The Problem of Voter Fraud

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Introduction

Voter identification requirements have become common and controversial in American elections. Proponents claim that such requirements deter in-person voter fraud, reducing illegal votes and thus converting some would-be fraudulent elections into legitimate ones. Opponents argue that the requirements suppress lawful votes, especially by members of marginalized groups who tend to vote for Democrats. That converts some legitimate elections into illegitimate ones—Republicans win, but only because a legal intervention discouraged certain voters from casting ballots.

The debate often proceeds as if voter ID requirements can have only one of those hypothesized effects: they deter fraud *or* suppress lawful votes. In fact, they can and probably do have both effects, and that leads to surprising results. ID requirements can convert fraudulent elections into legitimate ones—or into illegitimate or fraudulent ones in which the other side wins. They can even convert legitimate elections into fraudulent ones. To illustrate, suppose that without a voter ID law candidates A and B would receive 13 and 10 lawful votes, respectively, and B would receive an additional two fraudulent votes. Candidate A wins legitimately. Now suppose that with a voter ID law candidates A and B would get nine and nine lawful votes, respectively (less than before because of suppression), and B would get one fraudulent vote (less than before because of fraud deterrence). Candidate B wins fraudulently.

This paper explores those scenarios and others, examining the conditions necessary for them to arise and the plausibility of those conditions in practice. In the process it casts doubt on several partisan, policy, and legal arguments. Voter ID requirements can harm rather than help their supporters by converting elections their opponents would win fraudulently into elections their opponents would win lawfully. Because they can exacerbate the risk of fraud, ID requirements may be harder to justify on policy grounds than previously thought, and they may merit closer scrutiny from courts. Such requirements can also give rise to a paradox: they can improve the perceived integrity of elections while undermining their actual integrity.

Conventional Wisdom: Deterrence *or* Suppression

"[N]ot only is the risk of voter fraud real . . . it could affect the outcome of a close election." So wrote Justice Stevens in the majority opinion in *Crawford v. Marion County Election Board*. That 2008 case rejected a constitutional challenge to Indiana's stringent voter identification requirement and, more importantly, granted states substantial discretion to implement or change such requirements. Since then, over 30 states have reconsidered their prerequisites for voting, and many, including North Carolina and Virginia, have passed new, strict laws. The laws require voters to present government-issued identification, often with a photo, before voting.

Stevens pinpointed the alleged target of voter ID laws: voter fraud. Some individuals who are ineligible to vote—non-citizens, for example, or felons, non-residents, or others—may nevertheless cast a ballot. Likewise, some individuals who are eligible to vote but unscrupulous may vote multiple times, once for themselves and then

again for a relative or neighbor or someone else who may or may not consent to the scheme. In all cases voter fraud occurs: votes get cast and counted that should not be cast or counted. In just the right circumstance, fraud could determine the outcome of an election.

Voter ID requirements should mitigate the problem. A New Yorker cannot vote so easily in a California election, and Amy cannot vote so easily in Abigail's place, if both must present identification. This reasoning motivated the Court's decision in *Crawford*. At least one other factor influenced the Court as well: voter confidence. "[P]ublic confidence in the integrity of the electoral process," the Court wrote, "has independent significance, because it encourages citizen participation in the democratic process." Voter ID laws, with their promise to combat fraud, boost public confidence.

Of course, voter ID laws have not come without controversy. Opponents claim that in-person voter fraud is very rare. Fraud perpetrated through absentee ballots or other means may be more common, but because such fraud does not involve a face-to-face interaction between voter and official, voter ID laws cannot affect it. So, the argument goes, voter ID requirements deter little or no fraud. Meanwhile, they suppress lawful votes. Some eligible voters lack government-issued identification. Because of age, disability, or whatever else, they do not drive and do not possess a driver's license. Or they drive but misplaced their license (a problem to be sure, but not one that merits disenfranchisement). Some would-be voters cannot readily acquire an ID because doing so requires time and money: travel to the relevant government building, which may be many miles from a voter's home and polling station; long lines; copies of birth certificates and other documents that can be difficult to acquire, and so forth.

If the potential for suppression that voter ID laws carry did not correlate with political affiliation, then perhaps such laws would elicit fewer complaints. But there is a correlation, or so the argument goes. Those who lack ID are more likely to be poor, which means they are more likely to be racial minorities or members of other marginalized groups. Since those individuals are more likely to vote for the political left, voter ID laws disproportionately harm Democrats. Hence my description of voter fraud as the "alleged" target of voter ID laws. Skeptics claim that the real target is lawful liberal votes. They draw support from the fact that the push for voter ID has come overwhelmingly from Republicans.

All of this leads to two narratives, one common but naïve and the other rare but more sophisticated. The common narrative is that voter ID laws either deter fraud (the view of proponents) *or* suppress lawful votes (the view of detractors). That narrative is almost certainly wrong because voter ID laws almost certainly do both: they deter some fraud, however little, and they suppress some votes, however few. The sophisticated narrative, reflected in Spencer Overton's work, is that voter ID laws have both effects, meaning we face a tradeoff. Is preventing one fraudulent vote worth 10 lawful votes? What about 1,000 or 10,000 lawful votes?

Alas, the problem is even more complicated than it seems.

Characterizing Election Outcomes

Imagine an election with two candidates, *A* and *B*. The total number of lawful votes cast in the election is *L*. *A* gets some fraction of those votes, A_L. *B* gets the remainder of the votes, or the fraction 1-A_L. If A_L>.5, then *A* should win. But whether

A will win turns on more than lawful votes. It also depends on fraudulent votes. The total number of fraudulent votes cast is F, and A gets some fraction of those votes, A_F. B gets the remaining fraction of fraudulent votes, $1 - A_F$. If $A_L > .5$ and $A_F > .5$, then A gets more lawful votes and more fraudulent votes than B. A wins, and the election is non-fraudulent. That is because fraud does not determine the outcome; A would win whether the fraudulent votes were included in the vote totals or not. Likewise, the election is legitimate: *A should* win. Fraud makes the margin of victory deceitfully large, but the outcome is correct. In this short version of the paper, I focus only on election outcomes.

Now suppose $A_L > .5$ but $A_F < .5$, meaning A gets more lawful votes but fewer fraudulent votes. A should win, but whether that happens depends on the values of L, F, A_L, and A_F. As L gets larger relative to F (more and more lawful votes cast than fraudulent ones), and as A_L approaches 1 (more and more of those lawful votes were for A), then A becomes more and more likely to win. B would need A_F to approach zero (nearly all fraudulent votes were for B) to overcome A's lead. Conversely, if A's lead in lawful votes is slight, then B need not get many more fraudulent votes than A to overcome the deficit. If B wins the election, the outcome is fraudulent. Fraud determines the outcome; A would win if the fraudulent votes were excluded. Likewise, the election is illegitimate: *A* should win, not *B*.

Table 1 describes, with words and with a little math, the conditions necessary for A and B to win the election fraudulently and non-fraudulently.

TABLE 1: ELECTION OUTCOMES

Scenario 1: A wins non-fraudulently	Scenario 2: A wins fraudulently	Scenario 3: B wins non-fraudulently	Scenario 4: B wins fraudulently
A wins non-fraudulently if (1) he gets more lawful votes and (2) he gets more fraudulent votes *or* he gets fewer fraudulent votes, but not so many fewer that his advantage in lawful votes is overcome.	A wins fraudulently if (1) he gets fewer lawful votes and (2) he gets more fraudulent votes *and* so many more that his deficit in lawful votes is overcome.	B wins non-fraudulently if (1) he gets more lawful votes and (2) he gets more fraudulent votes *or* he gets fewer fraudulent votes, but not so many fewer that his advantage in lawful votes is overcome.	B wins fraudulently if (1) he gets fewer lawful votes and (2) he gets more fraudulent votes *and* so many more that his deficit in lawful votes is overcome.
$A_L > .5$ and $A_F > .5$ or $A_F < .5$ and $L(A_L - .5) > F(.5 - A_F)$	$A_L < .5$ and $A_F > .5$ and $F(A_F - .5) > L(.5 - A_L)$	$A_L < .5$ and $A_F < .5$ or $A_F > .5$ and $L(.5 - A_L) > F(A_F - .5)$	$A_L > .5$ and $A_F < .5$ and $F(.5 - A_F) > L(A_L - .5)$

L is the total number of lawful votes cast.

A_L is the fraction of lawful votes won by A. If $A_L > .5$, then A has more lawful votes than B.

F is the total number of fraudulent votes cast.

A_F is the fraction of lawful votes won by A. If $A_F > .5$, then A has more fraudulent votes than B.

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So far illegitimacy and fraudulence have run together; the election is illegitimate and fraudulent *or* legitimate and non-fraudulent. But that need not be the case. Envision two elections between *A* and *B*, one imaginary and the other real. The imaginary election would proceed in the usual way and produce some fraction of lawful votes for *A*, denoted again as A_L. The real election proceeds in the same way with one important exception: a rule applies that affects lawful voting. Specifically, the rule suppresses some lawful votes (*L* gets smaller), and it also affects the distribution of lawful votes, meaning *A* gets a different fraction of votes than he would in the imaginary election. The fraction he gets in the real election is $\tilde{A}_L$.

If $A_L > .5$ and $\tilde{A}_L > .5$, then *A* should win the real election. If *A* does win, then that election is legitimate and non-fraudulent (if $\tilde{A}_L > .5$, then the only way the election can be fraudulent is if *B* wins). Now suppose $A_L > .5$ but $\tilde{A}_L < .5$. *A* should win the real election; he trails only because of a legal intervention that, intentionally or not, suppressed lawful votes. If *A* does win, then the election is legitimate. But if *A* wins, it must be because he got enough fraudulent votes to overcome *B*'s lead in lawful votes. So if *A* wins, the election is legitimate *and fraudulent*: *A* should win, *A* does win, and *A* wins because of fraud. Suppose instead that *A* loses. Then the election is illegitimate but non-fraudulent: *A* should win, *B* wins instead, and *B* wins without fraud. Table 2 summarizes these possibilities.

TABLE 2: ELECTION CHARACTERISTICS

	A wins	*A loses*
A should win ($A_L > .5$)	Legitimate and non-fraudulent if $\tilde{A}_L > .5$, fraudulent if $\tilde{A}_L < .5$	Illegitimate and non-fraudulent if $\tilde{A}_L < .5$, fraudulent if $\tilde{A}_L > .5$
A should lose ($A_L < .5$)	Illegitimate and non-fraudulent if $\tilde{A}_L > .5$, fraudulent if $\tilde{A}_L < .5$	Legitimate and non-fraudulent if $\tilde{A}_L < .5$, fraudulent if $\tilde{A}_L > .5$

Consequences of Voter ID

Now consider the effects of imposing a voter identification requirement. Supporters of such requirements argue that they deter voter fraud. Returning to Table 1, supporters imagine that imposing voter ID moves elections from scenario 4 to scenario 1[1]: what would have been a fraudulent victory for one candidate becomes a non-fraudulent victory for the other. Opponents of voter ID, on the other hand, argue that such requirements suppress lawful votes. They fear that imposing such a law moves elections from scenario 3 to 1[2]: what would have been a non-fraudulent victory for one becomes a non-fraudulent victory for the other. In the right set of circumstances, either story (but not both!) could be correct.

Critically, these stories do not exhaust the possibilities, or even come close. If voter ID laws have two effects rather than one—if they deter some fraud and suppress some lawful votes—then their imposition could lead to a wide variety of outcomes. Voter ID could move elections from *any* starting scenario in Table 1 to *any other* scenario in Table 1.

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[1] Or, equivalently, a move from scenario 2 to scenario 3.
[2] Or, equivalently, a move from scenario 1 to scenario 3.

To illustrate, suppose an election would fall in scenario 1: *A* would win non-fraudulently. However, a voter ID law gets imposed, and it suppresses lawful votes and does so disproportionately, so the fraction of votes *A* actually gets, $\tilde{A}_L$, is less than the fraction he would (and should) have gotten, A_L. Despite the suppression, $\tilde{A}_L > .5$. Nevertheless, *A* may not win. If the voter ID law mostly or only deterred fraudulent votes that would have gone to *A*, then *B* may win because of fraud. Suppression cut *A*'s lead in lawful votes enough that *B*'s lead in fraudulent votes determines the election. This is a generalization of the situation the paper started with: without voter ID, *A* would receive 13 lawful votes and *B* would receive 10 lawful votes and 2 fraudulent votes; with voter ID, *A* would get 9 lawful votes and *B* would get the same plus one fraudulent vote.

In this case, voter ID exacerbates rather than mitigates the problem of voter fraud. Table 2 characterizes this with greater precision. Voter ID has converted a legitimate, non-fraudulent election into an illegitimate, fraudulent election.

Consider another possibility. Suppose an election would fall in scenario 2: *A* would win fraudulently. However, a voter ID law gets imposed, and it suppresses lawful votes disproportionately in *A*'s favor. Consequently, $A_L < .5$ but $\tilde{A}_L > .5$. *A* should not win, but *A* will win as long as *B* does not get enough fraudulent votes (whatever the effect of voter ID on those votes) to cover the difference. Here is an example of this situation: without voter ID, *A* would get 12 lawful votes and 2 fraudulent votes and *B* would get 13 lawful votes; with voter ID, *A* would get 11 lawful votes and one fraudulent vote and *B* would get 10 lawful votes.

In this case, voter ID mitigates fraud but produces an unsatisfactory outcome. It converts a fraudulent, illegitimate election into a non-fraudulent but still illegitimate

election. Even if voter ID prevents fraud from determining an election, it may not make for good policy.

Consider a final possibility. An election would fall in scenario 1: *A* would win non-fraudulently. However, a voter ID law gets imposed, and it suppresses lawful votes disproportionately in *B*'s favor. Consequently, $A_L > .5$ but $\tilde{A}_L < .5$. *A* should win, and *A* will if he gets enough fraudulent votes to cover the difference. Here is an example of this situation: without voter ID, *A* would get 12 lawful votes and 2 fraudulent votes and *B* would get 10 lawful votes; with voter ID, *A* would get 9 lawful votes and one fraudulent vote and *B* would get 9 lawful votes.

In this case, voter ID exacerbates fraud by making it determinative. Yet the outcome is satisfactory. Voter ID converts a non-fraudulent, legitimate election into a fraudulent but still legitimate election.

Implications

This analysis has at least three implications. First, and most obviously, it suggests that voter ID requirements are a substantially more complicated policy instrument than conventional wisdom suggests. Even as they reduce the number of fraudulent votes cast they can make fraud determinative. Even as they suppress lawful votes they can make illegitimate elections legitimate. Voter ID requirements can harm rather than help their partisan supporters by converting elections their opponents would win fraudulently into elections their opponents would win lawfully. Proponents and opponents alike may need to reconsider their positions on voter ID.

Second, perhaps courts should review voter ID laws with greater care. In *Crawford*, the Court established deferential review because states have an interest in combatting fraud and because reducing the number of fraudulent votes should, it would seem, reduce the likelihood of fraud affecting an election. But that is wrong, at least some of the time. By suppressing votes, ID laws can narrow the margin of lawful votes separating two candidates. Critics believe ID laws are designed for this purpose, to convert large Democratic leads into small Democratic leads or even Republican leads. If ID laws narrow margins without causing at least a proportional reduction in fraudulent votes, then they exacerbate the risk of fraud determining an election. Courts should not blithely uphold ID laws on the grounds that they reduce fraud when they can worsen it.

Third, voter ID laws can give rise to a paradox. Recall that the Court in *Crawford* upheld Indiana's voter ID law in part because of concerns over public confidence. States have an interest in promoting confidence in the integrity of the electoral process, the Court reasoned, because such confidence encourages citizens to participate in their democracy. One could imagine an extension of this argument: confidence in their democracy prompts citizens to take it more seriously, to accept election outcomes and to abide by the laws and policies they produce. Voter ID laws, with their promise to combat fraud, may very well boost public confidence—at the same time that they worsen the problem of fraud and make legitimate elections illegitimate.

A Concluding Generalization

The problem of voter fraud, whatever its seriousness, cannot be confined to contemporary America. Fraudulent votes must be an ubiquitous feature of democratic

elections worldwide. Likewise, the cross-cutting effects described above cannot grow

exclusively from voter ID requirements. A wide variety of policies and practices may

simultaneously reduce the number of fraudulent votes cast and suppress lawful votes. All

such policies and practices are subject to the analysis herein. And all of this suggests that

the problem of voter fraud is more serious than we realize—serious because fraudulent

votes are inherently wrong and can tilt elections, and serious because efforts, successful

ones included, to deter those votes can make matters worse.