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The voter suppression lie

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The voting wars have flared up again, though they've never really been far from the national political debate since Donald Trump was elected in 2016, or the Supreme Court decided *Shelby County v. Holder* in 2013 — or really *Bush v. Gore* in 2000. This time, a massive new Georgia law, the Election Integrity Act of 2021, also known as Senate Bill 202 (or SB 202), has triggered national apoplexy, with Democrats, including President Joe Biden, declaring it the new Jim Crow. Such comparisons are insulting to those who fought for civil rights in the 1960s, incendiary to a public discourse already hampered by low institutional confidence, and at base disingenuous.

Sorting out fact from fiction is not only important for this particular law, the fallout from which has already reached Major League Baseball and some Hollywood productions, but to understand the general debate over election regulation in America.

The Georgia law limits ballot drop boxes to places they can't be tampered with (such as early voting sites), standardizes weekend voting hours, and asks people to write a driver's license or Social Security number on absentee ballot envelopes.

Jim Crow was “literacy tests” and poll taxes, having to guess how many bubbles are in a bar of soap, and battling billy clubs and police dogs on the way to the voting precinct.

The *Washington Post* gave Biden “four Pinocchios” for his claim that SB 202 was “Jim Crow in the 21st century” for limiting voting hours and otherwise “deny[ing] the right to vote to countless voters.” That paper, not exactly a right-wing house organ, reported that “experts say the net effect was to expand the opportunities to vote for most Georgians, not limit them.” MIT elections expert Charles Stewart III found that “it indicated an expansion of hours, especially in rural counties.”

SB 202 does indeed improve voting access for most Georgians, entrenching the new opportunities to vote early and absentee (by mail and drop-off) introduced during the pandemic. For example, during a generous, at least compared to blue states such as New York and the president's own home state of Delaware, 17 days of in-person early voting, voting locations have to be open *at least* eight hours, with county officials given leeway to adjust the times to suit their constituents. Election Day voting hours are even longer. The window for requesting absentee ballots, which can be done online, is reduced to a “mere” 67 days, starting 11 weeks and closing 11 days before an election, to allow time for the ballot to be mailed out and returned.

More restrictive proposals were floated early in the drafting process, such as eliminating no-excuse absentee voting entirely — the current policy of 16 states, including such retrogrades as Connecticut and New Hampshire — and prohibiting early voting on Sundays (criticized

as targeting “souls to the polls” programs at black churches). But these sorts of measures never made it into the enacted law, even if some Democrats still claim that they did.

Gabriel Sterling, a Republican election official who came to prominence for countering Trump’s election disinformation last fall, explained that some provisions “were phantoms that the leadership in both the Senate and the House told their guys, ‘Hey, introduce whatever you need to to cover yourself with your people.’” In other words, given the level of distrust and anger in the electorate, state legislators had to show that they were “tough on fraud” even if they knew certain things weren’t going to be part of the reform package.

That said, these “phantom” provisions certainly hobbled the reception of the final law. Democrats could hardly be blamed for seeing ill intent behind the legislation if the crafting process included winks and nods to fictitious fraud claims.

Donald Trump’s insistence that he lost Georgia, among other states, due to widespread and systemic fraud has led about two-thirds of Republican voters not to believe that Biden was legitimately elected. So, it’s no surprise that election reform has become a priority for GOP-controlled legislatures. But “ballot integrity” isn’t synonymous with “voter suppression,” even if this fact was undermined by the legislature itself.

SB 202 removes Georgia Secretary of State Brad Raffensperger, the main target of Trump’s ire for not “finding the votes” to flip the state, from the state election board. Nevertheless, Raffensperger issued a statement that “Democrats and national media outlets asserting that Georgia’s election reform will ‘restrict access’ to voting are just [repeating] partisan talking points, not facts.” Sterling echoed that assessment in a tweet that sums up the larger state of affairs: “The claim of voter suppression has the same level of truth as the claims of voter fraud in the last election.”

Still, public pressure from activists outside the state, up through the president himself, resulted in Major League Baseball’s decision to move the All-Star Game out of Atlanta in retaliation. This, after Democratic state and local officials practically begged them not to do so, warning it punished minority-owned businesses and black workers in the area the most. Georgia voting-rights activist Stacey Abrams saw her own misleading criticism of the new law backfire when her pleas to MLB Commissioner Rob Manfred went ignored. Will Smith then announced he was moving the production of his forthcoming Civil War film out of Georgia.

Hyperbolic attacks on ballot integrity thus not only decrease trust in the system nationally but can have sharp consequences locally. And comparing Georgia to other states also adds crucial context that undermines the “Jim Crow” narrative.

When New Jersey recently passed a law limiting early voting to nine days, requiring only some polling locations to be open during that process, and limiting mandatory Sunday hours, there was no groundswell of social media opposition or corporate hand-wringing. Abrams even lauded the move because “our democracy is made stronger when we make it easier for the people’s voices to be heard.” Neither are there calls to boycott New York, which had no early voting at all until last fall, when new rules created nine days of in-person early voting. Or Delaware, whose new early voting legislation doesn’t take effect until next year. Six states still have no provision whatsoever for in-person early voting; I dare you to find some common thread among Connecticut, Kentucky, Mississippi, Missouri, New Hampshire, and South Carolina.

And yet, after Manfred announced that he was moving baseball's midsummer classic, he didn't clean out his Manhattan office. Baseball's Hall of Fame is also in New York, which has "abysmal election administration," the progressive UC-Irvine election law scholar Richard Hasen told the *Atlantic's* Derek Thompson. Hasen added that if New York "were a southern Republican state, there would be protests and calls for businesses to boycott [the state], because it's that terrible. But it's a blue state, so you don't see that." In fall 2018, before a recent legislative change, two scholars at New York University's Brennan Center for Justice called the state's voting system the "worst in the country."

Granted, New York's shortcomings tend to flow from incompetence, neglect, and corruption rather than as a reaction to Trumpist conspiracy, let alone racism, but two wrongs don't make a right. Still, the voting rights debate remains focused on the Peach State, whose election legislation, after an exceedingly close presidential race and two Senate runoffs marred by competing charges of fraud and suppression, aims to improve voter access while strengthening ballot integrity. It's hardly "Jim Crow on steroids," as Biden told ESPN.

Attempts by progressive groups and Democratic politicians to tie SB 202 to the era of segregation and systemic racial disenfranchisement are thus remarkably dishonest. Even the bizarre attack on the provision purportedly limiting the distribution of water to voters waiting in line is all wet. Many states have similar anti-electioneering (or anti-vote-buying) rules, which, as colorfully detailed by Dan McLaughlin in *National Review*, make it illegal to send "people in National Rifle Association t-shirts and MAGA hats to hand out free Koch-brothers-financed, Federalist Society-branded pizza to voters." To again pick on the Empire State, New York explicitly prohibits giving voters "meat, drink, tobacco, refreshment or provision" unless the sustenance is worth less than a dollar *and* the person providing it isn't identified. To be perfectly clear, under the new Georgia law, poll workers can still provide water to voters, *and anyone can donate food and drink for election workers to set out for those waiting in line.*

As for voter ID, SB 202 simply adds a requirement that voters provide the number of their driver's license or (free) state identification card to apply for a ballot, the same as California, New Jersey, and Virginia, and one of those (or the last four digits of a Social Security number) when returning it. Surely, applying a numerical voter-verification requirement to absentee or mailed ballots is better than the inexact science (to say the least) of signature-matching. Colorado, now a solidly blue state that votes entirely by mail, rejected 29,000 ballots last fall (about 1 in 112) because the mailed signatures didn't match those on file. That doesn't count the 11,000 who were allowed to "cure" the issue by texting in a picture of a — *gasp* — photo ID. Illustrating the point further, the *Tampa Bay Times* just came out with an amusing article about how Florida Gov. Ron DeSantis's signature has changed over the years, apparently leading to his ballot being tossed in a 2016 primary.

Voter ID more generally is hugely popular, including among Democrats (56% in a recent *Associated Press* poll) and African Americans (69% in a recent *Rasmussen* poll), despite in-person voter fraud being exceedingly rare. And majorities of all racial groups — 64% of whites, 59% of blacks, and 58% of other minorities — reject the claim that voter ID laws discriminate against certain voters. Indeed, many democratic countries require voter ID of some form, including Canada, France, Germany, India, Israel, Italy, and Sweden. As do most states with professional baseball teams, not to mention airlines and many of the other corporations now virtue-signaling about Georgia.

To top it off, the bipartisan 2005 Commission on Federal Election Reform, led by Jimmy Carter and James Baker, recommended voter ID as one of many common-sense reforms to promote election integrity. As the Supreme Court explained in *Crawford v. Marion County Election Board* (2008), a 6-3 decision written by the liberal Justice John Paul Stevens, such requirements are constitutional so long as the state doesn't unduly burden the ability to get an ID. And anyway, a recent National Bureau of Economic Research study found that these provisions have "no negative effect on registration or turnout," either overall or for any race, gender, or age group.

Even as it's hard to believe that a single Georgia voter will be stopped from casting a ballot, Sen. Elizabeth Warren (a Democrat from Massachusetts, another state without no-excuse absentee voting) tweeted, "The Republican who is sitting in Stacey Abrams' chair just signed a despicable voter suppression bill into law to take Georgia back to Jim Crow." Thus Warren not only furthered misinformation about SB 202 but resurrected the toxic myth that Gov. Brian Kemp stole his 2018 election from Abrams. That's an evidence-challenged allegation that Kemp's 55,000-vote margin came from more than 100,000 people being improperly removed from the rolls.

Abrams's charge continues to feed a left-wing narrative of racial disenfranchisement — her Fair Fight group secured the JimCrow2.com domain on March 10, two weeks before Kemp signed SB 202 into law — one that seems impervious to evidence of increased black voter turnout, including in states with "stricter" requirements. Many states that *Shelby County v. Holder* freed from a requirement to "preclear" with the federal government any changes in election regulations have consistently higher black voter registration and turnout rates than the rest of the country. Georgia and Mississippi have higher black registration rates than white! It could be understandable that black people voted at higher rates when Barack Obama was on the ballot in 2008 and 2012, but those elections continued long-term trends. And even though black turnout dipped in 2016, basically to pre-Obama levels, the Pew Research Center found that in the 2018 midterm elections, "all major racial and ethnic groups saw historic jumps in voter turnout."

Voting statistics put paid to the concerns, however sincere, of those who criticized *Shelby County* when it came out and who still criticize it and laws that it facilitated, such as SB 202. At the time, President Obama intoned that the ruling "upsets decades of well-established practices that help make sure voting is fair," while Hillary Clinton opined that "citizens will be disenfranchised, victimized by the law, instead of served by it." This, in reaction to a decision that merely eased out what was supposed to be a temporary provision — Section 5 of the Voting Rights Act, or VRA — enacted in 1965 to provide federal oversight of state elections based on that era's racial disparities. While politicians and pundits irresponsibly liken the ruling to sanctioning Bull Connor's dogs and the murder of Medgar Evers, it actually shows the strength of voting protections. The court simply found that the "coverage formula" for jurisdictions subject to preclearance was unconstitutional because it was based on 40-year-old data, such that the covered states and localities no longer corresponded to the incidence of racial discrimination in voting.

In other words, just as the court was correct in 1966 to approve the constitutional deviation that preclearance represented, as an "uncommon" remedy to the "exceptional conditions" in the Jim Crow South, it was correct in 2013 to restore the constitutional order. While Justice Ruth Bader Ginsburg in dissent compared ending preclearance to "throwing away your umbrella in a

rainstorm because you are not getting wet,” it’s actually more like stopping chemotherapy when the cancer (of actual Jim Crow) is eradicated. As Justice Clarence Thomas wrote in another voting rights case four years earlier, disabling preclearance “represents a fulfillment of the Fifteenth Amendment’s promise of full enfranchisement and honors the success achieved by the VRA.” Instead, corporate and media elites focus on a decision that, far from removing protections for racial minorities’ voting rights — the key Voting Rights Act provision (Section 2), which allows suits against discriminatory state actions, remains very much in effect — declared an end to the state of emergency that existed when those rights actually were systematically threatened.

“It’s clear that when blacks are sufficiently motivated, they have little trouble meeting the same requirements that other groups meet and casting a vote,” recently concluded Jason Riley in a Wall Street Journal column he provocatively titled “The Democrats Are Stuck in 1964.” “Democrats continue to claim that Republicans are advocating modern-day poll taxes and literacy tests in disguise, even as evidence to the contrary continues to mount.” And so we get these tired Jim Crow tropes every time a Republican legislature tweaks election laws.

Of course, the reason we’re seeing new election legislation now, in both red and blue states, isn’t just the latest iteration in the politicization of voting, or even a reaction and counterreaction to Trump’s post-election shenanigans, culminating on Jan. 6. It’s that the COVID-19 pandemic forced a chaotic process of ad hoc voting changes, including an overwhelming number of mailed ballots that local officials simply didn’t have the capacity to process. And not just absentee and mail voting was expanded; ballot-harvesting (collecting ballots from unrelated voters) and the automatic mailing of ballots to all registered voters (at their last known address) led to an electoral process unique in our history.

Then, local officials and state courts changed rules on the fly, including those regarding the validity of ballots arriving after Election Day or without confirmable voter identification. This free-for-all was a recipe not just for chaos in election administration but for a further lessening of political trust and increase in perceptions of both fraud and suppression at a time when that trust was already in short supply. And so, states moved to rein in some of the looseness, to codify the regulations that would apply to absentee, early, and mailed ballots under normal circumstances.

Different states can rightly take different approaches to achieving the common goal of making it easy to vote but hard to cheat, just as they take differing approaches to administering other government programs. There’s no Platonic number of early voting days and hours, for example, so I’m not really criticizing Delaware, New Jersey, or New York for coming late and cautiously to that game. Where you draw the various lines is a technocratic policy debate that can go differently in urban versus rural areas and also depends on other aspects of the overall election law. But Democratic criticism of Iowa for reducing early voting from 29 to 20 days is disingenuous when the District of Columbia, Delaware, Hawaii, Maryland, New York, and 16 other states all have shorter in-person voting periods. And slamming the Hawkeye State for closing poll locations at 8 p.m. (after opening at 7 a.m.) is rich given that California, D.C., Delaware, Massachusetts, and Rhode Island have the exact same hours.

Even from a progressive perspective, the outrage is much ado about nothing because, as the *New York Times* has reported, “making voting convenient doesn’t necessarily translate into more votes.” And convenience isn’t the only criterion for voting rules. The ultimate goal is to preserve

our orderly system of democratic decision-making and therefore the legitimacy of the governance it produces.

Democracy is complicated, but voting should be simple. And it largely is, at least when there's no pandemic — so simple that majorities of all races (59% of whites, 56% of blacks, and 63% of other minorities) say it's more important to prevent fraud than to make it easier to vote.

This isn't rocket science. You register; you get a ballot; you mark a box; you deliver the ballot; your vote is counted. But lurking behind that ideal is the need to maintain accurate voter rolls, have enough polling places so voters don't wait an unreasonable amount of time, and ensure speed and transparency in vote tabulation. The 2020 election failed on all those counts in many states, without anything nefarious necessarily going on.

Calling laws that attempt to create better electoral mechanisms post-pandemic “Jim Crow 2.0” is just as dangerous to citizens' confidence in their political institutions as spreading myths about illegitimate voting. “If American democracy is in peril,” my Cato Institute colleague Walter Olson concluded earlier this month, “laws of this sort are not very good evidence for that proposition.” Indeed, suggesting that the laws being passed in 2021 are updated versions of poll taxes, literacy tests, fire hoses, night riders, and white-only primaries isn't helpful.

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