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New State Rules Raising Hurdles at Voting Booth

By MICHAEL COOPER

Since Republicans won control of many statehouses last November, more than a dozen states have passed laws requiring voters to show photo identification at polls, cutting back early voting periods or imposing new restrictions on voter registration drives.

With a presidential campaign swinging into high gear, the question being asked is how much of an impact all of these new laws will have on the 2012 race.

State officials, political parties and voting experts have all said that the impact could be sizable. Now, a [new study](#) to be released Monday by the Brennan Center for Justice at New York University School of Law has tried to tally just how many voters stand to be affected.

The center, which has studied the new laws and opposed some of them in court and other venues, analyzed 19 laws that passed and 2 executive orders that were issued in 14 states this year, and concluded that they “could make it significantly harder for more than five million eligible voters to cast ballots in 2012.”

Republicans, who have passed almost all of the new election laws, say they are necessary to prevent voter fraud, and question why photo identification should be routinely required at airports but not at

polling sites. Democrats counter that the new laws are a solution in search of a problem, since voter fraud is rare. They worry that the laws will discourage, or even block, eligible voters — especially poor voters, young voters and African-American voters, who tend to vote for Democrats.

The Justice Department must review the new laws in several states to make sure that they do not run afoul of the [Voting Rights Act](#). The Supreme Court upheld Indiana's voter identification law in 2008, saying that while it found no evidence of the fraud the law was intended to combat, it also found no evidence that the new requirements were a burden on voters.

“This year there's been a significant wave of new laws in states across the country that have the effect of cracking down on voting rights,” said Michael Waldman, the executive director of the Brennan Center, who noted that five million votes would have made a difference in both the 2000 and 2004 presidential elections. “It is the most significant rollback in voting rights in decades.”

Just how much of an impact the new laws will have is a matter of some dispute. Senator Richard J. Durbin, Democrat of Illinois, who held a hearing on the new laws last month, said they “will make it harder for millions of disabled, young, minority, rural, elderly, homeless and low-income Americans to vote.” Republicans note that states like Georgia and Indiana moved to require photo identification from voters and that turnout there improved.

Some of the new laws have been introduced by Republicans for years, but passed only this year after the party made so many gains at the state level. Others have been promoted vigorously by conservative groups. But there is little doubt that they will alter the voting landscape.

Five states passed laws this year scaling back programs allowing voters to cast their ballots before Election Day, the Brennan Center found. Ohio passed a law eliminating early voting on Sundays, and Florida eliminated it on the Sunday before Election Day — days when some African-American churches organized “souls to the polls” drives for members of their congregations. Maine voted to stop allowing people to register to vote on Election Day — a practice that had been credited with enrolling some 60,000 new voters in 2008. Voters in Maine and Ohio are now seeking to overturn the new laws

with referendums.

The biggest impact, the Brennan Center said, will be from laws requiring people to show government-issued photo identification to vote. This year, 34 states [introduced legislation](#) to require it — a flurry of activity that Jennie Bowser, a senior fellow at the [National Conference of State Legislatures](#), called “pretty unusual.” Before this year, only two states, Indiana and Georgia, had “strict” photo identification requirements for voters, according to the conference. This year, five more states — Wisconsin, Kansas, South Carolina, Tennessee and Texas — passed laws to join their ranks.

Under the Texas law, licenses to carry concealed handguns would be an acceptable form of identification to vote, but not student ID cards.

The Brennan Center [estimates](#) that 11 percent of potential voters do not have state-issued photo identification. By that measure, it finds that the new laws would affect 3.2 million voters in the states where the change is scheduled to take effect before the 2012 elections.

While other groups have made similar estimates in the past, Hans von Spakovsky, a senior legal fellow at the [Heritage Foundation](#) who oversaw elections at the Justice Department during the administration of President George W. Bush, [argued](#) that the number is too high.

But there is little dispute that the new laws will have an effect on a large number of voters.

South Carolina and Texas estimate that between them they have more than 800,000 registered voters who may not have acceptable forms of photo identification. While both states will offer free identification cards that would be acceptable at the polls, critics of the new laws worry that the added barrier to voting could discourage people from going to the polls. South Carolina estimates that 8 percent of its voters — 216,596 people — do not currently have the proper identification.

Texas calculated that at least 95 percent of its registered voters have a driver’s license or valid identification card, but could not say for sure whether the 605,576 names on its voter list that do not

appear on its lists of people with driver's licenses or state-issued identification cards have them or not. The Department of Justice, which must approve the changes in Texas and South Carolina, recently asked both states for more information to make sure the changes do not violate the Voting Rights Act.

Representative Terri A. Sewell, Democrat of Alabama, said her state's new voter identification law, which is set to take effect in 2014, would strike close to home. Her father, who uses a wheelchair, has let his driver's license lapse, she said, and used his [Social Security](#) card as identification when he voted for her — something that will no longer be allowed.

“My mom will find a way to get my dad a photo ID, but a lot of my constituents don't have the same capability,” Ms. Sewell said. “Given the relatively low turnout that we see in modern-day elections, we should be encouraging people to go to the polls to exercise their rights, and not discouraging them.”

The Brennan Center argues that the type of fraud that such laws are intended to combat — impersonation — is extremely rare. The South Carolina State Election Commission “knows of no confirmed cases of voter identification fraud, defined as a person presenting himself to vote as someone he is not,” Chris Whitmire, a spokesman, said in an e-mail.

But proponents of the stricter identification laws say they make sense.

“The left always says that people who are in favor of this claim there is massive fraud,” said Mr. von Spakovsky, of the Heritage Foundation. “No, I don't say that. I don't think anybody else says that there is massive fraud in American elections. But there are enough proven cases in the past, throughout our history and recently, that show that you've got to take basic steps to prevent people from taking advantage of an election if they want to. Particularly close elections.”

Some of the laws restricting voting are aimed at illegal immigrants. Kansas, Alabama and Tennessee passed laws this year requiring voters to provide proof of citizenship before they can register to vote.

While most of the states that moved to require photo identifications are controlled by Republicans, there was an exception: Rhode Island, where a new voter identification law passed a legislature

controlled by Democrats and was [signed into law](#) by an independent governor, Lincoln Chafee.

The Brennan Center notes that between one million and two million people voted on days that are being eliminated by states that are scaling back early voting. But whether turnout will go down as a result of the change is unclear. Curtis Gans, the director of the [Center for the Study of the American Electorate](#) at American University, said that states with early voting did not always have better turnout relative to states that did not. “It’s a mixed picture,” he said, noting that early voting benefited Democrats in 2008 and Republicans in 2004.

In Florida, a new law imposing restrictions on voter registration drives has led the state’s [League of Women Voters](#), a nonpartisan group that had registered voters for 72 years, to call a moratorium on new registration drives in the state, citing the penalties that groups can face under the law.

Independent groups that register voters — like the league — face fines of \$50 to \$1,000 per applicant if they fail to turn in the applications to elections officials in a timely manner.

“It’s too cumbersome,” said Deirdre Macnab, the league’s president. “There is too much red tape and regulation.”



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