

ISSUE BRIEF

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Lessons from the Voter ID Experience in Tennessee

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The latest data from Tennessee about the state's experience with its new photographic voter identification law show that this requirement has done nothing to suppress voter turnout throughout the state. In fact, overall turnout in Tennessee was slightly higher, and black voters turned out at *higher* rates than white voters in the first election held after the law became effective.

The claims made by voter ID opponents that the law would prevent minorities and other Tennesseans from being able to vote have been shown to be untrue.

Voter ID Requirements. Tennessee's Voter Identification Act, which became effective in 2012, requires almost all in-person voters to present a valid photo ID when voting. Acceptable IDs include:

- A Tennessee driver's license with a photo;
- A U.S. passport;
- A photo ID issued by the Tennessee Department of Safety and Homeland Security;
- A photo ID issued by the federal or Tennessee state government, including employee IDs;
- A U.S. military photo ID; and
- A Tennessee handgun carry permit with a photo.¹

Free photo IDs can be obtained at 48 of the 49 Driver Service Centers across the state. These centers offer appointments and an "express service" to expedite the process for citizens seeking free government-issued IDs for voting.² There is an exemption to the voter ID requirement for voters who:

- Are residents of a licensed nursing home or assisted living center who vote at the facility;
- Vote by absentee mail;
- Are hospitalized within 20 days of the election;
- Have a religious objection to being photographed; or
- Are indigent and unable to obtain a free photo ID without paying a fee for an underlying document needed to get an ID, such as a birth certificate.³

A person who attempts to vote in person without a valid ID and who does not meet one of the exemptions can vote by provisional ballot. The ballot will be counted if the voter presents proof of identification to election officials "by the close of business on the second business day after the election."⁴

Court Decisions. A lawsuit filed in 2012 claimed the voter ID law was both facially unconstitutional under the state's constitution and unconstitutional as applied to the plaintiffs specifically. In October

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2013, the Tennessee Supreme Court held that the law was constitutional and did not infringe upon any voting rights.⁵

The court dismissed the plaintiffs' claims that requiring a voter ID placed an "undue burden on their right to vote" simply because it required "time and travel" to obtain an ID card.⁶ The court recognized the "compelling nature of the state's interest in the integrity of the election process" and explicitly rejected the "notion that a state must present evidence that it has been afflicted by voter fraud" before it can enact laws intended to prevent fraud.⁷

A federal judge similarly dismissed claims by the Green Party of Tennessee that the law violated the Tennessee and U.S. Constitutions, the Help America Vote Act of 2002 and the National Voter Registration Act.⁸ The Green Party even claimed that travel and other expenses incurred in obtaining a free ID card amounted to an "unconstitutional constructive poll tax," a claim that has been consistently rejected by numerous courts.⁹ The court stated that the U.S. Supreme Court's decision upholding Indiana's voter ID law in *Crawford v. Marion County Election Board* "is the controlling precedent." Tennessee's voter ID law is "virtually identical" to the Indiana case.¹⁰

Turnout in Presidential Elections. In 2008, when Tennessee had no voter ID requirement in place, 53.6 percent of the voting-age population (VAP) turned out to vote, according to a Census Bureau survey—4.6 percentage points *below* the

national rate of 58.2 percent.¹¹ In 2012, after Tennessee enacted its voter ID requirement, 53.7 percent of the state's VAP voted, a very slight uptick in turnout from 2008.¹² The national turnout rate dropped to 56.5 percent.

So in 2012, when Tennessee's voter photo ID requirement was in place for the first time in a general election and the turnout nationally went down from 2008, the turnout rate in Tennessee was slightly up and only 2.8 percentage points below the national rate. Tennesseans actually did better in 2012 with the new photo ID law in place in comparison to national turnout, and the turnout rate in Tennessee actually rose slightly from what it was in 2008.

Tennessee also had better turnout in 2012 than other states with *no* ID requirement. For example, according to the Census survey, the turnout rate in California (47.5 percent), Nevada (51.4 percent), New York (50.9 percent), and West Virginia (47.5 percent)—none of which has voter ID requirements—was below the turnout rate in Tennessee. Last year, undercover agents for the Department of Investigation of the City of New York were able to impersonate and obtain ballots for 61 registered voters out of 63 attempts because of the lack of an ID requirement and lax security in polling places.¹³ New York's turnout in 2012 was almost 3 percentage points below that of Tennessee.

Black and Hispanic Turnout. In 2008, according to the Census Bureau, 60.8 percent of the black VAP voted in the general election, and 31.6 percent

1. Tennessee Secretary of State, "Voter Identification Requirements," <https://www.tn.gov/sos/election/photoID.htm> (accessed February 23, 2014). See also Tenn. Code Ann. 2-7-112(c). The law was enacted on January 1, 2012, and amended effective April 23, 2013.
2. Tennessee Department of Safety and Homeland Security, "Voter ID Law," <http://www.tn.gov/safety/photoIDs.shtml> (accessed February 23, 2014).
3. Tennessee Secretary of State, "Voter Identification Requirements."
4. Tenn. Code Ann. 2-7-112(e)(5).
5. *Memphis v. Hargett*, 414 S.W.3d 88 (Tenn. 2013).
6. *Ibid.* at 108.
7. *Ibid.* at 103-104.
8. *Green Party of Tennessee v. Hargett*, Case No. 2:13-224 (E.D. TN Feb. 20, 2014).
9. See, e.g., *Common Cause of Georgia v. Billups*, 439 F.Supp.2d 1294, 1354 (N.D. Ga. 2006), and *Indiana Democratic Party v. Rokita*, 458 F.Supp.2d 775, 826-827 (S.D. Ind. 2006).
10. *Green Party of Tennessee v. Hargett*, slip op. at 13, and *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).
11. U.S. Department of Commerce, U.S. Census Bureau, "Voting and Registration in the Election of November 2008—Detailed Tables," Table 4b, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html> (accessed February 24, 2014).
12. *Ibid.*
13. Carl Campanile, "The Dead Can Vote in NYC," *New York Post*, December 30, 2013, <http://nypost.com/2013/12/30/the-dead-can-vote-in-nyc/> (accessed March 24, 2014). For an extensive look at a case of widespread impersonation fraud in New York, see Hans A. von Spakovsky, "Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation," Heritage Foundation *Legal Memorandum* No. 22, March 10, 2008, <http://www.heritage.org/research/reports/2008/03/stolen-identities-stolen-votes-a-case-study-in-voter-impersonation>.

of the Hispanic VAP voted nationwide. In Tennessee, African American VAP turnout was 58.1 percent, and Hispanic VAP turnout was 19.2 percent.¹⁴ Since white VAP turnout was only 53.7 percent, blacks voted at a higher rate than whites by slightly more than 4 percentage points.

In 2012, the national voter turnout of the African American VAP increased to 62 percent. Hispanic VAP turnout jumped modestly to 31.8 percent. Just as in 2008, African American voter turnout in Tennessee (57.4 percent) was below the national turnout rate. However, this result was a mere 0.7 percentage point decrease from 2008 and fell within the margin of error for the Census survey, so essentially there was no difference. Black Tennesseans still outvoted whites by 4 percentage points in 2012, since the white voting rate was only 53.4 percent.

Thus, even with a new photo ID requirement in place for the first time, blacks still voted at a *higher* rate than whites. Hispanic VAP turnout in Tennessee saw a huge increase in turnout in 2012, with 34.7 percent showing up to vote, nearly doubling turnout from 2008.¹⁵

Moving Forward with Voter ID. Voter ID in Tennessee does not impede its citizens from exercising their right to vote. Statewide turnout in Tennes-

see actually increased slightly from 2008 to 2012, after its voter ID law went into effect, while there was an overall decline in turnout seen across the country.

Black voters in Tennessee voted at a higher rate than white voters in 2012 while turnout of Hispanic voters almost doubled. This despite constant claims that voter ID was going to have drastic negative effects on minority voters.

Multiple courts, including the U.S. Supreme Court and the Tennessee Supreme Court, have found voter ID laws constitutional and not a burden on voters. As the Tennessee legislature concluded, voter ID is simply a common-sense reform that is needed to protect the security of elections. The goals of voter ID are simple: to fight against voter fraud, to maintain public confidence in the democratic process, and to ensure the legitimacy of elections in America.

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14. U.S. Department of Commerce, "November 2008—Detailed Tables," Table 4b.

15. *Ibid.*