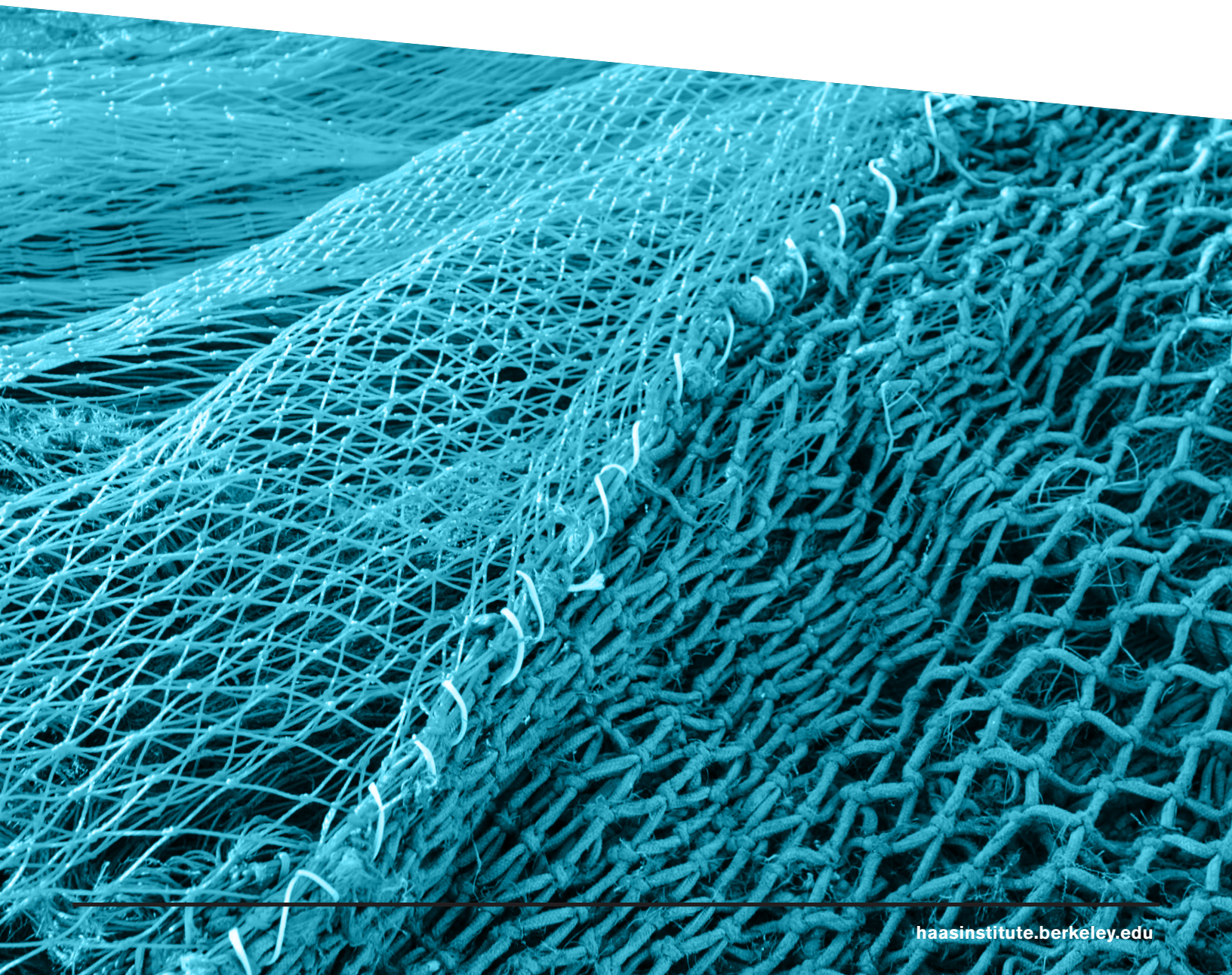

Widening the Lens on Voter Suppression

From Calculating Lost Votes to
Fighting For Effective Voting Rights

by Joshua Clark



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This brief argues that an affirmative vision of voting rights must recognize factors currently treated as “background conditions” of voter suppression instead as causes on par with suppressive laws themselves.

Introduction

More now than at any time in two generations, the right to vote in the United States is under attack.

Impediments to the right to vote are being erected across the country, and they affect voters unevenly across lines of race, class, and age. Indeed, there is considerable evidence that this is precisely their purpose. Yet even where courts ultimately confirm improprieties exist, their remedies often fall short. Courts send laws back to legislators to be amended rather than abandoned, changes to the original texts may not be implemented, and of course, voters are disenfranchised as these legal and administrative processes play out. For these and other reasons, a voting rights agenda that relies principally on litigation may win some important victories, but will ultimately be incomplete.

The Haas Institute for a Fair and Inclusive Society believes that pressing problems require sound analysis, innovative strategies, and collaborative, multi-pronged solutions. Grounded in our vision of an equitable society in which all can participate and belong, our work aims not only to remove barriers that exclude, but also to build capacity, infrastructure, and affirmative structures for inclusion. This brief articulates how that vision applies to voting rights as they relate to manifold sources of voter suppression.

The analysis and approach to voter suppression contained herein is motivated by a larger commitment to democratic principles and practices, and the goals of making government more responsive and equally accountable to all constituents. The suppression of votes is of course not the only issue within this ambit. It also includes the influence of money in politics, racial and partisan gerrymandering, and much more. But due to the immense interest across Haas Institute partners and networks, here we place our focus on research concerning a recent spate of restrictive voting laws.

Through careful engagement with empirical studies of these laws, this brief calls on analysts, advocates, and donors to broaden their framing of the problem of voter suppression—and their conception of the tools for fighting it. The brief argues that an affirmative vision of voting rights must recognize factors currently treated as “background conditions” of voter suppression instead as **causes on par with suppressive laws themselves**. Taking this multi-causal view, we can see that the best investments for fighting voter suppression may be projects that build capacity and knowledge “on the ground”: comprehensive voter outreach, education, civic engagement, and community organizing and power-building. Though litigation continues to be necessary, if the impact of restrictive voting laws is to be minimized in the short term and eliminated in the long term, champions of voting rights must also commit to fostering an inclusive, informed, and resolute electorate.

Background and Overview

BETWEEN 2012 AND 2016, a wave of new voting restrictions were enacted in states across the country. The US Supreme Court paved the way for many of these laws with its controversial 2013 ruling on the Voting Rights Act (VRA).¹ In a 5-4 decision, the Court rendered unenforceable key provisions of the VRA that required certain jurisdictions to secure prior federal approval—meant to prevent discrimination—for any changes to voting or registration rules. For many states, 2016’s presidential election was the first contest regulated by new restrictions on how people may register to vote, cast ballots, and prove their identities at the polls. Often referred to collectively as “voter suppression laws,” such legislation was passed in at least 13 states between 2012 and 2016.²

Laws that eliminate same-day voter registration,³ or allow voters to access the ballot using a concealed-handgun license but not a student ID,⁴ have always raised red flags with people serious about voting rights—and for good reason. But since the 2016 elections, interest in voter suppression among the broader public has surged. With the wealth of data on 2016’s electoral outcomes now available, researchers also have richer empirical bases for moving from analyzing laws’ **potential** to **actual** effects.

In the following section, I begin by reviewing the case against restrictive voting reforms as it stood even prior to the latest round of studies. I show that researchers have long agreed that these reforms discourage and impede eligible voters from casting ballots, while providing no real benefit. The impact on voters is also borne disproportionately by certain subgroups, and there are clear indications that this is intentional—driven by the perception that it will deliver partisan political gains. I argue that these facts alone constitute a strong voting-rights argument against the restrictive laws—irrespective of the laws’ aggregate effect on an election.

The brief’s subsequent section proceeds to evaluate research on restrictive voting laws that has shaped conversations since November 2016. The studies in question have generated vigorous debates among scholars, journalists, and other researchers over how to estimate how many votes these laws suppress. The brief examines these debates—and the methodological dilemmas they reveal—in some detail, with two goals in mind. First is to explain why it is so hard **to know voter suppression**—why even after more than a year of extensive analysis, researchers still cannot say with certainty how many votes were suppressed in 2016.

But second, and more important, is to point to the lessons about **fighting** voter suppression that we can extract from these challenges to quantifying it. In brief, I argue that the roles of myriad other factors—misinformation, voter ambivalence, limited civic-institutional infrastructure, and so on—in curtailing the exercise of the franchise remind us something important:

Voting restrictions depend on other structural causes to suppress the vote. This opens up a broader view on what it could, and should, mean to fight back against voter suppression.

New Voting Restrictions: An Exclusionary and Partisan Agenda

MUCH OF THE INTRIGUE around recent studies of voter suppression laws has centered on how many votes a new law prevented from being cast, and whether it was enough to swing the election. From a voting-rights perspective, these are not the questions that should orient our work. Rather, when we view the effective exercise of the franchise as a *universal right*, we must at a minimum oppose all restrictions that place an undue or discriminatory burden on **any** voters—no matter who, or how many, they are.

This section quickly reviews evidence that recent voting restrictions enacted across the country are unnecessary, discriminatory, and motivated by partisan interests. Knowing this is enough to know why voting-rights advocates should oppose these laws. I stress this at the outset in hopes that the subsequent section—which is critical of recent models for quantifying voter suppression—will not be misread as defending the laws. Rather, it is that opposition to—and investments in counter-ing—voter suppression laws *should not be contingent upon whether they change the outcomes of elections*. Were we to fall into that framing of the problem, voting rights would already have lost.

Proposals to curtail early voting, require photo identification to vote, or otherwise change how voters establish their identities at the polls are usually presented as efforts to prevent voter fraud. The problem with this rationale is that there is no evidence that such fraud poses any threat to US elections. A White House official's sworn declaration in January 2018 that the Trump administration's voter-fraud commission had no findings to disclose (upon its disbandment) is only the latest sign that voting restrictions address no legitimate need.⁵ In fact, there is broad agreement among researchers and legal experts that the phenomenon these laws ostensibly combat is practically non-existent.⁶ New voting restrictions merit the

name “voter suppression laws” because the votes they stifle are those of *eligible citizens*.

Researchers also regularly find that the obstacles voter suppression laws put in place impinge upon certain voter subgroups more than others. For example, a law adopted in Texas in 2014 was shown to have limited the accepted forms of voter ID in ways that disproportionately affected Black and Latino eligible voters relative to whites.⁷ A 2017 analysis of Alabama's voter ID law found that the same was true of it.⁸ In Ohio, a 2014 voting reform jettisoned the state's “Golden Week”—in which citizens can register and cast early votes on the same day—despite research finding that African Americans utilized the week at far higher rates than whites.⁹ More broadly, laws mandating that voters present photo IDs that are unexpired or contain current addresses are greater obstacles for the poor, the underemployed, and the young—all disproportionately people of color.

Finally, there is every reason to believe that voter suppression laws are designed with the goal of securing partisan advantage. Numerous researchers have noted that the pattern of new voting regulations adopted in state legislatures demonstrates that Republicans alone champion the laws.¹⁰ Indeed, 12 of the 13 states with new voting restrictions in 2016 entered the year with Republican state government “trifectas”—GOP control of both legislative houses and the governorship (see Figure 1). Some of these GOP-led legislatures moved on the laws only once the Supreme Court made the federal government unable to enforce pre-approval regulations on state voting reforms. Next, all efforts to turn up evidence of widespread voter fraud have failed. Meanwhile, research has consistently found that new voting restrictions are more likely to burden economically or otherwise structurally disadvantaged groups—groups widely considered to “lean

New or increased restrictive voting laws passed, 2012–2016

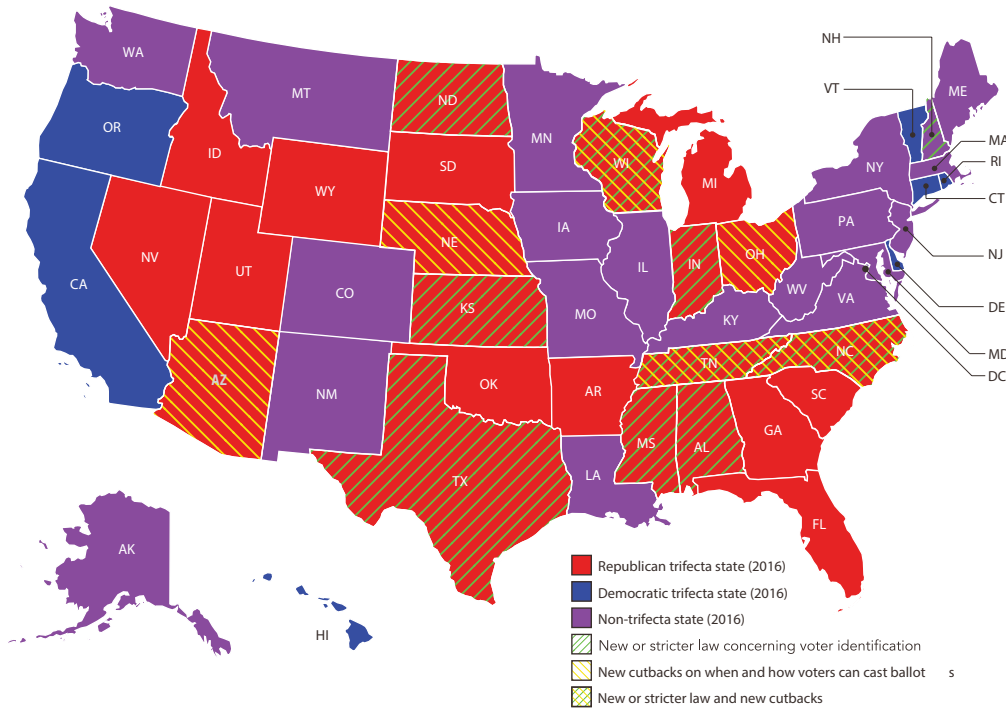


FIGURE 1

New voting restrictions (2012-2016) and state government “trifectas.” All states with new voting restrictions with the exception of New Hampshire were under full Republican control as of 2016.

Democrat.” Such an alignment of partisan legislative action with foreseeable partisan advantage is hard to imagine as purely serendipitous—innocent of intent.

For the most hardened skeptics of proof of intent, where voter suppression is concerned, we can also point to some smoking guns. In Wisconsin, a sworn statement by a Republican staffer attests that GOP state senators in a closed-door meeting were eager and “giddy” to pass that state’s voter ID law to give them a leg up in elections.¹¹ In North Carolina, e-mail correspondence from the state’s Republican Party director reveals that he instructed county elections boards to curtail early voting to target certain voter subgroups—what he himself called “mak[ing] party line changes.”¹² It is also in North Carolina that a strict voter ID law was struck down by a federal appeals court that

found that its creators had consulted race-disaggregated data on who in the state possessed which forms of ID. According to the court’s decision, the eventual Republican law “target[ed] African Americans with almost surgical precision.”¹³ And these are only some recent examples.¹⁴

This is the voting-rights argument against the recent spate of restrictive voting laws. They serve no legitimate purpose, while placing burdens on eligible voters that are borne by some subgroups more than others. Opposition to these laws should in no way be a partisan issue. Unfortunately however, they have been made one by a selection of politicians who see electoral advantage in making it harder for some citizens to vote.

The Challenges of Knowing Voter Suppression: An Appraisal of Recent Studies

SINCE THE 2016 presidential election, public interest in voting misconduct has surged, just as researchers receive their largest batch of voting data since most new voting restrictions took effect. The result is that several new studies on these laws' impacts have made headlines and captured considerable public attention.

In this section, I review the three most significant of these, examining both the studies' findings and the methodological debates they inspired. The terms of these debates circulate far less widely than the headlines, but I argue that they have more to teach us. In particular, the methodological challenge of how to distinguish restrictive voting laws' effects on turnout from the effects of other factors influencing voting behavior demands that we reconsider the nature of voter suppression. The reason this challenge is so ubiquitous is that restrictive voting laws are usually not singular, determinate causes of lost votes. They suppress the vote precisely by combining together with other voting deterrents. In most cases, it is only cumulatively that these multiple causes keep eligible voters from voting. This is what is most important, I argue, in the studies discussed below: They help us to recognize the co-causes of suppressed votes, and to name them as voting-rights issues and necessary targets in the fight against voter suppression.

The Civis Analytics-Priorities USA study

The first notable study to evaluate the impact of voter suppression laws in 2016 made a major splash. The ensuing scrutiny of its methods, however, made plain the pitfalls of analyzing voter suppression from the proverbial 30,000 feet.

Conducted by Civis Analytics for the super PAC Priorities USA, the study offered a stunning headline: Wisconsin's strict voter ID law suppressed 200,000 votes—in a state Donald

Trump won by less than 23,000. Wisconsin Senator Tammy Baldwin repeated the figures in a tweet. Hillary Clinton cites them in a chapter called "Why" in her election memoir.¹⁵ Yet the study's model was swiftly and decisively rejected by most voting rights scholars and experts—and with good reason.¹⁶

The Civis Analytics-Priorities USA study compares statewide turnout figures from the 2012 and 2016 elections. It finds that, on average, states that adopted strict voter ID laws saw a drop in turnout, while those that made no changes to voting laws had increased turnout in 2016. Already this is misleading, however, in that half of the ten states with new strict ID laws saw turnout **go up**, while a handful—Mississippi, Wisconsin, and Ohio—accounted for most of the overall drop for the entire group. From there, Civis Analytics treats the overall turnout increase of +1.3 percent in "no-change" states as the national norm—the amount by which each state **should have** increased its turnout rate in 2016. The study then imputes all change falling short of that level of growth to voter ID laws.

The report says that Wisconsin's turnout rate dropped by 3.3 percent, and that, if it "had instead increased by the national no-change average, we estimate that over 200,000 more voters would have voted in Wisconsin in 2016."¹⁷ At the national level, "If states where voter ID laws became stricter between 2012 and 2016 had increased turnout by the same rate as that of states where there were no voter ID law changes, we estimate that over 400,000 more voters... would have cast their ballots."¹⁸ Fair enough; these statements are about math. But it is something different to attribute all divergence from the average to voter ID laws. Doing so is particularly problematic when half of the states with new laws actually saw turnout increases.

A final contentious analytical tack in the Civis Analytics-Priorities USA study is its use of a comparison between Wisconsin and Minnesota—which has no voter ID law—to gauge the impact of Wisconsin’s law. Here the study looks at county-level turnout figures, with a particular interest in counties with larger African American populations. On one hand, the comparison is compelling, at once affirming that drop off in counties with more African Americans took place across the board, but also that it was steeper in Wisconsin than in Minnesota. But on the other, we must wonder what the outcome would be were the same analysis run for another neighboring state with no ID law: Michigan. Scholars who have analyzed voter file data based on official turnout records find that African American participation in that state declined at essentially the exact same rate as in Wisconsin.¹⁹ This by no means implies that African Americans’ votes were not suppressed in Wisconsin. But it certainly raises questions about Civis Analytics-Priorities USA’s model for assessing the impact of the voter ID laws.

Broadly speaking, the problem with this model is that it neither takes into account, nor controls for, any of the other myriad factors that influence whether voters will or will not go to the polls. It can attribute variation only to the factor it is trying to investigate—voter ID laws. What the Wisconsin-Minnesota comparison shows in particular is that the study treats voters as essentially a series of context-less, isolated units; it assumes they should behave in mostly consistent patterns irrespective of place insofar as they look the same in crude demographic terms. This is what allows for the conclusion that differences in Black voting patterns in Minneapolis-Saint Paul and Milwaukee cannot be explained otherwise than with reference to voter suppression laws.

In bringing this criticism out, we are reminded to think of the ways voters are networked in local communities that influence their behavior. They talk, share information, and influence one another’s opinions, dispositions, and practices. No matter how ubiquitous social media has become, we cannot ignore the significance of **place** in all of this—that these networks and communication are seated in distinct localities. This is essentially the difference between analyzing voters as members of populations versus **communities**.

Distinct civic dispositions form and spread in the context of communities through the dialogue of their members. These might include ideas that

our votes don’t really matter, that the candidates aren’t so different, or that withholding our support is the only way to get their attention.²⁰ They could also be that new ID laws make voting more trouble than it’s worth or that the people running things will just turn away “people like us” anyway. The collective political knowledge and sense-making that these conversations develop can be just as crucial to securing the exercise of voting rights as any piece of litigation. The critique of the Civis Analytics model’s indifference to this—or any—context surrounding voters reminds us that community networks and knowledge circuits are **infrastructure that give those rights effect**.

The Journal of Politics Debates

Important debates over how to quantify restrictive voting laws’ impacts also took place in the field of political science in 2017, most notably around a study published in *The Journal of Politics*. The professional researchers involved in this work avoided clear missteps like those in the Civis Analytics study, careful to control for outside variables as they investigated voter ID laws. Still, methodological disagreements persist among the researchers’ peers. These disagreements spotlight pending challenges not only to studying voter suppression, but also to combatting it.

The study appearing in *The Journal of Politics* was carried out by Zoltan Hajnal, Nazita Lajevardi, and Lindsay Nielson.²¹ Though these researchers’ work does not look at the 2016 election, it is groundbreaking as a peer-reviewed assessment of the impact of the post-2011 generation of strict voter ID laws.²² Hajnal et al. use data from the large-sample Cooperative Congressional Election Studies (CCES) of the five election years from 2006 to 2014, allowing them to focus on turnout effects across different voter subgroups—particularly as defined by race/ethnicity.

The Hajnal et al. study provides a strong and robust empirical case that recent voting restrictions are not only discriminatory in potential, but also in actual impact. It begins by comparing turnout rates of racial/ethnic subsets of the CCES sample for states with and without voter ID laws across multiple election cycles. In its straight comparison, the study shows that in general elections Hispanic turnout rates are 7.1 percentage points lower and Asian American rates are 5.4 points lower in states with strict voter ID laws in place. African American turnout is not much different in voter ID states during general elections, but

is 4.6 points lower in primaries.

Hajnal et al. then use regression models to control for a range of possible confounding (“third”) variables that might be influencing the apparent relationship between turnout in communities of color and voter ID laws. But here too they conclude that these laws have an effect on Hispanics more than any other racial or ethnic group. An average Hispanic voter’s likelihood of casting a ballot drops by 10 percentage points if the individual lives in a state with a strict voter ID law, “all else equal.”²³ Hajnal et al.’s regression analyses also find that such laws decrease African American and Asian American voters’ likelihood of voting in primary elections. Because they have no noticeable effect on whites, their overall consequence is to significantly increase the white-nonwhite turnout gap.

Despite the numerous factors for which it controls,²⁴ Hajnal et al.’s study quickly drew criticism for having not considered all possible confounding variables that could influence turnout. In a response piece to be published in *The Journal of Politics*, political scientists Justin Grimmer, Eitan Hersh, Marc Meredith, Jonathan Mummolo, and Clayton Nall make the case that there are likely “unobserved baseline differences between states with and without [voter ID] laws.”²⁵ That is, there are other factors that are both causal contributors to depressed turnout and correlated with the adoption of voter ID laws. Grimmer et al. ground this claim in the results of a “placebo test,” through which they find voter turnout effects in the states with ID laws even before those laws were in place.²⁶

This rebuttal to Hajnal et al.’s claims reinforces a point that should be a lesson for opponents of voter suppression: Many or most suppressed votes cannot have their causes neatly separated, but instead lie at the intersections of multiple factors. Notably, Grimmer et al. cannot say what the additional factor (or factors) whose presence they identify might be. If the original study’s researchers already account for known unknowns, the critique points to unknown unknowns—all those *other* other variables. Surely the stories of votes not getting cast are diverse; but they must also have patterns. More research and organizational capacity on the ground would enable us to better understand and contend with this multi-causality of vote suppression.

Grimmer et al. have other criticisms of the Hajnal et al. study, as well. One is that the CCES data that Hajnal et al. use is not in fact designed to be

representative at the level of state subsamples. Another is nonresponse bias: “The kind of person who lacks an ID is unlikely to be accurately represented in the opt-in online CCES study.”²⁷ Neither of these implies that voter ID laws are not discriminatory, nor that Hajnal et al. necessarily exaggerate their impact—only that the scholars do not have the data to make their precise claims.

But for those committed to advancing voting rights, these criticisms too contain a relevant point. Voter suppression laws pick on voter vulnerabilities that manifest across spectrums of economic, social, and civic life. If these exclusions, or forms of disconnection, make a voter both unlikely to have a voter ID and unlikely to participate in an opt-in survey, they no doubt also make her less likely to be networked with organizations and institutions that defend and facilitate the exercise of voting rights. That is, some of the same factors that foster the suppression of votes also make it harder to detect. Here too, increased capacity for voter-outreach initiatives operating within communities targeted by voter suppression laws would likely weaken their impact, and surely make its mechanisms more knowable—and contestable.²⁸

The Milwaukee and Dane County, WI Survey of Non-Voters

Grimmer et al. end their critique of the Hajnal et al. study saying that “custom-sampling surveys” may be a way for future researchers to better gauge the role of ID laws in voter turnout.²⁹ The final study I review here meets that call. Led by University of Wisconsin political scientists working with the Dane County (WI) Clerk, it too attracted considerable attention for its implication that Wisconsin’s voter ID law likely swung the state to Trump.³⁰ But it is the study’s recognition of the multiple causation or multiple responsibility for suppressed votes, and of the prevalence of voter misinformation, that I find most valuable.

A press release dated September 25, 2017, announced, “A Survey of registered voters in Dane and Milwaukee Counties who did not vote in the 2016 presidential election found that 11.2% of eligible nonvoting registrants were deterred by the Wisconsin’s [sic] voter ID law.” It goes on to say that this “corresponds to 16,801 people in the two counties,” but that an estimate “as high as 23,252” votes would be within the confidence interval.³¹ This latter figure grabbed the attention of journalists and activists in large part due to how close it was to the margin by which Trump carried

Wisconsin (22,748)—and it only covers two of the state’s counties.

These findings are the result of a survey mailed to 2,400 registered Milwaukee and Dane County voters who did not cast ballots in 2016. The questionnaire focused on why respondents did not vote, but also asked about their knowledge of Wisconsin’s voter ID law. An unfortunate limitation of the survey was the low response rate. Only 293 (around 12 percent) of the questionnaires were returned—a very small sample. The study’s finding that the “burdens of voter ID fell disproportionately on low-income and minority populations”—though consistent with all research on such laws—was also questioned due to the even smaller size of these subsamples.³²

The strength of a survey-based study of course is that it allows the researcher to ask the voter herself why she did not vote. Surveys that pose this question usually allow respondents to mark more than one answer, and many respondents do.³³ The Milwaukee-Dane study based its survey question on one that has long been used in Census Bureau voter studies, asking respondents to mark “yes” or “no” for each of a series of 12 possible reasons they did not vote. This question is followed by a separate one eliciting “the primary or main reason” for not voting (see Figure 2).

are included in a total of non-voters “deterred” from voting by the ID law.³⁴

The Milwaukee-Dane study finds that almost as many non-voters listed the voter ID as a contributing (non-primary) cause as were identified as having been “prevented” by it from voting. Of course, we must wonder on what basis voters make these distinctions, and arrive at their rank orderings of causes. As political scientist Ryan D. Enos chimed in via Twitter, a person is often unable to name the precise reason she takes (or does not take) an action; requesting an explanation after the fact tends to generate post-hoc rationalizations.³⁵ But this is only one side of the matter, and it is not safe to assume—as Enos’s comment might imply—that non-voters over-report the role of restrictive voting laws. Voters presumably have different ways of thinking about how to weigh the relative import of suppressive factors, and which is “primary.”³⁶ And what about those voters who knew they could not miss work or find childcare that Tuesday, and thus never even came to know the law’s additional hurdles, or that their out-of-state ID or proof of residence would be rejected at the polls?

As the Wisconsin survey also shows, so too are many voters misinformed about the content of voter ID laws. This is consistent with other recent studies, including a similar survey conducted with

2. Which of the following was the primary or main reason why you did not vote in the recent presidential election? Please check only one.

- You were ill or you are disabled
- You were out of town or away from home on election day
- You intended to vote, but did not have time
- You were not interested
- You had transportation problems and could not make it to the polling place
- You didn’t like any of the candidates or campaign issues
- You couldn’t get an absentee ballot
- You did not have the right photo ID and know you would not be able to vote
- You tried to vote, but were told at the polling place that you did not have the necessary photo ID
- You tried to vote, but the lines were too long
- You did not know where the early voting locations were, or you couldn’t make it to one
- You didn’t think your vote would have mattered

FIGURE 2
Reproduction of one question from the Milwaukee and Dane County, WI survey of non-voters.

As in other similar surveys, many respondents in the Milwaukee-Dane study reported multiple reasons for not voting. The researchers code as “prevented from voting” all of those who listed one of the voter ID responses as their primary reason for not voting, or indicated in a separate question that they lack qualifying ID. Those who listed voter ID as among the reasons, but not the primary one,

Texans who did not vote in 2016. There the vast majority of those who named the photo ID requirement as their main reason for not voting actually possessed an acceptable ID.³⁷ Likewise, the Milwaukee-Dane study finds that most of those who believed they did not have qualifying ID in fact did.³⁸ In both cases, the studies’ authors acknowledge that the laws, and legislatures that passed

them, are largely responsible for the confusion. But so too do they insist that the confusion—not just the law—must be urgently fought, through voter education, outreach, and empowerment.³⁹

Even better than the debates arising from the two previous studies, the Milwaukee-Dane study illustrates the multiple structural causes that go into voter suppression. These can be so intertwined and cumulative in their impact that it is hard even for non-voters themselves to pick one “main” cause. Sometimes they can. But often their choice is based on misinformation. In other cases, choosing a primary reason is simply arbitrary. What all of this tells those who are committed to voting rights is that the restrictive laws are only one—and likely not the easiest—target that could be removed to bring about a different result. If our goal is the universal effective exercise of voting rights, we are just as arbitrary when we choose to fight voter suppression by focusing only on the laws while ignoring other exclusionary causes.

Epilogue to 2017’s Quantitative Studies

In the final months of 2017, two media events put voter suppression in the public spotlight, if only for a while. The first was the release of a cover article in *Mother Jones* titled “Rigged.” In it, voting rights expert Ari Berman lays out the full case for saying that voter suppression handed Donald Trump the state of Wisconsin in the 2016 election.⁴⁰ The second was coverage of the special election for a US Senate seat in Alabama, a state with notorious and endemic voting-rights challenges.

Berman’s article draws on both the Civis Analytics and the Milwaukee-Dane studies, but is most notable for its long-term, on-the-ground investigation in Wisconsin. It profiles several disenfranchised voters and chronicles their exasperating efforts to obtain voting credentials and cast ballots in 2016. *The Washington Post’s* Philip Bump was quick to criticize the piece, among other things calling Berman’s reportage “anecdotal examples of people prevented from voting.”⁴¹ But this characterization is patently unfair; any qualitative researcher can recognize that the cases Berman highlights are only a selection from a larger corpus of findings.⁴² This is important to note because qualitative work like Berman’s is—for reasons discussed above—uniquely able to access many of the patterns and processes by which votes get suppressed. It is the knowledge of these—and not the number of suppressed votes—that must guide voting-rights work.

Still, there is room for concern over the selection of cases Berman chose to present in his important piece. The problem is that they essentially illustrate only one type of pattern by which votes are suppressed. It is one in which voters are absolutely determined to vote, exhaust every effort, and still end up being thwarted.

This is one story, and it is a powerful one. But its depiction of voter suppression is much too narrow. Specifically, it is too narrow in how it represents the disenfranchised voter. As a result, it misses the opportunity to make a more robust voting-rights argument. Such an argument should include voter suppression’s multiple causation, and in doing so, must include more than only the most sympathetic cases of prospective voters. Most of those who are systematically and structurally deterred from exercising the franchise are not the grandmother, the veteran, the survivor of a fire, all extraordinarily committed to voting. For many, no doubt, new voting restrictions are instead a final straw in a larger structural context that already minimizes incentives and reason for faith in the electoral process. If those voters are not included in the analysis, we get an abridged version of what voter suppression is, and a correspondingly abridged understanding of its solutions.⁴³

The case of the December 2017 special election in Alabama drives my point here home. There, major news outlets made room for some belated discussion of the state’s exclusionary voting laws,⁴⁴ but it was dwarfed by the sex-crime allegations surrounding GOP candidate Roy Moore. When Moore’s opponent, Doug Jones, ultimately emerged victorious, the storyline all but disappeared.⁴⁵ A decisive factor in the race was that African Americans in Alabama not only turned out at a higher rate than whites; they also voted at an unprecedented level for a non-presidential-year election.⁴⁶ So what does this say about voter suppression in Alabama—a state that bans early voting and same-day registration, limits absentee voting, and instituted a voter ID requirement at the same time it closed dozens of offices that issue them, disproportionately in counties with large African-American populations?⁴⁷

We can find the answers we need in what little post-election media attention the issue received. LaTosha Brown of Black Voters Matter Fund was a leader in the effort to mobilize Black voters in Alabama—around, and in spite of, restrictive laws. Surely the restrictions in many cases worked in tandem with voters already being ambivalent

about whether the election mattered; but home-grown power-building groups like Brown's tackle both. Of the restrictions, Brown told the *New York Times*, "I do think that very committed, focused people will find a way [to vote]. But is that fair?"⁴⁸ Assuming it is not, then neither would it be fair if only those who work unimaginably hard to vote were treated as deserving of voting-rights energy and resources. The equal and effective exercise of voting rights means creating whatever structures, capacity, and infrastructure are necessary to facilitate the participation of everyone.

Concluding Implications: A More Holistic Agenda for Fighting Voter Suppression

THIS BRIEF HAS proceeded by way of three steps. It began by arguing that the case against new restrictive voting laws lies not in the number of votes they suppress, but the facts that they address no legitimate need, impose burdens discriminatorily, and arise from partisan interests. I showed that these facts are well established by research and reportage including, but also pre-dating, the recent round of post-2016 studies.

Next, the brief turned to those studies, reviewing their findings on voter suppression laws' impacts, and the debates those findings have sparked. It highlighted the various methodological challenges to isolating restrictive voting laws' independent suppressive effect—challenges that arise from the laws' entanglement with, and reliance upon, other subtler exclusionary structures, both formal and informal.

Finally, I argued that these challenges—headaches for quantitative researchers—can and should be cultivated for their lessons on fighting voter suppression. Those lessons start with a broadening of the framing of what count as “voting-rights issues,” by way of the recognition that voter suppression has multiple causes or responsibilities. This recognition opens up our understanding of the factors suppressing the vote, bringing into view as co-causes that which has until now been considered mere context. From these multiple causes spring entry points for multiple modes of intervention—and solutions.

Figure 3 illustrates the proposal. On the top is a conventional framing of the problem of voter suppression. In the illustration, the laws are an encompassing and unbroken barrier—determinate for an unknown number of voters. It is notable that other factors do not go wholly unacknowledged here. But they are imagined like clouds or a fog, traversing the boundary between those who are and are not affected by the laws, and essentially

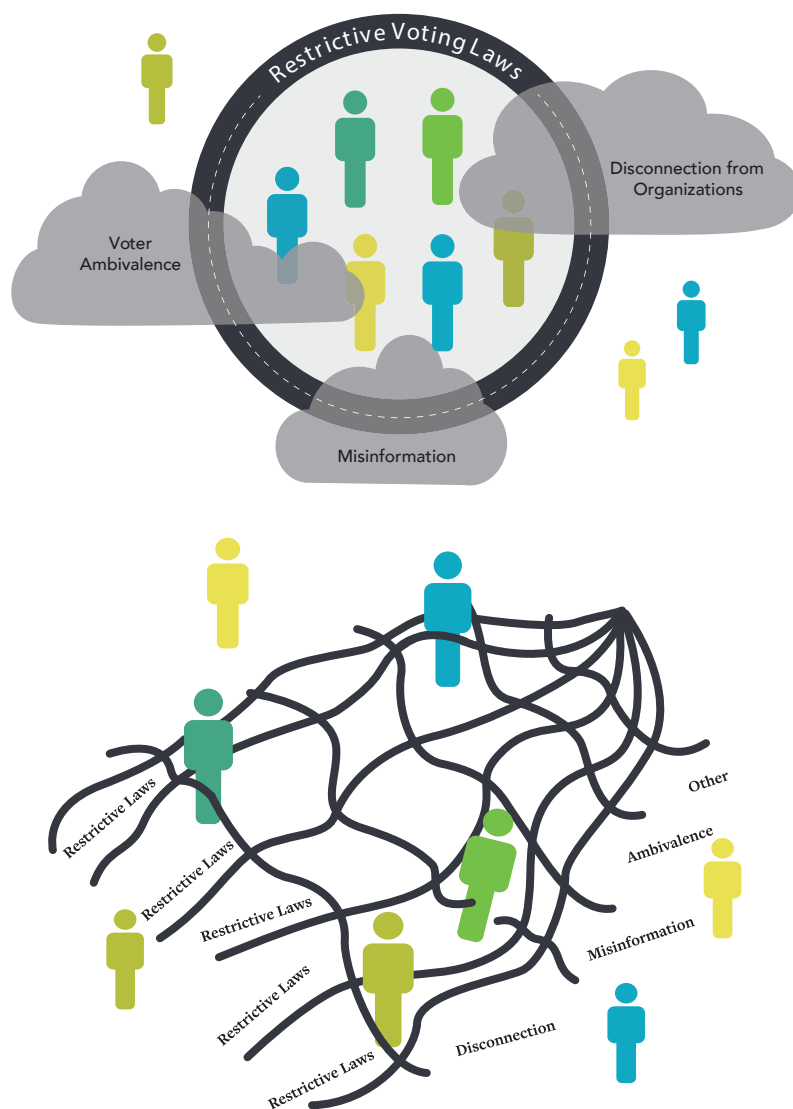


FIGURE 3

Conventional framing of the problem of voter suppression (top), and an alternative proposal (bottom).

incidental to them. If anything, these factors are a nuisance in that they obstruct the view of restrictive laws' causal impact, and the people being constrained by it.

The bottom graphic on Figure 3 is a depiction of my proposal for replacing this framing. It represents voter suppression as a net woven of interlocking strands. Not a perfect mesh, the distances between parallel strands vary, making for larger and smaller openings through which voters might pass or get ensnared. The strands' intersections are clearly the most perilous terrain, and yet still no part of the net is determinate—one can conceivably fight through it. But what is more important for our purposes is that a net can be snipped in many places, and from many angles. And, as with any net, here each strand is dependent on the others for its strength, and thus snipping any one weakens the entire structure.

At present, most of the energy and resources expended in the name of tackling voter suppression continues to go toward fighting restrictive laws in the courts. This is important—indeed crucial—work. But it should not overshadow the essential voting-rights role of a variety of other kinds of initiatives as well. I conclude here with a few that stand out based on the previous sections' analysis. Just as the “strands” in Figure 3 above do not represent all of voter suppression's causes, nor is the following meant to be an exhaustive list of possible modes of intervention.

Comprehensive voter education. When surveys reveal that most of those who did not vote because of an ID law actually possessed acceptable ID, clearly misinformation is a serious problem. Educating voters on new voting laws should be the responsibility of the state governments that pass the laws. Where they show little inclination to do so, civic organizations should make demands at both the state and local level for robust and equitable public education campaigns.

But the kind of voter education needed to overcome voter suppression also goes well beyond informing citizens about the content of new restrictions. First, such initiatives must be targeted and tailored to the voter groups that these laws affect. Among other things, this will involve their being delivered in linguistically and culturally appropriate ways. Second, for voter education to counter the formidable forces suppressing the vote, it must not only convey information but also equip individuals and communities to be effective civic advocates.⁴⁹ We have learned two important

lessons about “wins” in the courts: First, they are usually only partial; and second, voting rights can still “lose on the ground.” As Michael Wines has reported for the *New York Times*, the reasons include such factors as “foot-dragging by states, confusion among voters, [and] the inability of judges to completely roll back bias.”⁵⁰ When state administrators fail to comply with or implement the decisions of the courts⁵¹—or even the letter of the restrictive laws themselves—knowledgeable and strong citizen advocacy is the needed next step to turn back laws' suppressive effects. Community-based organizations are the best vehicle for this type of comprehensive voter education.

Civic-engagement and outreach infrastructure.

As my analysis of recent research above noted, social, economic, and civic exclusion and disconnection are partners to restrictive laws in the work of suppressing votes. One way to sever the ties of these co-causes is by bolstering organizations that conduct outreach with the young, the poor, and other constituencies with limited contact with civic networks and resources. This will include many who are mistrustful of institutions, for whom outreach will no doubt require innovative tactics and perhaps new technologies. The goal however should be to create and sustain connections and belonging in a community of voters. Many organizations already do this kind of work; yet it has not been widely appreciated as fundamental to voting rights.

Given adequate resources and capacity, these organizations can also serve as community-level sites for receiving and collating reports of misconduct and anomalies at the polls. The need for such a presence is evident when we consider an article like Berman's. Why does it take nearly a year—and a uniquely committed voting-rights reporter—to bring forth the stories of voters disenfranchised in a US presidential election? If the problem is that most media are disinclined to cover voter suppression, what would make such negligence impossible? One answer is to build local infrastructure for eliciting, aggregating, and publicizing people's stories. Crucially, this is but another capacity for the same civic-engagement institutions and networks that double as forces for preventing voter suppression in the first place. Where they are not able to help voters through the “net,” their work to amplify disenfranchised voters' stories seems preferable to coverage of quantitative studies. This is, again, because the latter tend to become consumed by technical debates over methodology, and by partisan ones

When we strengthen efforts to activate and empower voters, we fight voter suppression by building knowledge, resilience, and advocacy capacity.

Grounded in our commitment to effective voting rights, and in a body of empirical research, the Haas Institute sees the problem of voter suppression as requiring a multi-pronged and holistic approach.

about whether or not a voting law swung the election, rather than staying focused on voters' rights.

Voter empowerment and activation. A related but distinct factor that works in concert with restrictive voting laws to suppress the vote is voter ambivalence. By ambivalence, I mean to refer to various levels of doubt about whether one's vote matters, the legitimacy of the electoral process, and whether any candidate represents one's interests or community, among others. Such doubts of course transcend voter subgroup. But they are a particularly logical response for those who are rarely courted by electoral campaigns due to being habitually characterized as unreliable or "low-propensity" voters. That such characterizations are perceived by—and disempowering of—their subjects is borne out by the limited research exploring non-voters' reasons for sitting out the 2016 election.⁵² The effects are strongest on precisely those groups targeted by restrictive voting laws.⁵³ Nonetheless, those shaping mainstream conversations on voter suppression rarely permit that voter ambivalence be considered within the issue's ambit.

This omission is wrongheaded. The voter who is ambivalent is much more likely to be disenfranchised by new voting laws than is the voter who is determined and certain her vote matters. Principled voting-rights advocates should not be in the business of writing off the former—of saying that she didn't try hard enough or probably wouldn't have voted anyway. Of course, to a large extent it is the responsibility of campaigns and candidates to inspire a sense of commitment and determination to vote. Still, strong community and political organizations on the ground are best positioned to address voter ambivalence and restrictive laws in a sustained manner that builds constituency power and transcends individual candidates or election cycles.

Citizen advocacy around election administration. The three strategic entry points above are derived directly from my analysis of recent studies of restrictive voting laws and challenges to calculating their impact. As I have explained, the debates surrounding those studies draw attention to these entry points as promising immediate, affirmative modes of intervention that are not conventionally understood in voting-rights terms.

But there are also several additional institutional structures that are not captured here, but that work in concert with restrictive voting laws to dissuade certain constituencies from voting. Many policies and protocols for administering elections

rest on decisions made at the discretion of city, county, and state officials.⁵⁴ These may include matters such as registration deadlines; the timing and scheduling of early voting; the hours, locations, and staffing of polling places; and much more, depending on the state. These matters are anything but trivial to voters, and—especially when set in tandem with new voting restrictions—can have significant effects on who ultimately casts ballots.

Those who wish to fight voter suppression should thus support citizen advocacy around the administration of elections. Here I refer to constituent-driven demands aimed below the level of legislative action—demands whose content will vary depending on the particular needs of the electorate in a given jurisdiction. Not incidentally, each of the strategic modes of intervention listed above also builds constituencies' capacity to formulate, target, and organize campaigns around such demands.

Organizations committed to voting rights should be supported in work to assess local constituents' voting-access needs—as they relate, for example, to differences of age, ability, and identity. Subsequent advocacy will then be equipped to apply pressure and to promote inclusive reforms enabling everyone to reach the universal goal of effective enjoyment of the right to vote.⁵⁵

The Haas Institute sees all political power-building at the community level, especially with young people and communities of color, as voting-rights work. When we strengthen efforts to activate and empower voters, we fight voter suppression by building knowledge, resilience, and advocacy capacity. Investing in these capacities among groups disproportionately targeted by restrictive laws also fuels a virtuous pro-voting rights cycle: Once empowered, the groups will become constituencies capable of holding lawmakers accountable to high standards of inclusiveness in future laws and policies related to voting and registration.

Grounded then in our commitment to the universal enjoyment of effective voting rights, and in a body of empirical research, the Haas Institute sees the problem of voter suppression as requiring a multi-pronged and holistic approach. By pursuing it, we will not only be removing barriers—working from a defensive or rearguard position. We will be building capacity, infrastructure, and structures that affirm and advance the voting rights of everyone—structures for an inclusive electorate.

Endnotes

- 1 *Shelby County v. Holder*, 570 U.S. ____ (2013).
- 2 ACLU, "Voter Suppression Laws: What's New Since the 2012 Presidential Election." Georgia and Rhode Island also had restrictive voting laws on the books dating to 2011.
- 3 Aaron Blake, "North Carolina governor signs extensive Voter ID law," *The Washington Post*, August 12, 2013.
- 4 Rebecca Leber, "In Texas, You Can Vote With a Concealed Handgun License—but not a Student ID," *New Republic*, October 20, 2014.
- 5 "Second Declaration of Charles C. Herndon," *Dunlap v. Presidential Advisory Commission on Election Integrity*, US District Court for the District of Columbia, Document 39-2 (2018).
- 6 See the studies and judicial opinions compiled in the Brennan Center for Justice's comprehensive review memo, "Debunking the Voter Fraud Myth," January 31, 2017.
- 7 Matt A. Barreto and Gabriel R. Sanchez, "Accepted Photo Identification and Different Subgroups in the Eligible Voter Population, State of Texas, 2014," Expert report submitted on behalf of plaintiffs in *Veasey v. Perry*, June 2014. This version of the Texas law was struck down in part by the Fifth Circuit Court of Appeals, but is among those for which an interim amendment was ordered rather than wholesale elimination.
- 8 NAACP Legal Defense and Education Fund, "NAACP Legal Defense Fund Files Response to Alabama's Motion for Summary Judgment in Alabama Photo Voter ID Law Case," Press Release, November 6, 2017.
- 9 Darrel Rowland, "Judge rules Ohio voter rights violated," *The Columbus Dispatch*, May 24, 2016. Here an initially successful legal challenge was later overturned in time to ensure there was no "Golden Week" for the 2016 general election. David A. Graham, "Ohio's 'Golden Week' of Early Voting is Dead, Again," *The Atlantic*, August 23, 2016.
- 10 See for example Daniel R. Biggers and Michael J. Hanmer, "Understanding the Adoption of Voter Identification Laws in the American States," *American Politics Research* 45(4): 560-588 (2017); and Keith G. Bentele and Erin E. O'Brien, "Jim Crow 2.0?: Why States Consider and Adopt Restrictive Voter Access Policies," *Perspectives on Politics* 11(4): 1088-1116 (2013). Political scientists William Hicks, Seth McKee, Mitchell Sellers, and Daniel A. Smith also present evidence that voter identification laws are significantly more likely to be championed in electorally competitive states, further suggesting that their adoption is a partisan electoral strategy. See "A Principle or a Strategy?: Voter Identification Laws and Partisan Competition in the American States," *Political Research Quarterly* 68(1): 18-33 (2015).
- 11 Ari Berman, "Rigged: How Voter Suppression Threw Wisconsin to Trump," *Mother Jones*, November/December 2017.
- 12 Colin Campbell, "NC Republican Party seeks 'party line changes' to limit early voting hours," *The News & Observer* (Raleigh, NC), August 17, 2016.
- 13 The court's decision further argued that the state's proffered rationales for the law "cannot and do not conceal the State's true motivation." *North Carolina State Conference of the NAACP v. McCrory*, 831 F. 3d 204 (4th Cir. 2016).
- 14 For a discussion of several earlier examples, see Aaron Blake, "Republicans keep admitting the voter ID helps them win, for some reason," *The Washington Post*, April 7, 2016; see also Dara Kam, "Former Florida GOP leaders say voter suppression was reason they pushed new election law," *The Palm Beach Post*, November 25, 2012.

- 15 Hillary Rodham Clinton, *What Happened*, Simon & Schuster, 2017. See p. 420.
- 16 See for example, the reactions compiled in Rick Hasen, "Some Words of Caution About New Study Finding Voter ID Cost Clinton WI and Election," Election Law Blog, May 9, 2017.
- 17 Civis Analytics and Priorities USA, "Voter Suppression Analysis," Press Release, May 3, 2017.
- 18 *Ibid.*
- 19 Bernard L. Fraga, Sean McElwee, Jesse Rhodes, and Brian Schaffner, "Why did Trump win? More whites – and fewer blacks – actually voted," *Monkey Cage/The Washington Post*, May 8, 2017. Fraga et al. find that the voter participation rate for African Americans dropped by 12.4 percentage points in Michigan and 12.3 points in Wisconsin. These figures differ from those of the US Census Bureau's Voting and Registration supplements, which show a smaller drop in African American turnout in Michigan from 2012 to 2016. However, the Census Bureau's estimates have a number of known methodological problems, and in any case, official ballot counts for Wayne County (Detroit) and Flint, MI support Fraga et al.'s findings.
- 20 See the findings from focus groups with drop-off voters in Milwaukee: Civic Engagement Fund and Brilliant Corners Research & Strategies, *Breaking Away: Exploring the Third Party Millennial "Protest" Vote of 2016*, June 2017.
- 21 Zoltan Hajnal, Nazita Lajevardi, and Lindsay Nielson, "Voter Identification Laws and the Suppression of Minority Votes," *The Journal of Politics* 79(2): 363-379 (2017).
- 22 The authors rightly note that any inconclusiveness in peer-reviewed research on voter ID laws comes from studies that pre-date this wave of strict voting restrictions. See *ibid.*
- 23 *Ibid.*, p. 368.
- 24 Hajnal et al. control for age, education level, family income, nativity, gender, marital status, having children, being a union member, owning a home, being unemployed, and religion, as well as other state-level electoral laws that may encourage or discourage voter participation. *Ibid.*, p. 367.
- 25 Justin Grimmer, Eitan Hersh, Marc Meredith, Jonathan Mummolo, and Clayton Nall, "Comment on 'Voter Identification Laws and the Suppression of Minority Votes,'" forthcoming in *The Journal of Politics*, p. 2. The version of this article referenced herein is dated August 16, 2017.
- 26 *Ibid.*, pp. 7-8.
- 27 *Ibid.*, p. 3.
- 28 Hajnal et al. themselves note this knowledge gap, saying, "It could be that more minorities do not have the requisite ID, that the costs of obtaining an ID are too high for minorities to bear, that passing these laws sends a signal to minorities that they are not wanted at the ballot box, or some combination of the above. We simply do not know." Hajnal et al., "Voter Identification Laws and the Suppression of Minority Votes," p. 377.
- 29 Grimmer et al., "Comment," p. 12.
- 30 Kenneth R. Mayer and Michael G. DeCrescenzo, "Supporting Information: Estimating the Effect of Voter ID on Nonvoters in Wisconsin in the 2016 Presidential Election," September 25, 2017.
- 31 Kenneth R. Mayer and Scott McDonell, "Voter ID Study Shows Turnout Effects in 2016 Wisconsin Presidential Election," Press Release, September 25, 2017.
- 32 The researchers themselves state that their "estimates cannot be extrapolated to the state of Wisconsin as a whole," making the small sample size somewhat less problematic. Mayer and DeCrescenzo, "Supporting Information," p. 2.
- 33 For example, the post-2016 election wave of Pew Research Center's American Trends panel survey (n=4,183) identified 472 non-voters. Of these, 1/3 selected more than one reason for not voting; 1/6 chose at least three reasons. It is a tiny sample, but 14 out of the 20 who mentioned problems with voter ID, mail-in ballots, or their registration also mentioned

- another reason for not voting—be it that “something came up,” they didn’t have time, or they thought their vote wouldn’t matter anyway.
- 34 Mayer and DeCrescenzo, “Supporting Information,” p. 5. It is the latter category for which the researchers estimate the 11.2% figure; under the stricter definition, they find that 6% of non-voters were “prevented” from casting ballots.
- 35 There may be further psychic incentive to give a rational account of behavior that is socially disparaged, as failing to vote may be perceived to be.
- 36 For example, when responding to a question about the “primary” reason for not voting, some may consider material cost paramount, others might think of the final, deciding factor—“the straw that broke the camel’s back.”
- 37 Mark Jones, Renée Cross, and Jim Granato, “The Texas Voter ID Law and the 2016 Election: A Study of Harris County and Congressional District 23,” University of Houston Hobby School of Public Affairs, April 2017.
- 38 Mayer and McDonell, “Voter ID Study Shows Turnout Effects in 2016 Wisconsin Presidential Election.”
- 39 See further Renée Cross, Jim Granato, and Mark Jones, “State should focus on voter education,” *Houston Chronicle*, April 7, 2017
- 40 Berman, “Rigged.”
- 41 Philip Bump, “The case that voter ID laws won Wisconsin for Trump is weaker than it looks,” *The Washington Post*, October 20, 2017.
- 42 Berman has also published other findings elsewhere, e.g. Ari Berman, “How the GOP Rigs Elections,” *Rolling Stone*, January 24, 2018. Furthermore, he is not the only journalist to profile disenfranchised Wisconsin voters, who, according to another account, were “not hard to find.” Christina A. Cassidy and Ivan Moreno, “In Wisconsin, ID law proved insurmountable for many voters,” *The Associated Press*, May 14, 2017.
- 43 I of course in no way mean to suggest that this is Berman’s intent.
- 44 For examples, Vann R. Newkirk II, “What’s Missing From Reports on Alabama’s Black Turnout,” *The Atlantic*, December 7, 2017; Scott Douglas, “The Alabama Senate Race May Have Already Been Decided,” *New York Times*, December 11, 2017; and David Leonhardt, “Voter Fraud in Alabama,” *New York Times*, December 12, 2017.
- 45 This despite that numerous complaints of voter suppression were reported on election day. Pema Levy, “Reports of Voter Suppression Tactics Pour In From Alabama Election,” *Mother Jones*, December 12, 2017.
- 46 Official individual voting records showed Black turnout in December 2017 at 44.6 percent, and 48.2 percent among women. For point of reference, Alabama statewide turnout rates for midterm elections in 2014, 2010, and 2006 were 33.2 percent, 43.4 percent, and 37.5 percent, respectively.
- 47 Kyle Whitmore, “As it turns out... Bentley’s driver’s license closures were racial, after all,” *AL.com* (Alabama Media Group), January 5, 2017.
- 48 Alan Blinder and Michael Wines, “Black Turnout in Alabama Complicates Debate on Voting Laws,” *New York Times*, December 24, 2017. A stellar post-Alabama piece arguing that, “Relying on lawsuits to tackle the problem of voter suppression is a losing strategy,” is: Mikki Kendall, “Want to thank black voters for defeating Roy Moore? Tackle voter suppression,” *The Washington Post*, December 15, 2017.
- 49 A just and inclusive set of electoral structures would not necessitate this, of course, but I am here addressing the needs as they are in the present, as disclosed by the research discussed above.
- 50 Michael Wines, “As ID Laws Fall, Voters See New Barriers Rise,” *New York Times*, October 25, 2016.
- 51 For example, Ari Berman, “Wisconsin is Systematically Failing to Provide the Photo IDs Required to Vote in November,” *The Nation*, September 29, 2016.
- 52 See especially Civic Engagement Fund and Brilliant Corners Research & Strategies, *Breaking Away*; and Pew Research Center, *In Election’s Wake, Partisans Assess the State of Their*

Parties, December 2016, pp. 30-31. We might thus say that dominant tenets of electoral strategy *structurally dispose* certain voter groups to internalize their own exclusion, which manifests as ambivalence.

53 *Ibid.*

54 For a general overview, see Robert S. Montjoy, "The Public Administration of Elections," *Public Administration Review* 68(5): 788-799 (2008). For a study pointing to the discriminatory impact of local administrative discretion, see Ariel R. White, Noah L. Nathan, and Julie K. Faller, "What Do I Need to Vote?: Bureaucratic Discretion and Discrimination by Local Election Officials," *American Political Science Review* 109(1): 129-142 (2015). Finally, Richard Hasen has analyzed several instances in which partisan election administrators appear to have manipulated rules for partisan gain in *The Voting Wars: From Florida 2000 to the Next Election Meltdown*, Yale University Press, 2012. See Chapter 4.

55 Here I am drawing on the Haas Institute's "targeted universalism" framework. See for example, John A. Powell and Wendy Ake, "Creating Structural Changes: The Role of Targeted Universalism," in Andrea Flynn, Susan R. Holmberg, Dorian T. Warren, and Felicia J. Wong, eds., *The Hidden Rules of Race: Barriers to an Inclusive Economy*, Cambridge University Press, 2017.

The Haas Institute for a Fair and Inclusive Society brings together researchers, community advocates, policymakers, communicators, and culture makers to identify and challenge the barriers to an inclusive, just, and sustainable society in order to create transformative change.