

BRENNAN CENTER FOR JUSTICE

at New York University School of Law

For more information, contact Jeanine Plant-Chirlin:
jeanine.plant-chirlin@nyu.edu | 646-292-8322

OVERVIEW: VOTING LAW CHANGES IN 2012

A shift that could change the electoral landscape is underway – the tightening of restrictions on who can vote and how Americans can vote. Going into the 2012 elections, there will be millions of Americans who will find that since 2008, there are new barriers that could prevent them from voting.

SUMMARY

In the first three quarters of 2011, state governments across the country have suddenly enacted an array of new laws and policies making it harder to vote. Some states require voters to show government-issued photo identification, often of a type that as many as one in ten voters do not have. Other states have cut back on early voting, a hugely popular innovation used by millions of Americans. Two states reversed earlier reforms and once again disenfranchised millions who have past criminal convictions but who are now taxpaying members of the community. Still others made it much more difficult for citizens to register to vote, a prerequisite for voting.

These new restrictions fall most heavily on young, minority, and low-income voters, as well as on voters with disabilities. This wave of changes may sharply tilt the political terrain for the 2012 election. Already 19 new laws and two new executive actions are in place. At least 42 bills are still pending, and at least 68 more were introduced but failed. Already, it is clear that:

- These new laws could make it significantly harder for more than five million eligible voters to cast ballots in 2012.
- The states that have already cut back on voting rights will provide 171 electoral votes in 2012 – 63 percent of the 270 needed to win the presidency.
- Of the 12 likely battleground states, as assessed by an August *Los Angeles Times* analysis of Gallup polling, five have already cut back on voting rights (and may pass additional restrictive legislation), and two more are currently considering new restrictions.

States have changed their laws so rapidly that no single analysis has assessed the overall impact. It is too early to exactly quantify how the changes will impact voter turnout, but we know they will be a hindrance to many voters at a time when the United States continues to turn out less than two thirds of its eligible citizens in presidential elections and less than half in midterm elections.

Read the full report, *Voting Law Changes in 2012*, by the Brennan Center's Wendy R. Weiser and Lawrence Norden.

MORE THAN 5 MILLION VOTERS IMPACTED?

We estimate more than 5 million voters could be affected by the new laws, based on six key numbers.

- 1. 3.2 million voters affected by new photo ID laws.** New photo ID laws for voting will be in effect for the 2012 election in five states (Kansas, South Carolina, Tennessee, Texas, Wisconsin), which have a combined citizen voting age population of just under 29 million. 3.2 million (11 percent) of those potential voters do not have state-issued photo ID. Rhode Island voters are excluded from this count, because Rhode Island's new law's requirements are significantly less onerous than those in the other states.
- 2. 240,000 additional citizens and potential voters affected by new proof of citizenship laws.** New proof of citizenship laws will be in effect in three states (Alabama, Kansas, Tennessee), two of which will also have new photo ID laws. Assuming conservatively that those without proof of citizenship overlap substantially with those without state-issued photo ID, we excluded those two states. The citizen voting age population in the remaining state (Alabama) is 3.43 million; 240,000 (7 percent) of those potential voters do not have documentary proof of citizenship.
- 3. 202,000 voters registered in 2008 through voter registration drives that have now been made extremely difficult or impossible under new laws.** Two states (Florida and Texas) passed laws restricting voter registration drives, causing all or most of those drives to stop. In 2008, 2.13 million voters registered in Florida and, very conservatively, at least 8.24 percent or 176,000 of them did so through drives. At least 501,000 voters registered in Texas, and at least 5.13 percent or 26,000 of them did so via drives.
- 4. 60,000 voters registered in 2008 through Election Day voter registration where it has now been repealed.** Maine abolished Election Day registration. In 2008, 60,000 Maine citizens registered and voted on Election Day.
- 5. One to two million voters who voted in 2008 on days eliminated under new laws rolling back early voting.** The early voting period was cut by half or more in three states (Florida, Georgia and Ohio). In 2008, nearly 8 million Americans voted early in these states. An estimated 1 to 2 million voted on days eliminated by these new laws.
- 6. At least 100,000 disenfranchised citizens who might have regained voting rights by 2012.** Two states (Florida and Iowa) made it substantially more difficult or impossible for people with past felony convictions to get their voting rights restored. Up to one million people in Florida could have benefited from the prior practice; based on the rates of restoration in Florida under the prior policy, 100,000 citizens likely would have gotten their rights restored by 2012. Other voting restrictions passed this year that are not included in this estimate.

THE WAVE OF NEW LAWS

- **Photo ID laws.** At least thirty-four states introduced legislation that would require voters to show photo identification in order to vote. Photo ID bills were signed into law in seven states: Alabama, Kansas, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin. By contrast, before the 2011 legislative session, only two states had ever imposed strict photo ID requirements. The number of states with laws requiring voters to show government-issued photo identification has quadrupled in 2011. To put this into context, 11 percent of American citizens do not possess a government-issued photo ID; that is over 21 million citizens.
- **Proof of citizenship laws.** At least twelve states introduced legislation that would require proof of citizenship, such as a birth certificate, to register or vote. Proof of citizenship laws passed in Alabama, Kansas, and Tennessee. Previously, only two states had passed proof of citizenship laws, and only one had put such a requirement in effect. The number of states with such a requirement has more than doubled.
- **Making voter registration harder.** At least thirteen states introduced bills to end highly popular Election Day and same-day voter registration, limit voter registration mobilization efforts, and reduce other registration opportunities. Maine passed a law eliminating Election Day registration, and Ohio ended its weeklong period of same-day voter registration. Florida and Texas passed laws restricting voter registration drives, and Florida and Wisconsin passed laws making it more difficult for people who move to stay registered and vote.
- **Reducing early and absentee days.** At least nine states introduced bills to reduce their early voting periods, and four tried to reduce absentee voting opportunities. Florida, Georgia, Ohio, Tennessee, and West Virginia succeeded in enacting bills reducing early voting.
- **Making it harder to restore voting rights.** Two states—Florida and Iowa—reversed prior executive actions that made it easier for citizens with past felony convictions to restore their voting rights, affecting hundreds of thousands of voters. In effect, both states now permanently disenfranchise most citizens with past felony convictions.

