

VOTER SUPPRESSION

By J. Arthur Smith, III

KEY TAKEAWAYS FROM *VOTER SUPPRESSION IN 2020* BY WILLIAM WILDER,

PUBLISHED BY THE BRENNAN CENTER FOR JUSTICE

INTRODUCTION

“In the 2020 election cycle, voter suppression was alive and well. Overall, 70.9 percent of eligible white voters cast ballots in 2020 elections, compared with only 58.4 percent of non-white voters. . . . After the 2010 elections, for the first time since the peak of the Jim Crow era, states across the country began to enact laws making it more difficult for certain segments of population to vote. This wave of voter suppression was intertwined with race and the nation’s changing racial demographics and was, in least in part, backlash against rising turnout among communities of color contributing to the election of the nation’s first Black president. Efforts to suppress the votes of communities of color accelerated in 2013, when the Supreme Court gutted a key part of the Voting Rights Act in *Shelby County v. Holder*, 570 U.S. 529 (2013). In the eight years since *Shelby County* was decided, especially in 2020, these trends continued.” (p. 3)

In *Shelby County v. Holder*, *supra*, the United States Supreme Court declared unconstitutional the formula for the selection of states to be covered by § 4(b) of the Voting Rights Act of 1965. As a result, § 5 was immobilized. Sections 4(b) and 5 required pre-clearance federal approval of changes in voting laws in the covered jurisdictions. Under the Act, “a change will be approved unless Department of Justice finds it has the purpose [or]. . . the effect of denying or abridging the right to vote on account of race or color.”

“Racial discrimination voting takes many forms, ranging from blatant and open attempts to restrict access to voting among communities of color to more subtle policies that place heavier

burdens on certain communities. In 2020, voters of color faced a full spectrum of racial voter suppression.” (p. 3)

“ . . .the public officials and political operatives behind these voting changes are acknowledging that the intent of the new laws and policies is to exclude certain people from the electorate and bring about particular outcomes in elections.” (p. 3)

“When defending two of Arizona’s restrictive voting laws before the United States Supreme Court on March 2021, the attorney for the Republican National Committee admitted that the party’s interest in the laws was to avoid being at a “competitive disadvantage relative to Democrats.” And when discussing proposals to expand access to mail voting, former President Trump stated that an expansion of early and mail voting would lead to “levels of voting that if you agreed to it, you’d never have a Republican elected in this country again.” (p. 3). Similarly, Senator Lindsey Graham stated that if “Republicans don’t challenge and change the U.S. election system there will never be another Republican president elected again.”

NEW RESTRICTIVE VOTING LAWS

“Voters of color confronted a variety of varies in the lead-up to and on November 3, 2020. The first waive of these varies was new restrictive legislation. Several states around the country enacted restricted voting legislation that first went into effect for a federal election in 2020. The implementation of some of these new statutes created unique problems because of the complications Covid-19 pandemic caused for election administration. . .” The discriminatory impact on the new legislation on the 2020 election could have been even worse were not for state courts blocking some new measures. And in the aftermath of the 2020 general elections, legislatures and states across the country proposed new restrictive voting legislation for future elections cycles.” (p. 4). The following examples, although not exclusive, provide evidence as to the nature and extent of the discriminatory impact.

New Restrictive Legislation Enacted or Implemented in 2020

Florida: In 2019, the Florida legislature enacted a law that took effect for the 2020 elections. The Legislature conditioned voting rights restoration on payment by persons convicted of crimes of a wide range of fees and fines imposed by the criminal justice system. Evidence in the case challenging this law demonstrated that, among the more than 774,000 people disenfranchised due to outstanding legal financial obligations. The Brennan Center found that Black Floridians are both more likely to owe money because of outstanding fines and fees and are more likely to owe larger amounts than their white counterparts. (p. 4).

Iowa: The Iowa legislature inserted a provision into a pending bill which required voters to present a voter ID when voting early in-person, even as more Iowa voters chose to vote early, and governed offices shut their doors in response to the Covid-19 pandemic. According to the Brennan Center, extensive research has demonstrated that voter ID laws have a discriminatory effect on voters of color. The Center found that non-white Americans are disenfranchised more often due to voter ID laws, as they are less likely to possess an ID and face more barriers to accessing one than white Americans do. (p. 4).

“Oklahoma: Oklahoma tightened restrictions on mail voting in multiple ways. As President Trump spread false conspiracy theories about mail ballot collection, Oklahoma enacted new restrictions on mail voting options. The same month, the Oklahoma Supreme Court struck down an existing requirement in Oklahoma law that all mail ballots be notarized. Undeterred, Oklahoma responded swiftly by enacting legislation that required voters to either get their mail ballots notarized or include a photocopy of their identification card with their mail ballot, notwithstanding the additional burden imposed by this requirement during a global pandemic.” (p. 4)

New Legislation Blocked by Courts in 2020

“Montana: Montana attempted to implement a restriction on mail voting that a court found violated the rights of Native American voters. Montana voters enacted a law in 2018, via ballot initiative, that would have prevented civic groups and individuals (with certain exceptions) from helping others cast absentee votes by collecting and delivering their voted

ballots. In 2020, a state court struck down the law, finding that it violated Native Americans' right to vote and due process rights.” (p. 4-5)

“**North Carolina:** North Carolina attempted to implement a voter ID law that a court found was enacted with discriminatory intent. The courts found that the law would have had a “negative impact on African American voters because they lack acceptable IDs at a rate greater than white voters” and that the sequence of events leading to the bill’s enactment “suggest[ed] an underlying motive of discriminatory intent.” The Fourth Circuit has since reversed the federal injunction, but the state court opinion enjoining the law remains in place.” (p. 5)

“**Tennessee:** Tennessee state enacted wide-ranging new restrictions on voter registration drives in 2019. A federal court enjoined the law, however, and it was subsequently repealed.” (p. 5)

Postelection Legislation

“**Multiple States:** States across the country responded to rising voter turnout among communities of color by introducing and enacting new restrictions on the right to vote in the weeks and months after the 2020 election. . .historically, increased turnout among voters of color is often met with false allegations of fraud and new attempts to suppress the vote through legislation. . .The 2020 election cycle again saw historic turnout among communities of color. In response, in the final weeks of 2020 and in 2021, state legislators across the country prefilled or introduced more than 400 bills with provisions that would

restrict voting access. This was more than four times the number of bills filed over a similar period in 2019 and 2020. As of July 14, 2021, 18 of these states had enacted a total of 30 new laws that restrict access to the vote.” (p. 5)

DISCRIMINATORY VOTER ROLL PURGES

“Racial discrimination has been ingrained in the voter registration system throughout American history. This legacy continued in 2020, when new problems created by the Covid-19 pandemic compounded the discriminatory effects of voter roll purges. Voter roll purge rates have surged since the *Shelby County* decision, particularly in jurisdictions with a history of racial discrimination in voting that were required to preclear their purge practices with the Department of Justice prior to *Shelby County*, and are problematic in an increasingly vote-by-mail world.” (p. 6). “According to *FiveThirtyEight*, voter registration rates fell in March and April 2020 as Covid-19 shuttered government offices and brought community voter registration drives to a halt. The impact of these shutdowns fell most heavily on people of color, who disproportionately rely on in-person voter registration opportunities and voter registration drives.” (p. 6)

“**Georgia:** Election officials continued a troubling historical pattern of aggressive voter purges that disproportionately harm voters of color. In 2017, Georgia reportedly purged 560,000 names from its registration rolls in one day, the largest single voter roll purge in American history. The *Atlanta Journal-Constitution* found that Black, Latino, and Asian voters accounted for a disproportionate share of the voters wrongfully removed in that purge. Georgia continued its aggressive purge practices during the 2020 election cycle, removing more than 313,000 names from its rolls in an October 2019 purge. Ahead of the January 2021 U.S. Senate runoff elections, a coalition of anti-voter activists led by True the Vote sought to have an additional 364,000 names removed from Georgia’s voter rolls. The activists’ attempts were unsuccessful; however, new legislation in Georgia could make such mass voter challenges easier in the future by codifying the right of any voter to submit an unlimited number of challenges.” (p. 6)

“Ohio: Following a three-year hiatus due to pending litigation, Ohio resumed its aggressive purge practices and reportedly removed about 182,000 names from its voter rolls in September 2019 alone.” (p. 6)

“Texas: A court blocked Texas from wrongfully purging thousands of voters of color from its voter rolls based on false stories of noncitizen voting.” (p. 6) “Texas Senator Ted Cruz stated to his Senate colleagues that democracy reform bills were just an attempt to expand voting rights to “illegal aliens” and “child molesters” and that Texas Republicans would not win elections again for generations if federal voting rights reform passed.” (p. 7)

ATTEMPTS TO SUPPRESS MAIL VOTING

“Voters turned to mail voting in record numbers during the 2020 election, primarily in response to the Covid-19 crisis, and faced racial disparities throughout the process. Inequitable access to vote by mail was not a red state, blue state, or purple state problem last year; voters of color faced barriers in many different states across the country. These barriers came at every step of the mail voting process, and voters of color faced disparities in mail delivery itself.” (p. 8)

Disparities in Mail Delivery

“**Multiple States:** A crisis at the U.S. Postal Service disproportionately burdened many voters of color who attempted to vote by mail. The first and most publicized mail voting issue in 2020 was problems with mail delivery itself. More people choosing to vote by mail necessarily meant more reliance on the U.S. Postal Service to deliver ballots. The Trump Administration responded to the rise in usage of mail voting by exacerbating a crisis at the U.S. Postal Service beginning in June. To reduce costs during the Covid-19 pandemic, Trump-appointed Postmaster General Louis DeJoy eliminated the use of overtime for extra delivery shifts, dismantled and removed high-speed mail sorting machines, and removed collection boxes from streets in some cities.” (p. 8) “Civil rights groups and several state governments alleged that these efforts were not about reducing costs but about hurting the reliability of mail voting ahead of the election.” (p. 8) “A study by the Union of Concerned Scientists comparing FOIA records regarding mail delay complaints with Census Bureau demographic data found that the number of complaints filed per 1,000 residents was 49.44 percent higher than the national average in predominantly Black, Latino, Asian, and Native American zip codes throughout 2020.” (p. 8)

Disparities in Mail Ballot Eligibility Policies

“**Texas:** In response to the limited options for requesting a mail ballot, Harris County home to Houston and one of the most diverse counties in the country — sought to send a mail ballot application directly to every registered voter. The state intervened and sued, ultimately forcing Harris County to halt the program.” (p. 8)

Disparities in Opportunities to Return Mail Ballots

“**Texas:** Texas created a disparate burden on voters of color by limiting the availability of ballot drop-off locations. Governor Greg Abbott restricted ballot drop-offs by issuing an emergency proclamation to bar counties from providing more than one drop-off location for mail ballots during early voting. This policy disproportionately affected communities of color in Texas’s large, diverse urban counties. Harris County, one of the largest and most diverse counties in the country, was limited to a single drop-off location for more than 2.3 million registered voters. Smaller, predominantly white counties such as Rains County (84 percent white, with about 8,000 registered voters) and Somervell County (77 percent white, with about 6,500 registered voters) remained well within the Election Assistance Commission guidelines of one drop-off location for every 15,000 voters, but large counties such as Harris County could not meet their voters’ needs under the law.” (p. 9)

Disparities in Mail Ballot Processing

“**Georgia:** Georgia rejected mail ballots of Asian and Latino voters at twice the rate of white voters during Georgia’s presidential primary, according to a Brennan Center

investigation. Georgia’s State Election Board found that absentee voters in Fulton County — home to a large share of Georgia’s Black voters — were most likely to experience ballot processing delays during the presidential primary.” (p. 9)

“North Carolina: At one point in September 2020, Black voters’ mail ballots were reportedly being rejected at more than four times the rate of white voters’ mail ballots statewide.” (p. 9)

RACIAL DISCRIMINATION AT THE POLLING PLACE

“As the Brennan Center and others have extensively documented, long wait times and polling place closures disproportionately affect Black and Latino voters.” (p. 10)

Primaries

“**California:** California had extremely long lines during its primary on March 3, which disproportionately impacted Latinos. Due to technical breakdowns and rule changes, voters in some neighborhoods in Los Angeles were reportedly forced to wait several hours to vote.” (p. 10)

“**Georgia:** Georgia had a number of well-documented polling place closures and long lines during the primaries that were reported to be particularly acute in predominantly Black neighborhoods. In Fulton County, more than 16,000 voters were assigned to a single polling place.” (p. 10)

“**Kentucky:** Kentucky had long lines on the day of its primary, due primarily to polling place closures. Local media reported that Kentucky had roughly only 200 polling places statewide during its primary, including only one in all of Jefferson County, home to Louisville and the largest Black population in the state.” (p. 10)

“**Texas:** Voters at historically Black Texas Southern University in Houston reportedly waited up to six hours after their polling place closed.” (p. 10)

Early Voting

“Alabama: . . . Voters in large, diverse counties such as Jefferson County, Montgomery County, and Mobile County waited up to three hours to cast their ballots when attempting to vote in-person absentee.” (p. 11)

“Georgia: Georgia’s historical pattern of dwindling polling places in diverse areas continued throughout early voting, with some voters reportedly waiting up to 10 hours to vote in the first days of early voting. . . The average number of voters per polling place has grown 40 percent in the diverse Atlanta metro area since 2012, and voters in predominantly Black neighborhoods waited nearly 10 times as long on average after polling places closed as voters in predominantly white neighborhoods in the June 9 primary.” (p. 11)

“Texas: According to an analysis by *The Guardian*, of the approximately 750 polling sites Texas has closed since *Shelby County v. Holder*, 542 were in the 50 counties with the fastest-growing Black and Latino populations. . . And in Waller County, an area with a notorious history of voter suppression, election officials refused to expand early voting opportunities at predominantly Black Prairie View A&M University while providing more options in predominantly white areas of the county.” (p. 11)

Difficulties in finding the Right Polling Place

“Mississippi: Roughly 65,000 voters in 55 precincts across the state were forced to vote at a polling place in the November 2020 election different from the one where they voted in the March primaries just months before. . . According to a report

from the *Jackson Free Press*, the secretary of state's polling place locator tool provided incorrect polling place information for some voters in Hinds County, which has a total population that is 73 percent Black and is the largest county in the state, resulting in voters going to the wrong polling place on Election Day. The confusion was predictable: while election officials changed the locations of at least 55 precincts, Secretary of State Michael Watson announced just 17 precinct changes in the weeks before Election Day." (p. 12)

VOTER INTIMIDATION

Intimidation has been a part of racially discriminatory voter suppression throughout our country's history, and it persists to this day, at a time when hate crimes are at their highest levels in more than a decade.

Voter Intimidation by State Actors

“North Carolina: Law enforcement attacked a group of Black voters during early voting. Police used pepper spray on a group of primarily Black voters leading a peaceful march to the polls on the last day of the early voting period. The marchers harmed included children as young as three years old, a number of older voters, and a woman with a disability who suffered a seizure. The NAACP Legal Defense Fund filed a lawsuit against Alamance County under the Ku Klux Klan Act after the attack.” (p. 13)

Voter Intimidation by Private Individuals and Outside Groups

“Minnesota: Civil rights groups went to court to prevent a private mercenary contractor from deploying armed agents to polling places near the site of Black Lives Matter protests.” (p. 14)

“Texas: Civil rights advocates reported incidents of voter intimidation at polling places across the state. The Texas Civil Rights Project and the nonpartisan Election Protection coalition reported 267 incidents of voter intimidation across the state during the 2020 general election. These incidents included a convoy of military-style vehicles displaying a coffin outside a polling place in Fort Bend County, men

with visible firearms speaking with voters waiting in line in Hidalgo County, and men with bullet-proof vests and rifles standing near a polling place in Tarrant County.” (p. 14)

VOTER SUPPRESSION AFTER ELECTION DAY

“Attempts to suppress the vote in communities of color did not stop on Election Day. . . the voter fraud protest movement quickly escalated into racially targeted litigation seeking to invalidate votes and threats against election officials. Much of this litigation was aimed at jurisdictions with large Black and Latino populations. Some of the lawyers involved in this litigation were formally sanctioned by federal courts. . .” (p. 15)

By February 2021, legislators in 33 states had introduced, prefiled, or carried over 165 bills to restrict access to voting. By July this number had risen to more than 400 bills in 49 states, and at least 18 states had enacted 30 laws to restrict access to voting. Among other things, some of the new restrictive bills sought to limit access to mail voting, impose stricter ID requirements, limit the impact of successful pro-voter registration policies, enable more aggressive voter roll purges, impose criminal penalties for providing free food and water to people waiting in line to vote, and even allow the state legislature to over-ride the will of the voters in selecting presidential electors.” (p. 15)

Attempts to Overturn the Election Through Litigation

“**Georgia:** Voting rights opponents filed no fewer than eight federal and state lawsuits seeking to invalidate the results of Georgia’s election, most often targeting racially diverse areas and votes cast by mail. For example, four plaintiffs sued Governor Brian Kemp, Secretary of State Brad Raffensperger, and officials of eight counties with large Black populations to exclude those counties’ results from certification. The eight counties — Chatham, Dekalb, Fulton, Clayton, Gwinnett, Cobb, Augusta-Richmond, and Henry — account for 43 percent of Georgia’s total population but 70 percent of the state’s non-white population.¹⁹⁵ The plaintiffs

argued that they would provide evidence “that sufficient illegal ballots were included in the results to change or place in doubt the November 3 presidential-election results.” Less than a week later, apparently lacking such evidence, the plaintiffs voluntarily dismissed the case.” (p. 15)

“Wisconsin: The Trump campaign paid \$3 million for recounts in diverse Milwaukee County and in Dane County, home to a large student population, but did not request recounts in the rest of the state, which is largely white.” (p. 16)

Attempts to Overturn the Election by Threatening Election Officials

“Georgia: In a particularly disturbing — and likely illegal — incident, President Trump called Georgia Secretary of State Brad Raffensperger and pressured him to throw out votes and reverse the results of the election, while making thinly veiled racist remarks about Black local election officials.” (p. 16)

“Michigan: President Trump pressured Republican members of the Michigan State Board of Canvassers and the board of canvassers for Wayne County, where Detroit is located, to refuse to certify Michigan’s election results.” (p. 16)

New Restrictive Voting Legislation

“Florida: Florida enacted an omnibus elections bill that restricts access to voting in several ways that will disproportionately harm communities of color. In 2020, more than twice as many Black voters voted by mail in Florida as in 2016. Legislators responded with Senate Bill 90, which adds new and burdensome

identification requirements for voters requesting mail ballots, limits the use of mail ballot drop boxes, and makes it more difficult to return a friend's or neighbor's mail ballot for them. The bill also creates a new vague and broad criminal offense for certain activity within 150 feet of polling places, including providing water or snacks to voters. This provision will be particularly harmful to Black and Latino voters, who are more likely to experience long lines at polling places.” (p. 17)

“Georgia: Georgia enacted an omnibus elections bill that restricts access to voting in several ways that seem aimed at communities of color. Georgia’s law, S.B. 202, incorporates elements of at least 16 other bills that Georgia legislators had previously introduced. The bill tightens mail voting ID requirements, shortens the window to apply for a mail ballot, restricts the use of mail ballot drop boxes, effectively reduces early voting in many counties, affirmatively sanctions mass challenges to voter eligibility, ends out-of-precinct voting, allows the removal of local election officials, and criminalizes the act of giving snacks or water to voters waiting in line. . . In June 2021, the Department of Justice determined that S.B. 202 was likely enacted with discriminatory intent and filed a lawsuit alleging that several provisions of the bill were adopted with the purpose of infringing on the right to vote on account of race and that Georgia lawmakers knew of the cumulative and discriminatory effect of the laws when voting to adopt them.” (p. 17)

CONCLUSION

“These efforts to overturn the election results through violence and to alter the law to restrict access to the vote must be seen as logical next steps in a long campaign to spread lies about voter fraud and suppress the votes of people of color. Voter suppression in the 2020 election, the attempt to overthrow our democracy on January 6, and the new wave of voter suppression legislation across the country in 2021 all stem from the same big lie: that when communities of color effectively make their voices heard at the ballot box, there must be some kind of underlying fraud.” (p. 18)

KEY TAKEAWAYS FROM *WHAT CAN 2020 TELL US ABOUT 2021*

BY IAN SILVERII FOR THE BIGHORN COMPANY

Threats to Democracy – “A Republic, if you can keep.”

- 33 Republican voter suppression laws have been enacted in 19 states since the 2020 election.
 - Voter ID, reducing early/Inail voting, aggressive voter purging
- 8 States (incl. AZ and GA) have enacted 10 laws that shift election related responsibilities to partisan actors
 - MT, FL, GA, KY, AK, TX, KS, AZ

New Restrictive Laws

Effect on Voting

- Shorten window to apply for a mail ballot
- Shorten deadline to deliver mail ballot
- Make It harder to remain on absentee voting lists
- Eliminate or limit sending mail ballot applications to voters who do not specifically request them
- Eliminate or limit sending mail ballots to voters who do not specifically request them
- Restrict assistance in returning a voter's mail ballot
- Limit the number, location, or availability of mail ballot drop boxes
- Impose stricter signature requirements for mail ballots
- Impose harsher voter ID requirements

- Expand voter purges or risk faulty voter purges
- Increase barriers for voters with disabilities
- Ban snacks and water to voters waiting In line
- Eliminate Election Day registration
- Reduce polling place availability (locations or hours)
- Increase number of voters per precinct

Bill of Numbers

AL H.B. 538. AR S.B. 643, GA S.B. 202, IA S.F. 413, KY H.B. 574. NY S.B. 264. OK H.B. 2663

AR S.B. 643, IA S.F. 413

AZ S.B.1485. FL S.B. 90

GA S.B. 202. IA S.F. 413. KS H.B. 2332. TX S.B. 1

FLS.B.90

AR H.B. 1715. FL S.B. 90. IA S.F. 413. IA S.F. 568. KS H.B. 2183. KY H.B. 574. MT H.B. 530. TX S.B. 1

FL S.B. 90. GA S.B. 202. IA S.F. 413. IN S.B. 398

AZ S.B. 1003. ID H.B. 290. KS H.B. 2183. TX S.B. 1

AR H.B. 1112. AR H.B.1244. FL S.B. 90. GA S.B. 202. MT S.B.169. NH H.B. 523. TX S.B. I. WY H.B. 75

AZ S.B.1819. IA S.F. 413. KY H.B. 574. LA H.B.167. NH S.B. 31. TX S.B. UU. UT H.B. 12

AL H.B. 285. IA S.F. 568. TX H.B. 3920. TX S.B. I

FL S.B. 90. GA S.B. 202

MTH.B.176

IA S.F. 413. MT S.B.196. TX S.B. I

NVS.B.84

GA S.B. 202. IA S.F. 413. TX S.B. 1