will easily engage voters through a medium with which they are already familiar and comfortable. Making it easy and more accessible to register and update voter registration could lead to increased registration and participation, as well. Implementing online voter registration also results in tremendous cost savings. Among states that have already adopted it, online voter registration costs less money than the paper alternative across the board. In Arizona, an EZ Voter online registration form costs just \$.03 to process, whereas a paper registration application costs \$.83 to process.⁴⁷ Similarly, in Washington State, the cost of an online voter registration is \$.45 against \$1.55 for a paper registration.⁴⁸

Finally, online voter registration greatly improves the accuracy of information on voter registration because voters themselves control how the information is entered in the online system. By reducing the number of handwritten voter registration cards and data entry by local election officials, online registration significantly reduces errors in the voter rolls. Accuracy of name spelling is also essential to ensuring that voters are properly listed in poll books. Data entry errors are common when transferring voter registration information from handwritten registration applications to voter databases.

Online voter registration is a bipartisan, commonsense, and cost-effective measure that all states can and should consider implementing to streamline their elections in coming years. It is one that many states have already adopted and it continues to gain popularity with each passing election.

III. Improved poll worker training

One of the most important and readily adopted election reforms is improved poll worker training. Poll workers play a crucial role in a voter's Election Day experience, and well-trained and well-informed poll workers are much more able to assist voters who may face any number of problems when they cast their ballots.

Poll worker training is a crucial, and often overlooked, aspect of the voting experience. In recent years, the expansion of electronic voting machines, use of provisional ballots, and creation of a different identification standards for voters have all contributed to an increasingly complicated Election Day. On top of this, many state legislatures have been passing controversial election laws, which frequently end up being litigated in the court system. These changes, as well as the uncertainty that results from ongoing court battles, add to the challenges and potential for confusion for voters and poll workers alike.

As a result of these layers of changes in elections laws, Election Day issues arise because of poll worker errors. The reality is that most of these errors occur because of confusion and inadequate poll worker training. Typically, most discussion around poll worker training has been about increasing the amount of training that poll workers must receive. However, serving as a poll worker is unique and requires a specific form of training. Unlike a typical job, poll workers – particularly new poll workers – do not get to develop their skills over an extended period of time. In places without in-person early voting, Election Day is the first time poll workers are put to the test. They are placed at their polling location with the expectation that they can sufficiently serve voters, regardless of the assistance needed or the unique problems which may present themselves. The lack of opportunity for on-the-job training, combined with a constant influx of new employees, forces jurisdictions to provide materials which take the guesswork out of poll worker responsibilities.

Some states and cities have considered other unique ways of more effectively training poll workers. Among these unique methods are training poll workers in sequential order of their responsibilities on Election Day, providing added training specifically on set-up and use of electronic voting machines, and dividing poll worker jobs so that each poll worker only has 1-2 responsibilities rather than having every poll worker carry out every type of task.

IV. Same day registration

Same day registration is another extremely effective and important reform that is slowly gaining traction in more states throughout the country. By implementing same day registration, states can allow qualified voters to go to an elections office or polling place on Election Day, and register to vote and cast a ballot in the same visit. Currently, eleven states plus the District of Columbia offer same day registration.⁴⁹

For the 2014 general election, Illinois ran a pilot same day registration program in a few locations. The program's success and widespread use led to the wholesale adoption of same day registration by the state legislature in December.⁵⁰

One of the predominant concerns with implementing same day registration is preventing fraud. States that have already implemented same day registration have adopted a number of safeguards to ensure the eligibility of voters utilizing same day registration. One of the most effective of these safeguards is the use of electronic pollbooks. States that use electronic pollbooks can, in real-time, access the statewide registration database to ensure that the voters registering at the polls on Election Day have not already registered and voted at another polling location.

Another important aspect of same day registration is being able to ensure a voter's residency. States without same day registration are easily able to check a voter's registration address ahead of Election Day. States with same day registration will usually require voters to offer some proof of residence, including a driver's license with a current address or a utility bill.

Conclusion

The 2014 general election proved to be an important test for many new election laws throughout the country. The bigger test for election reform nationwide will be the 2016 presidential election. Presidential election years consistently yield higher turnout than midterm years, and even more voters will be impacted by some of 2014's newly implemented restrictive voting laws. In the meantime, many more states will undoubtedly consider new election reform. Election officials and elected officials alike should consider the wide variety of positive reforms available to improve access to the ballot for voters in their states.

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⁴ The Editorial Board, *supra* note 2.

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¹² DeLong, *supra* note 11.

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