

The Progressive

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.