

Testimony of
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Hearing: Voting in America: The Potential for Voter ID Laws, Proof-of-Citizenship
Laws, and Lack of Multi-Lingual Support to Interfere with Free and Fair Access to the Ballot

The Committee on House Administration
U.S. House of Representatives

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Chairman Butterfield, Ranking Member Steil, and Members of the Committee, thank you for the opportunity to testify before you today. I am Professor Lonna Atkeson from the University of New Mexico and I study elections, voting behavior and voting rights and have written extensively on voter id implementation and voter confidence.

While most of the focus on issues related to voter ID policies has been on how they may affect turnout, an equally important and alternative question to consider is whether voter ID policies are administered equally across groups.¹ This is an important question because, historically, laws like voter ID have been used to create barriers to participation and have been implemented unequally across segments of the voting population. In the case of voter ID, the effects on minorities might be more subtle and difficult to discern because these laws may not directly result in a reduction in turnout but may affect voter confidence or satisfaction in the election process, which may have long term consequences for turnout or lead to increases in provisional voting.

Several studies of poll workers and voters suggest that implementation practices can result in unequal application of voter identification laws (Atkeson et al 2010, Atkeson et al 2014,

¹ My statement stems from my experience and work in the field including extensive election observation. In the Appendix I have provided a bibliography to a large number of articles and reports that have also impacted my thinking in this area.

Cobb et al 2011, Alvarez et al 2010, Ansolabehere 2009, Suttman-Lea 2020). In my original study in New Mexico we found that many voters were asked by poll workers for ID inappropriately and that Hispanics and men were asked for a photo ID more often than whites and women (Atkeson 2010). In another study in Massachusetts (Cobb et al 2011), researchers found that blacks and Hispanics were asked for photo identification at higher rates than whites. In subsequent studies in New Mexico we have found varying degrees of differences between whites and Hispanics, sometimes showing significant differences and sometimes not, but always showing inappropriate requests by poll workers for photo ID (Atkeson et al 2007, Atkeson et al 2010, Atkeson et al 2011, Atkeson et al 2013, Atkeson et al 2015, Atkeson et al 2017; Atkeson et al 2020).

Unequal application appears to be related to the interaction between the amount of discretion that poll workers have along with the complexity of the voter ID law, especially having different voter ID rules for different types of voters, and having a variety of rules that allow many different options for the type of ID that the voter can use and poll workers can request (Atkeson et al 2010, Cobb et al 2012). For example, both New Mexico and Massachusetts had adopted the minimum Help American Vote Act (HAVA) requirement that first time voters who (i) registered by mail, (ii) and did not include photocopies of valid IDs with their mailed registration forms were required to show a physical ID. In addition, Massachusetts required a physical ID for voters who had been identified as “inactive”. Otherwise, for most voters the minimum standard for voter identification in Massachusetts was the voter’s name and address, in New Mexico it was the voter’s name, address, and birth year, but it was the voters’ choice in New Mexico and voters could also show a driver’s license, Sam’s Club card, voter registration card or a utility bill to authenticate themselves.

This means that many of the states that have the most accessible voter ID laws are the most likely to have problems with voter ID implementation. States that have easier to follow and consistent rules across voters appear to have fewer problems with the application of voter ID policies. Of course, voter ID rules may have a different impact on turnout.

Why does this happen? It seems that poll workers do not always follow or appear to know the law (Atkeson et al 2014, Suttman-Lee 2020). The poll worker studies indicate that poll workers are likely to misinterpret, misunderstand, or disagree with a voter ID law and therefore to misapply voter ID policies. Poll workers are temporary workers, working long hours a few times a year, and are often poorly trained likely with no background in law or public policy. Consequently, when they are faced with a decision on how to apply policies to which they may be uncertain they choose to require voter ID or not based upon their personal beliefs or normative judgments about what they believe those laws *should* be.

Can this problem be resolved? While proper training can reduce poll worker discretion substantially, it likely cannot eliminate it. In addition, it is clear that the county clerk has to be continuously vigilant because without constant emphasis during poll worker training discretion results in uneven implementation (Atkeson et al 2007, Atkeson et al 2010, Atkeson et al 2011, Atkeson et al 2013, Atkeson et al 2015, Atkeson et al 2017; Atkeson et al 2020).

In conclusion, it is important to note that many states have hybrid policies that have different ID requirements for different types of voters and offer many options for voter IDs. These laws are more likely to produce voter and poll worker confusion, allowing poll workers to set their own standards. As legislators and policy makers grapple with this issue, they should consider how the design of laws affects their implementation and what that means for creating uniform practices. Voters should be treated equally by their election administrators.

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