



## How Voter Suppression Imperils the Midterms

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The November 6 midterm election could deliver a decisive rebuke to the “Crazytown” of the Trump presidency. A Blue Wave of outraged voters could transfer the House, if not the Senate, from Republican to Democratic control and set the stage for impeaching the forty-fifth President.

But Blue Wavers may find it harder to cast a ballot this fall, due to a counter-wave of laws and policies meant to suppress the Democratic-leaning votes of the poor, the young, and minorities.

Twenty-four states—mostly red ones—have stricter voting laws than they did in 2010, and nine of those states minted them since 2016, according to the Brennan Center for Justice at New York University (see chart). These laws abbreviate early voting, require proof of citizenship, limit student voting, curb voter registration drives, and, most notoriously, mandate photo IDs, even though the problem they’re supposed to prevent—people voting under false identities—is exceedingly rare.

“More people are struck and killed by lightning than walk into polls and pretend to be someone else,” says Justin Levitt, a professor at Loyola Law School who worked in the Department of Justice’s Civil Rights Division during the Obama Administration. Levitt’s research has uncovered only thirty-one credible cases of voter impersonation involving up to 250 people between 2000 and 2014, during which more than a billion votes were cast.

Perhaps not surprisingly, restrictive voting laws have proliferated since the election of America’s first black President in 2008. President Donald Trump tweeted—without evidence—that he would have won the popular vote in 2016 if not for “the millions of people who voted illegally” for Hillary Clinton (undocumented immigrants, he later specified). Proof wasn’t forthcoming from his Presidential Advisory Commission on Election Integrity, which disbanded in January after less than eight months of wheel-spinning. Meanwhile, Trump won’t acknowledge what U.S. intelligence agencies say is a real, ongoing threat to election integrity—Russian meddling.

Court challenges may keep some voter-suppression laws from coming to bear in November. In June, a federal judge struck down a Kansas law requiring documentation of citizenship that blocked 30,000 eligible citizens from voting. Kansas Secretary of State Kris Kobach, who

authored this law and headed Trump's election commission, mustered only thirty-nine examples of noncitizens successfully registering between 1999 to 2013. Kobach called it the tip of the iceberg, but "the Court draws the more obvious conclusion that there is no iceberg; only an icicle," U.S. District Judge Julie Robinson declared in her ruling, under appeal.

Groups including the American Civil Liberties Union (ACLU) say states have been emboldened to reshape the electorate by the U.S. Supreme Court's *Shelby County v. Holder* decision in 2013, which weakened the Voting Rights Act of 1965. The high court effectively ruled 5 to 4 that certain jurisdictions with a history of racial discrimination at the polls—à la literacy tests, poll taxes, and other Jim Crow ruses—no longer had to clear changes to their elections in advance with the federal government.

"Our country has changed," wrote Chief Justice John Roberts, "and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions." Ilya Shapiro, a constitutional law scholar at the conservative Cato Institute, agrees, telling *The Progressive*, "You have to be deluded to think that we live under the same Jim Crow of the 1960s."

But the immediate aftermath of *Shelby* offered little comfort about "current conditions," as states rushed to take advantage of their new license to discriminate. North Carolina in 2013 enacted a set of election measures dubbed the "monster" law that shortened early voting, eliminated same-day registration, and required certain photo IDs such as a driver's license. A federal appeals court in 2016 voided the law, saying it discriminated against African Americans with "almost surgical precision" with "cures for problems that did not exist."

As activist minister the Reverend William Barber II put it, targets of voter suppression now face the sons of Jim Crow, who've earned law degrees to become James Crow, Esquire.

Perhaps the most worrisome voter-suppression threat this fall is purging—the practice of removing individuals from registration rolls. Granted, there are good reasons to purge. Voters move, or die. Accurate rolls help election officials know how many voting machines and poll workers they'll need. But purging becomes voter suppression when it is performed unfairly.

Purging rates have risen since the Supreme Court's *Shelby* decision, according to a recent Brennan Center study. It found that states purged almost 16 million voters between 2014 and 2016, a 33 percent increase over the 12 million expunged between 2006 and 2008. Purging increased more in jurisdictions formerly subject to Voting Rights Act preclearance.

Jonathan Brater, a voting rights attorney at the Brennan Center, says purges are insidious because they can be executed surreptitiously, without legislation. Often voters don't discover they've been purged until they try to cast a ballot, and then it's usually too late. "A voter ID law is a problem, but at least you know what's coming," Brater says in an interview.

Some purges target alleged noncitizens or felons. In 2016, Arkansas's secretary of state flagged more than 7,000 voters as felons ineligible to vote. Some, it turned out, had never been charged or convicted of a crime, or had only a misdemeanor on their record, while others who had felony convictions had their right to vote restored.

Some voters this fall may find themselves stricken from the rolls as potential double-voters—that is, people registered in two states. It makes sense to purge a voter who's moved out of state, but

how do you ascertain that? A database created by the office of the Kansas Secretary of State purports to spot dual registrations. Encompassing twenty-eight states as of 2017, the Interstate Voter Registration Crosscheck program looks for matches among roughly 100 million voters based on first name, last name, and date of birth.

The trouble is, many people share the same first and last name and date of birth, especially if they're African American or Latinx (think José Garcia). A study by researchers at Microsoft and a collection of universities including Harvard found that Crosscheck flaws “risk impeding more than 300 [legitimate] votes for every double vote prevented.” The program’s ineffectiveness has prompted a few states to pull out.

The Supreme Court this June strengthened the hand of states to purge voter rolls by ruling 5 to 4 in *Husted v. A. Philip Randolph Institute* that Ohio could begin the process after someone didn't vote in a single federal election. One of the plaintiffs in that case was Navy veteran and software engineer Larry Harmon; after he skipped the 2010 midterm, the state mailed him a returnable card in 2011 to verify his address, a card Harmon said he never saw. With no response from Harmon, Ohio waited until he failed to vote in 2012 and 2014 and then struck him from the rolls, preventing him from voting when he tried to participate in a 2015 election.

Conservative groups such as Judicial Watch and the Public Interest Legal Foundation (PILF) are pressuring states and counties—sometimes with lawsuits—to aggressively cull registration rolls to comply with federal law. PILF spokesperson Logan Churchwell, a Breitbart News contributor, says his group targets counties where registered voters exceed the number of voting-age residents, saying local officials are failing to check their rolls against the Social Security death index or postal records. The Brennan Center’s Brater counters that claims of registration bloat are overstated and that counties may go overboard with purging when confronted by “election fraud vigilantes.”

Purges aside, citizens may discover at their polling place in November that they can't vote because of their state's noncompliance—willful or not—with the National Voter Registration Act of 1993.

Under this law, anyone who applies for a driver's license or state benefit can opt to have their personal information serve as a voter registration application; if they update their address with the state, their voter registration is supposed to be updated, too. But state motor vehicle agencies often don't relay the new addresses to election officials, says Denise Lieberman, a St. Louis attorney with a civil rights organization called the Advancement Project.

“The people impacted the most are those who move a lot—poor people, people of color, and young people,” says Lieberman, who represents the League of Women Voters of Missouri and other groups suing Missouri over its alleged noncompliance with the Voting Rights Act.

In a similar suit, North Carolina agreed in a settlement this year to revise its procedures, which cost Army veteran Sherry Holverson her vote in 2014 after she had updated her driver's license with a new address. She was “pissed” to find that the new address didn't transfer to her voter registration file.

“I'm a firm believer in voting,” Holverson tells *The Progressive*. “If you don't vote, you don't have a right to complain.”

Another form of voter suppression to watch for this November is “ballot security” initiatives, which range from schemes to invalidate individual voter registrations over alleged wrong addresses to deception and intimidation, like telling voters in line that they must pay library fines before they can cast a ballot. The voting rights group Election Protection received reports of “visibly armed individuals” haunting polling places in Arizona’s Maricopa and Pima Counties on Election Day in 2016.

Hotline calls about Election Day menaces rose in 2016, according to Election Protection. “As the political environment becomes more toxic, people are more likely to see voter intimidation,” says the group’s director, Marcia Johnson-Blanco.

If all else fails, vote suppressors can consolidate polling places in the name of saving money and make their political opponents drive farther to cast a ballot—assuming they have a car. The shuttering of polling places has risen since the *Shelby* decision, especially down South, according to the Pew Charitable Trusts.

For all the angst about voter suppression, the November midterms could actually result in expanded voting rights. Florida voters will decide on a proposed constitutional amendment to restore felons’ right to vote once they complete their sentences, unless they were convicted of murder or a sex crime. A constitutional amendment on the ballot in Maryland would let citizens register to vote on Election Day. And Michigan, Utah, and Colorado voters will consider measures to create independent commissions to draw Congressional and state legislative districts that aren’t gerrymandered to favor one party.

However, constitutional amendments to mandate photo IDs to deter the speck-sized problem of voter impersonation go before voters in North Carolina and Arkansas. North Carolina’s proposal, a phoenix arising from the ashes of the notorious “monster” law, illustrates the persistence of political forces that would make voting more difficult.

The PILF’s Logan Churchwell notes that even after the *Shelby* decision, the Voting Rights Act had enough juice for the appeals court to void the “monster” law, which the U.S. Supreme Court declined to restore. “The hype is the Supreme Court tore up the VRA,” he says. “No, it didn’t.”

But ACLU staff attorney Sophia Lin Lakin argues that by eliminating the requirement for federal preclearance of proposed voting changes in problematic jurisdictions—by striking down the formula for defining those jurisdictions—the Supreme Court sapped the law’s deterrent power.

“Preclearance is a before-the-fact remedy,” Lakin tells *The Progressive*. Now groups like the ACLU must fight the “constant waves” of voter suppression policies after the fact in expensive, grueling litigation. “I wish we didn’t have to spread ourselves so thin.”

Assaults on voting rights are inspiring new defenders, though. Mina Ezikpe, a recent Duke University graduate, went to work for a group called You Can Vote after North Carolina’s photo ID requirement, then intact, prevented her from voting in March 2016. She thought her university ID would count, but it didn’t. “The point of these laws is to create a lot of confusion,” she tells *The Progressive*.

A self-described “trouble-making freedom fighter,” Ezikpe is getting even. She says she’s helped register more than 100 voters—and counting.