

Chapter 1

Introduction

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Proof of Citizenship in the Unlikeliest of Places

It is not unusual to hear about the Bible in American politics, but in the twenty-first century, it is not usually used as a form of identification. For Jo French and Evelyn Howard, the Bible was used for just that purpose. French, who was born in Arkansas and later moved to Kansas, was unable to get a copy of her birth certificate from Arkansas and had to use a note of her birth in a family Bible to prove her citizenship in 2016 so she could legally vote in Kansas. In 2014, just two years prior, 92-year-old Evelyn Howard presented a Bible to her state's chief elections official. Despite having already voted in eighteen presidential elections, Howard was put in a difficult position as she prepared to register and vote, having moved from Minnesota to Kansas in 2013. The family Bible was the only record of Howard's birth, and the secretary of state deemed the informal record adequate documentation to allow Howard to vote.

The use of a Bible to prove citizenship by birth was not the only thing Howard and French had in common. They both moved to the state that is in the center of a roiling contemporary controversy over the right to vote. Kansas had become a national touchstone over voting rights, primarily because of the emergence of a single figure: Kris Kobach, an anti-illegal immigration activist who served as Kansas secretary of state from 2011–19. Kobach served as the author and architect of a policy agenda that signaled a significant shift, advising state and election

officials in other states while simultaneously spearheading the effort in Kansas. For more than a half-century, reforms at the federal and state levels have focused on the expansion of the voting franchise, but from 2003–2016, state-level reforms concentrated on restriction of the franchise, particularly in Republican-voting states.

Plan of Book

After a brief introduction, this book begins with an in-depth consideration of the history of voting rights in the United States, starting shortly before the Civil War and continuing through the present day. The discussion shows how the arc of this story includes two periods of reconstruction—the time period and associated policies formally known as Reconstruction, immediately following the Civil War, and a second period of reconstruction that consisted of civil rights activism, court rulings, and constitutional amendments that occurred primarily during the mid-to-late twentieth century, reaching its zenith with the passage of the Voting Rights Act in 1965.

The two periods of reconstruction included a host of changes intended to expand the franchise for people of color—African Americans in particular. Not only did African American former slaves and their descendants gain the right to vote, but many who participated in the confederacy, including hundreds of thousands of Confederate States of America (CSA) veterans, were stripped of their own voting rights due to their role in the “rebellion.” Numerous African American officials were elected to public office by a dramatically changed electorate after the ratification of the Fifteenth Amendment in 1870. The end of Reconstruction and the resurgence of states’ rights brought all of this to an abrupt halt, with numerous chicaneries such as the grandfather clause, the poll tax, literacy tests, and egregiously gerrymandered districts. All of this began before the election of 1876, but accelerated dramatically afterward, due to the political compromises that Republicans made with the South to end the electoral deadlock of that year’s presidential election. The chapter’s author calls this backlash the first of four Mississippi Plans—reactionary policies meant to roll back gains in voting rights. During the Second Mississippi plan, beginning in 1889, violence and fear were added to the other measures as a way of denying African Americans access to the ballot box. The Ku Klux Klan, which grew rapidly during

this era and reached its membership peak in the 1920s, joined other terror groups in using lynching—often threatened, sometimes carried out—to intimidate their targets away from voting. During this period, the federal government and courts frequently turned a blind eye, while some state governments, particularly in the South, actually encouraged the practice, with the white “Citizens’ Councils” of Mississippi being a particularly stark example.

The Third Mississippi Plan was a reaction to the second reconstruction era, and it began in the 1970s. The author argues that this era saw yet more attempts to weaken the votes of African Americans, though the means of doing so became more subtle. Methods included at-large elections and multimember districts using winner-take-all voting, which both had the effect of preventing the creation of many minority-majority districts, which in turn may have elected people of color to office. This era was something of a mixed bag for voting rights. It included the Voting Rights Act Amendments of 1992, which called for the drawing of more majority-minority districts. It also included the National Voter Registration Act of 1996 (NVRA), popularly known as “Motor Voter,” which provided for voter registration at state Department of Motor Vehicles (DMV) offices, created a federal registration form, and included provisions meant to sharply curtail voter “caging.” However, numerous anecdotal accounts make it clear that caging is still happening despite the NVRA.

The Fourth Mississippi Plan began with Republican officials’ backlash to the highly contested election of 2000. Between the Florida recount debacle and outrage over botched election procedures and inaccurate voter rolls in St. Louis, Missouri, Republican Party officials embraced the idea that voter fraud was a widespread problem that required measures such as Proof of Citizenship, Photo ID, and disenfranchisement of those convicted of felonies. Critics never wavered from their contention that little, if any evidence existed to back the claims of voter fraud, but proponents of the new laws were undaunted. Of course, this era has also seen numerous court rulings, with mixed results. Photo ID laws, for example, were upheld in *Crawford v Marion County* (2003), but only under certain circumstances. On the other hand, proof-of-citizenship requirements were sharply limited by the U.S. Supreme Court (*Arizona v Inter Tribal Council* 2013), and in one case, struck down entirely by a Federal District Court (*Fish v Kobach/Bednasek v Kobach* 2018).

The remainder of this book is concerned with empirically testing the impact of the laws and procedures associated with the Fourth Mississippi

Plan, including voter ID, proof of citizenship, felony disenfranchisement, and gerrymandering. Voter “caging” is also discussed in chapter 8. Caging is a process by which postcards or other mailers are sent to specified, targeted precincts, and voters who do not return these by the deadline are removed from the voter rolls. The most egregious forms of caging are supposed to be illegal, as per the NVRA, and it also receives bad publicity when discovered. As a result, it often occurs in the shadows, thus is not as easy to study systematically.

In chapter 3, the author begins by continuing ch. 2’s analysis with a more detailed discussion of the laws passed since 2000. The author notes the debate, not only over the laws themselves, but also over how to measure them and whether they are significant. The results of earlier research are mixed. The author then offers his own cross-sectional, county-level data analysis from 2016. The results point to a possible backlash effect among African American voters, finding findings that both non-photo ID and photo ID laws resulted in higher, not lower turnout in the 2016 presidential election. The author also found that the interaction with percentage of African American voters again pointed to higher turnout—the reverse of what was expected, and an indication of a possible backlash effect. The other results—including those that interact the new laws with a county’s percentage of Hispanic voters—are insignificant.

In chapter 4, the chapter’s author develops the backlash hypothesis further with an analysis of individual-level data. Using American National Election Studies data for the 2012 election, the analysis finds that the presence of a “soft” ID law correlates with a greater likelihood of participants voting, and the impact is even stronger when it is combined with the voter’s having been mobilized via personal contact from a campaign. Only one state—Pennsylvania—had such a law taking effect that year, and it was highly controversial. The courts modified the law into a muddle, and one Republican legislative leader even said publicly that the law’s purpose was to deliver the state’s electoral votes to Mitt Romney. Utilizing two different datasets and two different elections, chapters 3 and 4 offer substantial, if not definitive evidence that a backlash against ID laws may be occurring, particularly among African American voters under certain circumstances.

In chapter 5, the authors analyze the impact of these laws on changes in the partisan vote share and changes in county-level turnout, 2008–12 and 2012–16. As with the two previous chapters, this analysis finds that the imposition of new laws correlates with higher, not lower

voter turnout in many cases. Likewise, the impact of the new laws when interacted with percentage Black hints at a possible backlash effect, while the interaction with percentage Hispanic, respectively, are mixed. Yet there is a notable relationship with partisanship—the imposition of the new laws correlates with a larger shift toward Republican votes than in counties located in states that did not have the new laws in place. Thus, while the impact on turnout and racial composition is inconclusive or even (as per the two previous chapters) in the opposite direction than hypothesized, the impact in shifting the electorate toward being slightly more Republican is evident from this analysis. Combined with chapter 3, the overall conclusion appears to be that ID laws may be more effective at mobilizing Republican voters than they are at suppressing Democratic-voting constituencies. However, the evidence also points to a backlash effect among African American voters, who in many cases are more, not less, likely to vote when they live in states affected by the new laws. The impact on Hispanic voters is more mixed.

These puzzling results may be explained in part by research done previously. Smith, Anderson, and Rackaway (2014) found that when certain restrictive laws were put in place, they shifted the electorate, not by suppressing Democratic turnout, but by boosting Republican turnout. In other words, the laws may be an effective voter-mobilization tool for Republicans. The results of chapter 5 are consistent with this finding.

In chapter 6, the author considers the impact of felony disenfranchisement laws, finding that there is a wide variation among the states regarding the impact of these laws. Some states—particularly in the South—effectively ban those convicted of felonies from voting for life, unless they successfully petition the court or governor for a restoration, which must be done on a case-by-case basis. The percentage of the voting-age population (VAP) disenfranchised is highest in these states, reaching its peak in Georgia, where a full three percent of VAP is ineligible to vote due to felony convictions. At the other end of the spectrum are Maine and Vermont, where there is no loss of voting rights even while serving one's sentence, and absentee voting stations are set up inside state prisons. Most states are in between these extremes, denying one the right to vote while in prison or under alternative sentencing, as well as on parole and probation, but then allowing for restoration of these rights upon completion of the sentence. However, popular misunderstanding of the laws by the affected population leads to a widespread belief that they have lost their voting rights for life, even when this is not the case.

Two notable states in the felony-disenfranchisement analysis are Iowa and Florida, which are moving in opposite directions. Iowa recently passed a strict, lifetime felony disenfranchisement law. By contrast, Florida voters approved a 2018 ballot initiative repealing what had been one of the nation's strictest felony-disenfranchisement laws. However, the Florida Legislature has looked at options to limit or override the voter-approved initiative.

The analysis showed that in 2016, a higher percentage of the African American population disenfranchised by these laws correlated with lower voter turnout and a larger shift toward the GOP, relative to 2012. These results were as hypothesized, and they are troubling.

In chapter 7, the authors analyze the mathematical studies on gerrymandering. Mathematical analysis shows that a coherent way of modeling gerrymandering is impossible. One mathematician even showed that an intuitive, geographically compact hypothetical map of North Carolina congressional districts would have even more bias toward the state's slight Republican majority than would the gerrymandered map currently being used. The authors contributed their own model, showing that even a slight partisan majority in a state leads one to predict that most possible ways of drawing districts will result in a heavy bias toward that majority, and then applies this to hypothetical maps of Iowa. Thus, rather than gerrymandering being a tool to "pack" and "crack" minorities, it may make more sense to view gerrymandering as the best hope for minority representation, assuming single-member districts and winner-take-all elections. If anything, gerrymandering tends to benefit the minority. Proportional representation remains the best way to insure minority representation, but it is rarely used in U.S. congressional or state legislative elections.

In chapter 8, the author considers civil rights groups' responses to these new laws, as well as other suppressive tactics used against minorities such as voter caging. The author finds that civil rights groups split into three strategic approaches when fighting these new laws. In the electoral strategy, the civil rights organizations and the Democratic Party utilized voter anger at the laws to mobilize voters, hoping not only to elect more allies but to elect a majority that would vote to repeal the laws. As noted above, chapters 3 and 4 offer *prima facie* evidence that this strategy may be effective in some cases, particularly with African American voters. In addition, the electoral strategy has also been combined with protest, the second strategy, particularly since the rise of the #BlackLivesMatter movement.

The final strategy was the legal one. Embraced by the NAACP and the ACLU, the legal strategy led to a whole series of court cases challenging the laws. During this time, the results were decidedly mixed. In general, there has been no clear thrust, either pro or con, regarding the constitutionality of these laws, and court rulings often turn on a very detailed reading of each individual law.

Taken together, the studies in the book result in several findings. First, our review of the other studies finds that there is not a strong case for the existence of widespread voter fraud, which is the justification used for passing the laws in the first place. Second, the results regarding the impact on turnout are mixed. None of our analyses found a significant impact on Hispanic voters, and some even pointed to a possible backlash regarding ID laws—an actual boost in turnout—among African American voters, particularly if they are mobilized. Yet we do find that the laws shift the composition of the electorate toward being slightly more Republican. One plausible explanation for this, is that ID laws tend to mobilize Republican voters, rather than demobilize Democrats. However, the analysis of felony disenfranchisement laws indicates that a higher percentage of African Americans disenfranchised correlates lower turnout as well as a larger shift toward the Republican Party.

As for gerrymandering, mathematical analyses offer little hope that drawing more compact districts would increase minority representation—indeed, it may even dilute it. And finally, in the courts, the legal fight is ongoing, with no clear direction being established in favor of, or in opposition to the laws, and the rulings being made on a case-by-case basis, while new civil rights activists have merged together their concerns about restrictive voting laws with a host of other issues such as stopping police brutality, and Medicaid expansion.

A Note on Tone and Consistency

This book is an edited volume. All contributors are academics, including several political scientists, one economist, one mathematician, and one geographer. Every effort has been made to format the chapters consistently and to make references within the chapters to other chapters in this book that are relevant to the discussion. Still, each chapter is written as a standalone piece, even though none of them have been published elsewhere. As a result, some variations in writing style and formatting are

to be expected. Still, the editor has made an effort to link the chapters together into a cohesive narrative, so that the book may be read cover to cover and not simply treated as a reference volume.

References

- Arizona v. Inter Tribal Council of Arizona, Inc. 570 U.S. 1 (2013).
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