

Race and Voter ID Laws: A Review

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ABSTRACT

Given their notoriety and the controversy they attract, social scientists have developed a large body of empirical literature on whether, and to what extent, voter identification laws disproportionately burden voters of color. However, empirical research on this topic has not been given the attention it deserves in legal scholarship. Accordingly, this Article synthesizes the empirical literature on the nexus between race and voter identification laws by addressing three empirical questions: First, are registered voters of color less likely to possess voter identification than white registered voters? Second, are voter identification laws implemented in a racially-neutral manner? And third, do voter identification laws disproportionately suppress voters of color? This Article concludes by discussing the limitations of existing empirical research.

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I. INTRODUCTION

Prior to the 2000 election, election administration was an insipid topic of interest only to election administrators and the occasional local government enthusiast.¹ Voter identification (“voter ID”) laws, which

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1. See Daniel P. Tokaji, *The Future of Election Reform: From Rules to Institutions*, 28 YALE L. & POL’Y REV. 125, 125 (2009) (“Before 2000, few people—aside from the state and local officials charged with running elections—paid much attention to such arcane

require voters to show a form of identification before they vote, were no exception.² These laws, which date back to the mid-twentieth century,³ were enacted by a range of states, some with Democratic majorities and some with Republican majorities.⁴

The controversies surrounding the 2000 election brought renewed attention to the nuts and bolts of election administration.⁵ In the years that followed, both Republicans and Democrats agreed that election reform was necessary, but they disagreed on how to carry out these reforms. Democrats generally sought to decrease barriers to voting,⁶ whereas Republicans sought to ensure that only those who are eligible to vote could do so.⁷ Accordingly, election administration–voter ID laws included—became a highly partisan and contentious issue.⁸ In 2006, for example, the Federal Election Integrity Act, which would have required all voters to present a form of identification to verify their identity prior to voting, was supported in the United States House of Representatives by nearly all Republicans and opposed by nearly all Democrats.⁹ Sixteen years later,

matters as voting technology, provisional ballots, voter identification, and voter registration.”).

2. *See id.*

3. *See* Daniel J. Hopkins et al., *Voting But for the Law: Evidence from Virginia on Photo Identification Requirements*, 14 J. EMPIRICAL LEGAL STUD. 79, 82 (2017) (noting that the first voter ID law was passed in 1950).

4. *See Voter ID Chronology*, NAT’L CONF. OF STATE LEGISLATURES (Sept. 29, 2021), <https://bit.ly/3NVhAkN>.

5. *See* Daniel P. Tokaji, *The New Vote Denial: Where Election Reform Meets the Voting Rights Act*, 57 S.C. L. REV. 689, 689 (2006) (“The years since the 2000 presidential election have witnessed unprecedented attention to the mechanics of election administration.”); Barry C. Burden et al., *What Happens at the Polling Place: Using Administrative Data to Look Inside Elections*, 77 PUB. ADMIN. REV. 354, 354 (2016) (“Tremendous attention has been paid to local election administration since the 2000 presidential election meltdown . . .”).

6. *See* Stephen Ansolabehere, *Access Versus Integrity in Voter Identification Requirements*, 63 N.Y.U. ANN. SURV. AM. L. 613, 613 (2008).

7. *See id.* at 616.

8. *See* Richard L. Hasen, *Race or Party? How Courts Should Think About Republican Efforts to Make It Harder to Vote in North Carolina and Elsewhere*, 127 HARV. L. REV. F. 58, 63 (2014).

9. *See* Samuel P. Langholz, Note, *Fashioning a Constitutional Voter-Identification Requirement*, 93 IOWA L. REV. 731, 753–54 (2008) (“After an hour of contentious and partisan debate, the House passed the bill by a nearly party-line vote of 228 to 196, with only four Democrats voting in favor of the bill and three Republicans voting against it.”).

voter ID laws remain one of the most contentious issues in American politics.¹⁰

According to proponents of voter ID laws, these laws are reasonable and justifiable.¹¹ Supporters of these laws argue that voter ID laws prevent voter fraud and increase confidence in the electoral process.¹² Additionally, proponents note that voter ID laws are immensely popular with the American public,¹³ ubiquitous in many peer countries,¹⁴ and Americans must present a government-issued ID to exercise many other rights and engage in routine behaviors, such as boarding a plane, entering most federal buildings, and completing a Form I-9 to obtain employment.¹⁵ In other words, voter ID laws are common-sense measures.¹⁶

10. See Chris Cillizza, *Voter ID Requirements Are Really Popular. So Why Are They So Divisive?*, CNN POL. (June 25, 2021, 11:53 AM ET), <https://cnn.it/3yw1LLK>; Will Hyland, Note, *Voter ID: Combating Voter Fraud or Disenfranchising? A Comprehensive Analysis of Voter ID Laws, Native American Disenfranchisement, and Their Intersection*, 29 U. MIA. INT'L & COMP. L. REV. 283, 286 (2021).

11. See John Cornyn, *Voter ID Laws Are Reasonable, Constitutional, Necessary*, AUSTIN AM.-STATESMAN (Dec. 17, 2011, 11:01 PM CT), <https://bit.ly/3PgNsBn>.

12. See Kyle Endres & Costas Panagopoulos, *Photo Identification Laws and Perceptions of Electoral Fraud*, RSCH. & POL., July–Sept. 2021, at 1, 1–2 (“Proponents of voter ID requirements often justify ID restrictions on the grounds that ID laws protect against voter fraud”); Eugene D. Mazo, *Finding Common Ground on Voter ID Laws*, 49 U. MEM. L. REV. 1233, 1247 (2019) (“Many proponents of voter ID laws argue that preventing the perception that voter fraud exists is a compelling justification for a state to enact voter ID legislation.”).

13. See, e.g., R. Michael Alvarez et al., *Voter Opinions About Election Reform: Do They Support Making Voting More Convenient?*, 10 ELECTION L.J. 73, 78 (2011) (finding that 75.6% of American adults support voter ID laws); David C. Wilson & Paul R. Brewer, *The Foundations of Public Opinion on Voter ID Laws: Political Predispositions, Racial Resentment, and Information Effects*, 77 PUB. OPINION Q. 962, 969 (2013) (finding that 78% of respondents support voter ID laws).

14. See Frederic Charles Schaffer & Tova Andrea Wang, *Is Everyone Else Doing It? Indiana’s Voter Identification Law in International Perspective*, 3 HARV. L. & POL’Y REV. 397, 398 (2009) (“One of the claims made by advocates of Indiana-like voter identification laws is that other countries require identification to vote, so therefore the United States should too.”); Olga Khazan, *Voter ID Proponents Point to Laws in Other Countries*, WASH. POST (July 12, 2012), <https://wapo.st/3AE0FjQ> (“Proponents of the law have argued that such measures are not a threat to voters’ rights because similar voter ID restrictions are in place in democracies around the world.”).

15. See Hans A. von Spakovsky, *Protecting the Integrity of the Election Process*, 11 ELECTION L.J. 90, 95–96 (2012).

16. See Reince Priebus, *Voter ID Laws Are Common Sense*, CNN OP. (Dec. 31, 2011, 2:01 PM ET), <https://cnn.it/3Rksjlr>; Hans A. von Spakovsky, *Steps to Protect Integrity of Elections Are Common Sense*, HERITAGE FOUND. (Oct. 1, 2013), <https://herit.ag/3yVfVao>;

Opponents of voter ID laws, on the other hand, contend that these laws are unnecessary.¹⁷ After all, voter fraud is exceedingly rare.¹⁸ Moreover, there is little evidence that voter ID laws prevent fraud¹⁹ or increase confidence in the electoral process.²⁰ Additionally, opponents note that voter ID laws in the United States are much stricter than voter ID laws in other countries,²¹ and they assert that the claim that government-issued ID is needed to exercise many other rights is greatly exaggerated.²² For these reasons, opponents of voter ID laws describe these measures as “a solution in search of a problem.”²³

Rodney Davis, *Voter ID Is Just Common Sense, but It Needs the Supreme Court's Protection*, WASH. EXAM’R (Apr. 21, 2022, 9:13 AM), <https://washex.am/3IrPEDW>.

17. See Ryan Chatelain, *Debate Over Photo ID Laws Is Enduring—And Complex*, SPECTRUM NEWS (July 15, 2021, 11:44 AM ET), <https://bit.ly/3NZXaqK> (“[C]ritics argue that photo ID laws are an unnecessary solution to a nonexistent problem.”).

18. See, e.g., M.V. Hood III & William Gillespie, *They Just Do Not Vote Like They Used To: A Methodology to Empirically Assess Election Fraud*, 93 SOC. SCI. Q. 76, 76 (2012); Ray Christensen & Thomas J. Schultz, *Identifying Election Fraud Using Orphan and Low Propensity Voters*, 42 AM. POL. RSCH. 311, 313 (2014); John S. Ahlquist et al., *Alien Abduction and Voter Impersonation in the 2012 U.S. General Election: Evidence from a Survey List Experiment*, 13 ELECTION L.J. 460, 473 (2014); Stephen Ansolabehere et al., *The Perils of Cherry Picking Low Frequency Events in Large Sample Surveys*, 40 ELECTORAL STUD. 409, 409 (2015); David Cottrell et al., *An Exploration of Donald Trump's Allegations of Massive Voter Fraud in the 2016 General Election*, 51 ELECTORAL STUD. 123, 124 (2018); Sharad Goel et al., *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections*, 114 AM. POL. SCI. REV. 456, 467 (2020); Andrew C. Eggers et al., *No Evidence for Systematic Voter Fraud: A Guide to Statistical Claims About the 2020 Election*, PROC. NAT’L ACAD. SCI., Nov. 2021, at 1, 6.

19. See Enrico Cantoni & Vincent Pons, *Strict ID Laws Don't Stop Voters: Evidence from a U.S. Nationwide Panel, 2008-2018*, 136 Q.J. ECON. 2615, 2653 (2021).

20. See *id.* (“[W]e find the laws had no significant effect on the perceived occurrence of voter impersonation, multiple voting, and noncitizen voting”); see also Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements*, 121 HARV. L. REV. 1737, 1756 (2008) (“Whether the state or local election administration frequently asks for voter identification or not seems to have no relationship to individuals’ beliefs about the frequency of Fraud or Impersonation.”); Charles Stewart III et al., *Revisiting Public Opinion on Voter Identification and Voter Fraud in an Era of Increasing Partisan Polarization*, 68 STAN. L. REV. 1455, 1473 (2016) (“[T]here is no evidence that the passage of strict photo ID laws has led to a decrease in the belief of the frequency of voter impersonation.”).

21. See Schaffer & Wang, *supra* note 14, at 399, 411; Khazan, *supra* note 14.

22. See Justin Levitt, *Election Deform: The Pursuit of Unwarranted Electoral Regulation*, 11 ELECTION L.J. 97, 104 (2012).

23. See David M. Faherty, Comment, *The Post-Crawford Rise in Voter ID Laws: A Solution Still in Search of a Problem*, 66 ME. L. REV. 269, 289 (2013); Joshua A. Douglas,

However, the most common objection to voter ID laws is that they disproportionately burden voters of color. Many are skeptical of facially neutral election laws—such as voter ID laws—given America’s long and dark history of employing facially neutral election laws to suppress minority voters.²⁴ What is more, qualitative evidence suggests that some state legislators enact voter ID laws with discriminatory intent. For example, emails between state legislators in North Carolina indicated they viewed voter ID laws as a mechanism to decrease minority turnout,²⁵ and an employee of the Wisconsin State Senate testified that Republican state senators were “giddy” that Wisconsin’s voter ID law might prevent racial minorities from voting.²⁶ Recently, empirical research has documented that race plays a significant role in the introduction of, and legislators’ support for, voter ID laws.²⁷ Accordingly, many lawmakers,²⁸ civil rights

“*How the Sausage Gets Made*”: *Voter ID and Deliberative Democracy*, 100 NEB. L. REV. 376, 377 (2021).

24. See Anthony J. Gaughan, *Has the South Changed? Shelby County and the Expansion of the Voter ID Battlefield*, 19 TEX. J. C.L. & C.R. 109, 112 (2013) (“The long history of election law ‘reforms’ leading to minority disenfranchisement makes such fears quite reasonable.”).

25. See William Wan, *Inside the Republican Creation of the North Carolina Voting Bill Dubbed the ‘Monster’ Law*, WASH. POST (Sept. 2, 2016), <https://wapo.st/3uzqLAV>; see also Christopher Ingraham, *The ‘Smoking Gun’ Proving North Carolina Republicans Tried to Disenfranchise Black Voters*, WASH. POST (July 29, 2016, 5:11 PM EDT), <https://wapo.st/3yw66P1>.

26. See Sari Horwitz, *Getting a Photo ID So You Can Vote Is Easy. Unless You’re Poor, Black, Latino, or Elderly*, WASH. POST (May 23, 2016), <https://wapo.st/37zM8JR>.

27. See, e.g., Keith G. Bentele & Erin E. O’Brien, *Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies*, 11 PERSPS. ON POL. 1088, 1096 (2013) (finding that, as minority turnout in the previous election increases, so too does the likelihood that a voter ID law is proposed in the state); Seth C. McKee, *Politics Is Local: State Legislator Voting on Restrictive Voter Identification Legislation*, RSCH. & POL., July–Sept. 2015, at 1, 6 (finding that the size of a legislative district’s black population positively influences the probability that a Republican legislator will vote in favor of a voter ID law).

28. See Mazo, *supra* note 12, at 1234 (“Democrats liken voter ID laws to the poll taxes and literacy tests of the past . . .”). Prominent Democrats describing voter ID laws in this manner include Congressman Marc Veasey, then-presidential candidate Beto O’Rourke, and then-Vice President Joe Biden. See Marc Veasey, *In 2016, Why Are Voters Still Paying Poll Taxes?*, HUFFINGTON POST (June 25, 2016, 2:43 PM EDT), <https://bit.ly/3PZiTBv>; Hunter Woodall, *O’Rourke Seeks End of Voter ID Laws That He Calls ‘Racist,’* ASSOCIATED PRESS (Mar. 19, 2019), <https://bit.ly/3Nh0LB7>; Rebecca Kaplan, *Joe Biden Sees Lingering ‘Hatred’ in Voter ID Laws*, CBS NEWS (Feb. 26, 2014, 1:02 PM), <https://cbsn.ws/3m9bOAC>.

leaders,²⁹ and academics³⁰ decry voter ID laws as racially discriminatory and akin to the poll taxes and literacy tests of the Jim Crow era.

In response to these concerns, social scientists have developed a voluminous body of empirical literature on whether, and to what extent, voter ID laws disproportionately burden voters of color.³¹ Likewise, legal literature has given ample attention to voter ID laws, with many articles focusing on topics such as outlining potential legal challenges to voter ID laws,³² debating the proper level of scrutiny courts should apply when adjudicating voter ID cases,³³ and pitching fixes to voter ID laws.³⁴ Yet

29. See Nicholas A. Valentino & Fabian G. Neuner, *Why the Sky Didn't Fall: Mobilizing Anger in Reaction to Voter ID Laws*, 38 POL. PSYCH. 331, 333 (2017) (“Civil rights leaders have rallied, loudly characterizing [voter ID laws] as a Jim Crow style war on Black voter access to the ballot.”); Jason Kandel, *NAACP Head Likens Voter ID Measures to Jim Crow*, REUTERS (July 25, 2011, 3:50 PM), <https://reut.rs/3NURtKW>.

30. See, e.g., David Schultz, *Less than Fundamental: The Myth of Voter Fraud and the Coming of the Second Great Disenfranchisement*, 34 WM. MITCHELL L. REV. 483, 485 (2008) (“This time the tools are not literacy tests, poll taxes, or lynch mobs, but rather the use of photo IDs when voting.”); Atiba R. Ellis, *The Cost of the Vote: Poll Taxes, Voter Identification Laws, and the Price of Democracy*, 86 DENV. U. L. REV. 1023, 1025 (2009) (“These laws are similar to other restrictions on the franchise, such as property requirements and poll taxes . . .”).

31. See Joshua Hochberg, *Who Lacks Voter ID?: Evidence from Expert Reports*, 56 U.S.F. L. REV. F. 479, 489 (2022) (“In the past two decades, a voluminous body of literature has emerged on how voter ID law might disproportionately burden voters of color.”).

32. See, e.g., Kelly T. Brewer, Note, *Disenfranchise This: State Voter ID Laws and Their Discontents, A Blueprint for Bringing Successful Equal Protection and Poll Tax Claims*, 42 VAL. U. L. REV. 191, 232–40 (2007); Kathleen M. Stoughton, Note, *A New Approach to Voter ID Challenges: Section 2 of the Voting Rights Act*, 81 GEO. WASH. L. REV. 292, 314–27 (2013); Caitlin Foley, *A Twenty-Sixth Amendment Challenge to State Voter ID Laws*, 2015 U. CHI. LEGAL F. 585, 616–32 (2015); Steve Kolbert, *The Nineteenth Amendment Enforcement Power (But First, Which One Is the Nineteenth Amendment, Again?)*, 43 FLA. ST. U. L. REV. 507, 567–68 (2016); Carolyn F. Rice, Comment, *Turning to the States: Why Voting Rights Advocates Should Bring Voter ID Challenges to State Courts and How to Identify a Friendly Forum*, 24 U. PA. J. CONST. L. 541, 569–87 (2022).

33. See, e.g., Muhammad At-Tauhidi, Note & Comment, *Access v. Integrity: Determining the Constitutionality of Voter ID Laws Under Anderson v. Celebrezze*, 17 TEMP. POL. & C.R.L. REV. 215, 217–18 (2007); Garrett Franklyn, Article, *Suffrage and the State's Interest in Preventing Fraud—The Constitutionality of Tennessee's Photo Identification Requirement Under Strict Scrutiny*, 81 TENN. L. REV. 929, 948 (2014); Matthew R. Pikor, *Voter ID in Wisconsin: A Better Approach to Anderson Burdick Balancing*, 10 SEVENTH CIR. REV. 465, 495–98 (2015).

34. See, e.g., Langholz, *supra* note 9, at 786–800; Richard Tyler Atkinson, Note, *Underdeveloped and Overexposed: Rethinking Photo ID Voting Requirements*, 33 J. LEGIS. 268, 287 (2007); Spencer Overton, *Voter Identification*, 105 MICH. L. REV. 631, 674–81 (2007); Adam Gregg, Note, *Let's See Some I.D.—A New Proposal for Voter Identification*

the current legal literature has one major shortcoming: it has failed to seriously examine the empirical literature.

Thus, there is a significant gap in legal literature, which this Article fills by reviewing three questions addressed in social science literature: First, are registered voters of color less likely to possess voter ID than white registered voters? Second, are voter ID laws implemented in a racially-neutral manner? And third, do voter ID laws disproportionately suppress voters of color? Part II of this Article reviews the literature on voter ID possession rates by racial group and finds that white registered voters are slightly more likely to possess voter ID than Black and Hispanic voters.³⁵ In Part III, this Article presents research on the implementation of voter ID laws, which reveals that voters of color are more likely to be asked to present their voter ID than white voters.³⁶ Next, Part IV shows that, based on existing research, there is little evidence that voter ID laws disproportionately affect minority turnout.³⁷ Finally, this Article concludes with a brief discussion of the limitations of existing social science research.³⁸

II. POSSESSION OF VOTER ID

It is theoretically intuitive that registered voters of color are less likely to possess voter ID than registered white voters. Black and Hispanic adults are less likely to have access to a car on a regular basis than white Americans.³⁹ Accordingly, it follows that Black and Hispanic adults would be less likely to possess a valid driver's license, which is the most common type of voter ID.⁴⁰ Similarly, white Americans are more likely than Black and Hispanic Americans to have recently traveled internationally,⁴¹

in Iowa, 57 *DRAKE L. REV.* 783, 799–802 (2009); Neil P. Kelly, Note, *Lessening Cumulative Burdens on the Right to Vote: A Legislative Response to Crawford v. Marion County Election Board*, 19 *CORNELL J.L. & PUB. POL'Y* 243, 274–82 (2009); Louis A. D'Amarino, Article, *Connecting the Dots: Forming a Uniform Voter Identification System Through Established Law*, 8 *U. MASS. L. REV.* 404, 435–40 (2013); Sean Radomski, *A Common-Sense Voter Identification Proposal*, 22 *TEX. REV. L. & POL.* 11, 40–44 (2017).

35. See *infra* Part II.

36. See *infra* Part III.

37. See *infra* Part IV.

38. See *infra* Part V.

39. See Algernon Austin, *To Move Is to Thrive: Public Transit and Economic Opportunity for People of Color*, DEMOS (Nov. 15, 2017), <https://bit.ly/37IIBsa>.

40. See Robert A. Pastor et al., *Voting and ID Requirements: A Survey of Registered Voters in Three States*, 40 *AM. REV. PUB. ADMIN.* 461, 467 (2010) (finding that a driver's license is the most common type of voter ID possessed by registered voters).

41. See Laura Silver, *Most Americans Have Traveled Abroad, Although Differences Among Demographic Groups Are Large*, PEW RSCH. CTR. (Aug. 12, 2021), <https://pewrsr.ch/3uB7z5J>.

suggesting that white Americans are more likely to possess a passport than non-white Americans. Taken together, it seems likely that registered voters of color are less likely to possess voter ID than white registered voters.

Table 1 confirms this: white registered voters are more likely to possess voter ID than Black and Hispanic registered voters based on surveys conducted by social scientists. In some states, the gap between white registered voters and non-white registered voters is relatively slim. For example, a 2012 Pennsylvania survey estimated that 87.6% of white registered voters, 86.1% of Black registered voters, and 83.8% of Hispanic registered voters possessed voter ID.⁴² Similarly, 97.9% of white registered voters in a 2014 Texas survey reported that they had voter ID, compared to 95.1% of Black registered voters and 93.2% of Hispanic registered voters.⁴³ Nevertheless, the racial gap in voter ID possession rates is substantively large in other states. A survey of registered voters in Indiana found that 84.2% of white registered voters possessed voter ID, while only 78.0% of Black registered voters did.⁴⁴ And in Milwaukee County, Wisconsin, 94% of white registered voters had acceptable voter ID, compared with 84.7% of Black registered voters and 88.7% of Hispanic registered voters.⁴⁵

42. Expert Report of Matt A. Barreto at 28, *Applewhite v. Commonwealth*, No. 330 MD 2012 (Pa. Commw. Ct. July 16, 2012).

43. Expert Report Submitted on Behalf of Plaintiffs at 19, *Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014) (No. 13-cv-00193) (“While 2.1 percent of white registered voters do not possess an accepted photo ID, 4.9 percent of Black and 6.8 percent of Latino registered voters lack accepted photo ID.”).

44. Matt A. Barreto et al., *The Disproportionate Impact of Voter-ID Requirements on the Electorate—New Evidence from Indiana*, 42 PS 111, 113 (2009).

45. Expert Report Submitted on Behalf of Plaintiffs at 20, *Frank v. Walker*, 17 F. Supp. 3d 837 (E.D. Wis. 2014) (No. 11-CV-01128) (“While 6.0 percent of white registered voters do not possess an accepted photo ID, 15.3 percent of African American and 11.3 percent of Latino registered voters lack accepted photo ID.”).

Table 1. Percentage of Registered Voters with Voter ID by Race (Surveys)

<i>Location</i>	<i>White ID %</i>	<i>Black ID %</i>	<i>Hispanic ID %</i>	<i>White-Black Difference</i>	<i>White-Hispanic Difference</i>
Pennsylvania	87.6%	86.1%	83.8%	1.5	3.8
Texas	97.9%	95.1%	93.2%	2.8	4.7
Indiana	84.2%	78.2%	n/a	6.0	n/a
Milwaukee, WI	94.0%	84.7%	88.7%	9.3	5.3

However, survey research on voter ID possession rates suffers from two key limitations. First, surveys are imprecise because a very small percentage of registered voters lack voter ID.⁴⁶ That is, while we know approximately how many people lack ID along demographic lines, the fact that so few people lack ID means that surveys cannot be entirely accurate. Second, survey respondents often incorrectly state that they lack voter ID. For instance, a survey of registered voters in Texas’s 23rd Congressional District who did not vote in the 2014 election found that many respondents cited a lack of voter ID as a reason why they did not vote.⁴⁷ Nonetheless, the majority of non-voters who cited a lack of voter ID as a reason for not voting actually possessed voter ID.⁴⁸ A subsequent survey of registered voters in Texas’s 23rd Congressional District and Harris County, Texas found that 95% of registered voters who cited a lack of voter ID as a reason for not voting in the 2016 election actually possessed voter ID.⁴⁹ And in Michigan, over 95% of voters who voted via a signed affidavit—an option

46. See Hochberg, *supra* note 31, at 484 (“[R]esearch on voters who lack ID is imprecise because a small amount of people lack voter ID.”).

47. See Bill Hobby et al., *The Texas Voter ID Law and the 2014 Election: A Study of Texas’s 23rd Congressional District*, UNIV. HOUS. HOBBY CTR. PUB. POL’Y 1 (Aug. 2015), <https://bit.ly/3MjNtDl>.

48. See *id.* at 7 (“[M]ost of the non-voters who stated they did not vote due principally or at least in part to the fact that they did not have one of the required forms of photo identification actually did possess at least one of the seven state-approved forms of photo ID.”).

49. Mark P. Jones et al., *The Texas Voter ID Law and the 2016 Election: A Study of Harris County and Congressional District 23*, UNIV. HOUS. HOBBY SCH. PUB. AFFS. 16 (Apr. 2017), <https://bit.ly/35rt0wx> (“In Harris County 95.0% of those non-voters who strongly agreed or agreed that a reason they did not vote was because of their lack of a required photo ID actually possessed one of the required forms of photo ID, with a nearly identical 95.3% of similar CD-23 non-voters also possessing at least one of the required forms of photo ID needed to cast a vote in person in 2016.”).

for those who lack voter ID—actually possessed valid voter ID.⁵⁰ Thus, while beneficial to gain a general understanding of voter ID possession rates, survey research ultimately cannot give us a clear idea of who possesses voter ID and who does not.

An improved method to understanding racial gaps in voter ID possession rates is matching registered voters to state and federal ID databases. While difficult, matching registered voters to these databases is feasible by cross-referencing social security numbers or by constructing a matching algorithm.⁵¹ Record matching offers several benefits, including increased precision and accuracy; there is no risk of a respondent incorrectly stating that they do or do not possess voter ID.

Under federal law, researchers are generally prohibited from accessing state and federal ID databases, rendering academic research in this field “virtually impossible.”⁵² However, exceptions are often made for expert witnesses retained in the context of voter ID litigation.⁵³ Specifically, these experts are granted access to state and federal ID databases, as well as voter registration records, and are tasked with determining the percentage of registered voters that possess voter ID, both in the aggregate and along various demographic lines.⁵⁴

Table 2 presents the results from expert reports introduced and accepted as evidence in voter ID litigation. In all five states, white registered voters are more likely to possess voter ID than Black and Hispanic registered voters. However, the racial gaps in voter ID possession rates are generally smaller than the gaps identified by survey research. In Alabama, for example, white registered voters are just 1.0 percentage points more likely to possess voter ID than Black registered voters and 0.8 percentage points more likely to possess voter ID than Hispanic registered

50. See Phoebe Henninger et al., *Who Votes Without Identification? Using Individual-Level Administrative Data to Measure the Burden of Strict Voter Identification Laws*, 18 J. EMPIRICAL. LEGAL STUD. 256, 266–67 (2021) (finding that 95.7% of voters who voted via an affidavit possessed state-issued identification).

51. For an example of a matching algorithm, see Stephen Ansolabehere & Eitan D. Hersh, *ADGN: An Algorithm for Record Linkage Using Address, Date of Birth, Gender and Name*, 4 STAT. & PUB. POL'Y 1, 9–16 (2017).

52. See Charles Stewart III, *Voter ID: Who Has Them? Who Shows Them?*, 66 OKLA. L. REV. 21, 24 (2013) (“Because of privacy laws, independent academic research in this area is virtually impossible.”).

53. See Hochberg, *supra* note 31, at 485 (“During voter ID litigation, however, expert witnesses are given access to state and federal databases to determine how many registered voters lack an allowable form of voter ID.”).

54. See *id.*

voters. Similarly, the white-Black and white-Hispanic gaps in Virginia are merely 1.3. and 1.5 percentage points, respectively.

Table 2. Percentage of Registered Voters with Voter ID (Record Matching)

<i>Location</i>	<i>White ID %</i>	<i>Black ID %</i>	<i>Hispanic ID %</i>	<i>White-Black Difference</i>	<i>White-Hispanic Difference</i>
South Carolina ⁵⁵	94.5%	90.5%	90.0%	4.0	4.5
Texas ⁵⁶	96.4%	92.5%	94.2%	3.9	2.1
Virginia ⁵⁷	95.9%	94.6%	94.4%	1.3	1.5
North Carolina ⁵⁸	95.4%	89.9%	n/a	5.5	n/a
Alabama ⁵⁹	98.5%	97.5%	97.7%	1.0	0.8

The racial gap in voter ID possession rates is further slimmed when examining only likely voters, defined as registered voters who voted in the previous election. This distinction is important because most registered voters who lack ID were not active voters in the years preceding the enactment of a voter ID law.⁶⁰ In Texas, for instance, 98.8% of those who voted in the 2010 election were matched to a state or federal ID database in 2014, including 99% of white voters, 97.9% of Black voters, and 98.4% of Hispanic voters.⁶¹ Likewise, 98.5% of active voters in North Carolina were matched to a state and federal ID database, with 99.1% of White and 96.6% of Black active voters possessing a voter ID.⁶² Thus, while there is a gap between active white voter ID possession and active Black and Hispanic voter ID possession, it is a slight one.

55. Rebuttal Declaration of Charles Stewart III, PhD. at 11 Table 2, *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.S.C. 2012) (No. 12-203).

56. Declaration of Stephen D. Ansolabehere at 97 Table VI.2, *Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014) (No. 13-cv-00193).

57. Expert Report of Jonathan Rodden, PhD. at 32 Table 6, *Lee v. Va. St. Bd. of Elections*, 188 F. Supp. 3d 577 (E.D. Va. 2016) (No. 3:15CV357).

58. Declaration of Charles Stewart III, Ph.D. at 38 Table 7, *United States v. North Carolina*, 214 F. Supp. 3d 466 (M.D.N.C. 2016) (No. 1:13CV861).

59. Report of Bernard R. Siskin, Ph.D. at 42 Appendix 4, *Greater Birmingham Ministries v. Alabama*, 284 F. Supp. 3d 1253 (N.D. Ala. 2018) (No. 2:15-cv-02193).

60. See M.V. Hood III & Charles S. Bullock III, *Much Ado About Nothing? An Empirical Assessment of the Georgia Voter Identification Statute*, 12 ST. POL. & POL'Y Q. 394, 402 (2012).

61. Declaration of Stephen D. Ansolabehere, *supra* note 56, at 101 Table VI.4.B.

62. Declaration of Charles Stewart III, *supra* note 58, at 43 Table 10.

III. IMPLEMENTATION OF VOTER ID LAWS

Even though racial gaps in voter ID possession may be relatively slim, voter ID laws can still be implemented in a discriminatory manner. Whether they are implemented in such a way depends primarily on poll workers. Poll workers are the underappreciated, underpaid, and overworked backbone of the American electoral process.⁶³ But despite their importance, poll workers generally receive inadequate training.⁶⁴ The average poll worker training is just 3.5 hours, and in some jurisdictions, 10% of trainings take less than an hour.⁶⁵ And even when poll workers are properly trained, last-second changes to voter ID laws brought about by litigation can render their training obsolete on Election Day.⁶⁶ Therefore, it is not surprising that less than 15% of poll workers in one survey strongly agreed that their training prepared them for Election Day.⁶⁷ Still, little training is better than no training. In some jurisdictions, only a

63. See, e.g., Douglas M. Spencer & Zachary S. Markovits, *Long Lines at Polling Stations? Observations from an Election Day Field Study*, 9 ELECTION L.J. 3, 5 (2010) (noting that poll workers “control the success or failure of each election”).

64. See HEATHER K. GERKEN, *THE DEMOCRACY INDEX: WHY OUR ELECTION SYSTEM IS FAILING AND HOW TO FIX IT* 12 (2009) (“Poll workers are often poorly trained and badly compensated.”); Joshua A. Douglas, *A “Checklist Manifesto” for Election Day: How to Prevent Mistakes at the Polls*, 43 FLA. ST. U. L. REV. 353, 354 (2016) (“[P]oll workers, who run our elections, often have little training.”).

65. See Barry C. Burden & Jeffrey Milyo, *The Quantities and Qualities of Poll Workers*, 14 ELECTION L.J. 38, 44 (2015). There are more than 10,000 election jurisdictions in the United States, most of which operate at the county-level. See Daniel P. Tokaji, *First Amendment Equal Protection: On Discretion, Inequality, and Participation*, 101 MICH. L. REV. 2409, 2511 (2003). For reference, the median jurisdiction in the 2008 election had approximately 2,000 voters, although most Americans reside in a jurisdiction that has at least 50,000 voters. See David C. Kimball & Brady Baybeck, *Are All Jurisdictions Equal? Size Disparity in Election Administration*, 12 ELECTION L.J. 130, 131–32 (2013).

66. See Richard L. Hasen, *Softening Voter ID Laws Through Litigation: Is It Enough?*, 2016 WIS. L. REV. FORWARD 100, 108–11 (describing how voter ID litigation can produce last-second changes to voter ID laws).

67. See Thad Hall et al., *Poll Workers and the Vitality of Democracy: An Early Assessment*, 40 PS 647, 649 (2007) (finding that only 13.9% of poll workers strongly agreed that their training prepared them well for Election Day). However, this survey of poll workers focused on poll workers in Utah and Cuyahoga County, Ohio, so these findings might not be generalizable.

handful of poll workers even receive training before each election.⁶⁸ Other jurisdictions do not require any training for poll workers.⁶⁹

Unsurprisingly, the meager training poll workers receive, coupled with the fact that poll workers have wide discretion and are often unsupervised,⁷⁰ means that poll worker errors and misinterpretations are widespread.⁷¹ During the 2004 primary elections in California, for example, 29% of the “head” poll workers in Los Angeles asserted that voters needed to present a state ID to vote.⁷² But under guidelines issued by the California Secretary of State, a voter only needed to present voter ID if their name was not correctly listed on the voter rolls.⁷³ Hence, nearly three-in-ten of the “head” poll workers in Los Angeles implemented the state’s voter ID law incorrectly. Similar errors occur throughout the United States.⁷⁴

Though poll worker errors are perhaps inevitable, there are reasons to fear that these errors will disproportionately burden voters of color. While poll workers may not intend to target voters of color, their implicit and unconscious biases can influence their decision-making.⁷⁵ Consider that many states allow voters to cast their ballot even if their voter ID is not an

68. See David C. Kimball et al., *Survey of Poll Worker Recruitment, Training, and Evaluation Practices by Local Election Officials*, UNIV. MO. ST. LOUIS 23 (June 11, 2010), <https://bit.ly/3AC6YEk> (“In smaller jurisdictions, poll worker training is often required just once a year or once every two years.”).

69. Burden & Milyo, *supra* note 65, at 44 (“Nearly every state requires some form of training, although a few do not.”).

70. See Mara Suttman-Lea, *Poll Worker Decision Making at the American Ballot Box*, 48 AM. POL. RSCH. 714, 715 (2020) (noting that poll workers operate with little oversight and have wide discretion).

71. See Douglas, *supra* note 64, at 354 (noting that poll workers err in every election).

72. Matt A. Barreto et al., *Are All Precincts Created Equal?: The Prevalence of Low-Quality Precincts in Low-Income and Minority Communities*, 62 POL. RSCH. Q. 445, 450–51 (2009).

73. See *id.* at 450 (“The Secretary of State of California instructs poll workers that no identification is necessary if the voter’s name is correctly listed on the rolls.”).

74. See Alex Napoliello, *Signs Requiring Voters to Show ID Posted in N.J. Polling Place*, NJ.COM (Nov. 8, 2016, 8:46 PM), <https://bit.ly/3Q5Qtpv>; Laura Benshoff, *Some Pa. Poll Workers Illegally Asked Voters to Show ID*, WHYY (Nov. 9, 2016), <https://bit.ly/3aMQE93>; Kira Lerner, *South Carolina Voters Are Getting Misleading Instructions About Voter ID*, THINKPROGRESS (Feb. 19, 2016, 1:08 PM), <https://bit.ly/3MwncBn>.

75. See Anthony Page & Michael J. Pitts, *Poll Workers, Election Administration, and the Problem of Implicit Bias*, 15 MICH. J. RACE & L. 1, 1 (2009) (“[T]here is a strong possibility that unconscious bias could play a role in poll worker decision-making [and] the result may be race-based discrimination between prospective voters.”).

exact match to the voter rolls, so long as the name on the ID is similar to the name on the voter roll.⁷⁶ It could be that poll workers, who are a largely white group,⁷⁷ are more likely to allow a white voter to vote when their ID is not a perfect match than a non-white voter in a similar situation.⁷⁸ A recent audit experiment bolstered concerns that voter ID laws will not be implemented in a racially-neutral manner, finding that election administrators are less responsive to Latino constituents than they are to white constituents who ask whether they need voter ID to vote.⁷⁹ These results are consistent with research on the bias of government employees and political elites in general.⁸⁰

Indeed, fears of poll worker bias are well-founded: national surveys have found that poll workers ask voters of color to show their voter ID more often than white voters. During the 2006 general election, 47% of white, 54% of Hispanic, and 55% of Black voters were asked to show their voter ID.⁸¹ Similarly, 53% of white, 58% of Hispanic, and 73% of Black voters were asked to show their voter ID during the 2008 Super Tuesday primary.⁸² And in the 2008 general election, only 51% of white voters were asked to show their ID, compared to 65% of Hispanic and 70% of Black voters.⁸³ Notably, these racial differences remain even after controlling for a voter's state of residence and the relative stringency of the state's voter ID law.⁸⁴

76. See Michael J. Pitts, *Photo ID, Provisional Balloting, and Indiana's 2012 Primary Election*, 47 U. RICH. L. REV. 939, 945–946 (2013).

77. See Hall et al., *supra* note 67, at 649; see also Thad E. Hall & Kathleen Moore, *Poll Workers and Polling Places 9* (Caltech/MIT Voting Tech. Project, VTP Working Paper # 104, 2011), <https://bit.ly/3NBYild>.

78. See Page & Pitts, *supra* note 75, at 38; Lauren Watts, Comment, *Reexamining Crawford: Poll Worker Error as a Burden on Voters*, 89 WASH. L. REV. 175, 199 (2014); Arusha Gordon & Ezra D. Rosenberg, *Barriers to the Ballot Box: Implicit Bias and Voting Rights in the 21st Century*, 21 MICH. J. RACE & L. 23, 34–38 (2015).

79. See Ariel R. White et al., *What Do I Need to Vote? Bureaucratic Discretion and Discrimination by Local Election Officials*, 109 AM. POL. SCI. REV. 129, 130 (2015).

80. See Matthew S. Mendez & Christian R. Grose, *Doubling Down: Inequality in Responsiveness and the Policy Preferences of Elected Officials*, 43 LEGIS. STUD. Q. 457, 458 (2018); Ethan Porter & Jon C. Rogowski, *Partisanship, Bureaucratic Responsiveness, and Election Administration: Evidence from a Field Experiment*, 28 J. PUB. ADMIN. RSCH. & THEORY 602, 603 (2018); Mia Costa, *How Responsive Are Political Elites? A Meta-Analysis of Experiments on Public Officials*, 4 J. EXPERIMENTAL POL. SCI. 241, 252 (2017).

81. Stephen Ansolabehere, *Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day*, 42 PS 127, 128 (2009).

82. *Id.*

83. R. Michael Alvarez et al., *2008 Survey of the Performance of the American Elections: Final Report*, ELECTIONS DEL. 2 (2010), <https://bit.ly/3nSubWy>.

84. See *id.* at 43 (“Even after controlling for state laws, there is a sizable difference across racial groups in the administration of voter identification.”); Ansolabehere, *supra*

One concern with national surveys regarding the implementation of voter ID laws is that their results may be driven by unobserved, state-specific contexts. However, survey research in specific localities obtains results similar to national surveys. For example, a survey of voters in New Mexico's 1st Congressional District following the 2006 election revealed that Hispanic voters were approximately 15 percentage points more likely to be asked to show their ID than the median voter, even after controlling for other factors.⁸⁵ Similarly, an exit poll fielded in Boston, Massachusetts during the 2008 general election found that voters of color were more likely to be asked to show their ID than white voters.⁸⁶ Specifically, the probability that a white voter would be asked to show their ID was 27%, but increased to 37% for Black voters and 40% for Hispanic voters.⁸⁷ Hence, whether at the national or local level, voter ID laws are not implemented in a racially-neutral manner.

IV. EFFECTS OF VOTER ID LAWS ON MINORITY TURNOUT

While empirical research confirms that voter ID laws are not implemented in a racially-neutral manner, these laws' impact on minority voter turnout appears to be relatively benign. Following the proliferation of voter ID laws in the 2000s, many social scientists have sought to quantify the effects of voter ID laws by determining whether voter ID laws decrease voter turnout.⁸⁸ Most studies on this topic fail to find evidence that voter ID laws reduce voter turnout, although a few have found small but statistically significant effects.⁸⁹ In reviewing the literature on voter ID laws and aggregate turnout in a 2017 article, Professor Benjamin Highton concluded that "the claim that voter identification laws depress turnout to a substantial degree is difficult to sustain based on existing evidence."⁹⁰

note 81, at 128 ("These racial differences persisted upon holding constant income, education, party identification, age, region, state laws, and other factors."). *But see* Stewart III, *supra* note 52, at 48 (finding sizeable racial differences in states with relatively loose voter ID laws but not in states with relatively strict laws).

85. See Lonna Rae Atkeson et al., *A New Barrier to Participation: Heterogenous Application of Voter Identification Policies*, 29 ELECTORAL STUD. 66, 70 (2010).

86. See Rachel V. Cobb et al., *Can Voter ID Laws Be Administered in a Race-Neutral Manner? Evidence from the City of Boston in 2008*, 7 Q.J. POL. SCI. 1, 2 (2012) ("We find strong evidence that Hispanic and black voters were asked for identification at higher rates than white voters, even after adjusting for a number of other factors.").

87. *Id.* at 22.

88. For a review of these studies, see Benjamin Highton, *Voter Identification Laws and Turnout in the United States*, 20 ANN. REV. POL. SCI. 149, 155–64 (2017).

89. See *id.*; see also Samuel Issacharoff, *Ballot Bedlam*, 64 DUKE L.J. 1363, 1381–82 (2015).

90. Highton, *supra* note 88, at 163.

However, a more important question is whether voter ID laws suppress minority turnout relative to white turnout. The early answer to this question was no. One study analyzing data from the Current Population Survey (“CPS”)⁹¹ collected between 2000 and 2006 found no evidence that voter ID laws decreased minority turnout during this period.⁹² A similar study examining CPS data over a longer period, from 1980 until 2010, came to the same conclusion.⁹³ And researchers from the University of Georgia found no evidence that Georgia’s voter ID law disproportionately suppressed voters of color during the 2008 election.⁹⁴ In sum, the first wave of articles on this topic found no evidence that voter ID laws disproportionately decrease minority voter turnout.

The general tenor of the literature changed in 2017 when Zoltan Hajnal, Nazita Lajevardi, and Lindsay Nielson published *Voter Identification Laws and the Suppression of Minority Votes*.⁹⁵ Using Congressional Cooperative Election Study (“CCES”)⁹⁶ data from 2006 to 2014, Hajnal and his colleagues estimated that strict voter ID laws result in roughly a 9% decrease in Black and Hispanic turnout in primary elections.⁹⁷ The authors also found that strict voter ID laws decrease

91. The CPS is a monthly survey fielded by the United States Census Bureau and the Bureau of Labor Statistics. Due to its large sample size and high response rate, the CPS is viewed by many as the “gold standard among turnout surveys.” See Aram Hur & Christopher H. Achen, *Coding Voter Turnout Responses in the Current Population Survey*, 77 PUB. OP. Q. 985, 985 (2013).

92. See R. Michael Alvarez et al., *The Effect of Voter Identification Laws on Turnout* 18 (Cal. Inst. of Tech., Social Science Working Paper 1267R, 2008) (“[W]e can reject the hypothesis that there is a substantial racial difference in the impact of voter identification requirements.”).

93. See Rene R. Rocha & Tetsuya Matsubayashi, *The Politics of Race and Voter ID Laws in the States: The Return of Jim Crow?*, 67 POL. RSCH. Q. 666, 675 (2014).

94. See Hood III & Bullock III, *supra* note 60, at 409.

95. See Zoltan Hajnal et al., *Voter Identification and the Suppression of Minority Votes*, 79 J. POL. 363, 368 (2017). That this article was published in the *Journal of Politics* (“JOP”) is notable given that the JOP is one of the “big 3” political science journals. See Joshua D. Kertzer & Jonathan Renshon, *Experiments and Surveys on Political Elites*, 25 ANN. REV. POL. SCI. 529, 530–31 (2022).

96. The CCES is an annual survey featuring more than 50,000 respondents. Data from the CCES has been analyzed in more than 100 academic articles. A list of publications leveraging CCES data is available on the CCES website. See *Cooperative Election Study*, HARV. UNIV., <https://bit.ly/3TW4TKx> (last visited Sept. 8, 2022).

97. See Hajnal et al., *supra* note 95, at 368 (“[A] strict ID law could be expected to depress Latino turnout by 9.3 percentage points [and] black turnout by 8.6 points . . .”).

Hispanic turnout in general elections.⁹⁸ These remarkable findings garnered extensive attention.⁹⁹

However, political scientists heavily criticized Hajnal, Lajevardi, and Nielson's work.¹⁰⁰ The strongest rebuttal article came from a consortium of political scientists who opined that the data Hajnal and his colleagues analyzed did not accurately measure the dependent variable¹⁰¹ and that the authors made several coding errors.¹⁰² These mistakes rendered their findings "unsupported."¹⁰³ Another group of researchers sought to replicate Hajnal, Lajevardi, and Nielson's conclusions using voter turnout data from the CPS (instead of the CCES), but found no evidence that voter ID laws decrease minority turnout.¹⁰⁴ Thus, the value of Hajnal and his colleagues' research on how voter ID laws impact minority turnout is seriously debatable.

In subsequent years, there has been a steady trickle of research on the effects of voter ID laws on minority voter turnout. Consistent with earlier research, nearly all scholars continue to find little evidence that voter ID laws disproportionately suppress voters of color.¹⁰⁵ The most comprehensive and statistically powerful study to date was conducted by

98. *See id.* ("In the general elections, the model predicts that Latinos are 10% less likely to turn out in states with strict ID laws than in states without strict ID regulations, all else equal.")

99. *See* Jay Willis, *Study: Those Allegedly Racist Voter ID Laws Are Actually Pretty Racist*, GQ (Feb. 15, 2017), <https://bit.ly/3vaK7fO>; Van R. Newkirk II, *How Voter ID Laws Discriminate*, THE ATL. (Feb. 18, 2017), <https://bit.ly/3MlmYNu>.

100. *See* Barry C. Burden, *Disagreements over ID Requirements and Minority Voter Turnout*, 80 J. POL. 1060, 1061–62 (2018).

101. *See* Justin Grimmer et al., *Obstacles to Estimating Voter ID Laws' Effect on Turnout*, 80 J. POL. 1045, 1046 (2018) (noting that the CCES is ill-suited to measure state-level turnout).

102. *See id.* at 1046, 1048.

103. *Id.* at 1046.

104. *See* Ben Pryor et al., *Voter ID Laws: The Disenfranchisement of Minority Voters?*, 134 POL. SCI. Q. 63, 81 (2019) ("[W]hen we analyzed CPS data, the results differed from those of Hajnal, Lajevardi and Nielson, finding that strict voter ID laws did not disproportionately disenfranchise particular minority groups.")

105. *See, e.g.*, BERNARD L. FRAGA, *THE TURNOUT GAP: RACE, ETHNICITY, AND POLITICAL INEQUALITY IN A DIVERSIFYING AMERICA* 184 (2018); Lauren R. Heller et al., *Voter ID Laws and Voter Turnout*, 47 ATL. ECON. J. 147, 155 (2019); M.V. Hood & Scott E. Buchanan, *Palmetto Postmortem: Examining the Effects of the South Carolina Voter Identification Statute*, 73 POL. RSCH. Q. 492, 501 (2020). *But see* John Kuk et al., *A Disproportionate Burden: Strict Voter Identification Laws and Minority Turnout*, 10 POL. GRPS. & IDENTITIES 126, 132 (2022) (finding that after strict voter ID laws were enacted, the turnout gap between racially diverse counties and less racially diverse counties grew).

economists Enrico Cantoni and Vincent Pons.¹⁰⁶ The authors leveraged a panel dataset of more than 1.5 billion observations and found no evidence whatsoever that voter ID laws decrease turnout for any racial group.¹⁰⁷

However, it is important to note that the scholarship on voter ID laws' effects on voter turnout suffers from methodological shortcomings. Specifically, two of the most common surveys used to estimate voter turnout—CCES and CPS—are flawed: the CCES does not accurately measure state-level voter turnout,¹⁰⁸ and the CPS overstates minority turnout.¹⁰⁹ Given that Enrico Cantoni and Vincent Pons calculated voter turnout using administrative records covering the entire universe of registered voters, along with their thoroughness, their work is now viewed as the controlling authority on the effects of voter ID laws on minority voter turnout.¹¹⁰ Hence, there is scant evidence that voter ID laws have any disproportionate impact on minority turnout.

V. CONCLUSION

Over the past two decades, many scholars, politicians, and civil rights advocates have denounced voter ID laws, arguing that these laws are more likely to burden voters of color than white voters, are not implemented in a racially-neutral manner, and disproportionately suppress voters of color.¹¹¹ The empirical research evaluated in this Article lends credence to some, but not all, of these claims. First, registered voters of color are less likely to possess voter ID than white registered voters, although the racial gap in ID possession rates is slim. Second, voters of color are more likely to be asked to show their voter ID than white voters, even after controlling for an array of variables. And third, there is little evidence that voter ID laws disproportionately decrease minority turnout relative to white turnout.

As is the case with all research, however, empirical scholarship on the nexus between race and voter ID laws has several limitations. First, extant research likely overstates the number of registered voters who lack voter

106. See Cantoni & Pons, *supra* note 19, at 2643.

107. See *id.* (“[W]e do not find any significant direct or differential effect of the laws on Blacks and on voters of other races. The bottom line is that strict ID laws did not decrease the participation of any race group.”).

108. See Grimmer et al., *supra* note 101, at 1046.

109. See Stephen Ansolabehere et al., *The Current Population Survey Voting and Registration Supplement Overstates Minority Turnout*, 84 J. POL. 1850, 1851 (2022).

110. See Emily Rong Zhang, *Questioning Questions in the Law of Democracy: What the Debate over Voter ID Laws' Effects Teaches About Asking the Right Questions*, UCLA L. REV. (forthcoming 2022).

111. See *supra* notes 24–30 and accompanying text.

ID, as many states do not require that the ID presented to poll workers be an exact match to the voter registration database.¹¹² Additionally, many registered voters who lack voter ID would not vote in the first place, even if they had voter ID.¹¹³ Second, the literature on the disparate implementation of voter ID laws is relatively old; the most recent inquiries on this topic rely on data over ten years old.¹¹⁴ Third, it is possible that voter ID laws do in fact disproportionately suppress voters of color, but the effects are so small that they cannot be detected.¹¹⁵ Alternatively, it is possible that voter ID laws would have disproportionate suppressive effects, but these effects are combatted by countermobilization through formal campaign efforts¹¹⁶ or grassroots organizing driven by Democrats and racial minorities who feel targeted by voter ID laws.¹¹⁷

Despite these findings, much remains unknown. For example, despite poll workers' importance, the empirical literature on which poll workers ask for voter ID—and when they do—can only be described as paltry.¹¹⁸ In addition, researchers are only now able to examine the quantities and qualities of registered voters who want to vote but cannot do so because of voter ID laws.¹¹⁹ To this end, I hope research on the nexus between race and voter ID laws continues to flourish. Until then, however, it appears that voter ID laws will continue to disproportionately burden voters of color, although perhaps not to the extent previously feared.

112. See Hopkins et al., *supra* note 3, at 84; Pitts, *supra* note 76, at 945.

113. See Hopkins et al., *supra* note 3, at 84.

114. See *supra* notes 81–87 and accompanying text.

115. See Zhang, *supra* note 110.

116. See Jacob R. Neiheisel & Rich Horner, *Voter Identification Requirements and Aggregate Turnout in the U.S.: How Campaigns Offset the Costs of Turning Out When Voting Is Made More Difficult*, 18 ELECTION L.J. 227, 227 (2019).

117. See Valentino & Neuner, *supra* note 29, at 347.

118. Lonna Rae Atkeson et al., *Who Asks for Voter Identification? Explaining Poll-Worker Discretion*, 76 J. POL. 944, 944 (2014) (“[E]xisting literature has not clearly explained why voter ID laws are inconsistently applied . . .”).

119. Bernard L. Fraga & Michael G. Miller, *Who Do Voter ID Laws Keep From Voting?*, 84 J. POL. 1091, 1091 (2022) (“[W]e provide the first direct documentation of the traits of voters who would be stopped from voting under strict identification laws.”).