

# BACKGROUND

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## Revisiting the Lessons from the Voter ID Experience in Texas: 2015

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### Abstract

*Critics of the Texas voter identification law claim that a voter ID requirement suppresses voter turnout. However, turnout data from elections held with the voter ID law in place show that there is no evidence whatsoever that this requirement has prevented Texans from turning out to vote. In fact, turnout increased during the 2013 state elections—despite the enactment of the new voter ID requirement. Likewise, during the 2014 midterm elections—a contest that saw voter participation plummet across the U.S.—turnout in Texas declined at a smaller rate than the national average and a smaller rate than the rates in 12 states that have no ID requirement.*

Texas passed its photographic voter identification law in 2011, and since then, critics have claimed that this requirement has suppressed voter turnout.<sup>1</sup> However, turnout data from elections held with the voter ID law in place show that there is no evidence whatsoever that this requirement has prevented Texans from turning out to vote.

Since 2013, when its voter ID law was implemented, Texas has conducted one state election (in addition to various local elections and primaries) and one midterm congressional election. In the state election, turnout increased, and while turnout declined slightly in the congressional midterm election—an election in which turnout generally declined across the country—the decline in Texas was less than declines in some states that have no ID requirement.

### KEY POINTS

- There is no evidence whatsoever that new voter ID requirements have prevented Texans from turning out to vote.
- In addition to a valid photo ID, Texas also allows individuals to use a large number of other, secondary documents to obtain an Election Identification Certificate. The very small number of individuals in Texas who do not already have a qualifying ID can obtain an EIC in three different ways.
- Texas recognizes 28 types of “supporting identification,” including voter registration cards, school records, insurance policies, military records, Social Security cards, W-2 forms, Medicare or Medicaid cards, immunization records, tribal membership cards, and government agency ID cards, among others.
- It is improbable that any Texas resident could credibly claim not to have access to at least some of the documents required to meet the voter ID requirements.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3042>

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## Requirements of the Texas Voter ID Law

The Texas law requires in-person voters to present a valid photo ID when voting. Forms of acceptable ID include:

- A Texas driver's license issued by the Texas Department of Public Safety (DPS);
- A Texas Election Identification Certificate issued by the DPS;
- A Texas personal identification card issued by the DPS;
- A Texas concealed handgun license issued by the DPS;
- A U.S. military identification card containing the person's photograph; or
- A U.S. passport.<sup>2</sup>

There are several exemptions to the law, including exemptions for individuals who have a religious objection to being photographed, persons who lack ID as a result of a natural disaster, and disabled voters.<sup>3</sup> Voters who are 65 or older can vote by absentee ballot without a photo ID.<sup>4</sup>

Normally, an individual obtaining a certified birth certificate is charged a fee of \$2 or \$3.<sup>5</sup> However, the Texas Department of State Health Services has waived most of the fees for obtaining a birth certificate that may be needed to get a free voter ID—the Election Identification Certificate (EIC).<sup>6</sup> In

addition, on May 27, 2015, the Texas governor signed into law a bill, passed unanimously by the state legislature, that eliminated *all* fees associated with obtaining *any* state records needed as supporting documentation to get an EIC.<sup>7</sup>

Texas also allows individuals to use a large number of other, secondary documents to obtain an EIC. The very small number of individuals in Texas who do not already have a qualifying ID can obtain an EIC in three different ways:

- Present one “primary” ID,
- Present two “secondary” IDs, or
- Present one “secondary” ID plus two pieces of “supporting identification.”<sup>8</sup>

A “primary” ID is a Texas driver's license or personal ID card issued by the DPS that has been expired for less than two years.<sup>9</sup> “Secondary” IDs include a birth certificate, a U.S. Department of State certification of birth, a court order that records a change in name or gender, and citizenship or naturalization papers without a photo.<sup>10</sup>

Texas recognizes 28 types of “supporting identification,” including voter registration cards, school records, insurance policies, military records, Social Security cards, W-2 forms, Medicare or Medicaid cards, immunization records, tribal membership cards, and government agency ID cards, among others.<sup>11</sup> It is improbable that any Texas resident could credibly claim not to have access to at least some of these documents.

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1. Andrew Cohen, “How Voter ID Laws Are Being Used to Disenfranchise Minorities and the Poor,” *The Atlantic*, March 16, 2012, <http://www.theatlantic.com/politics/archive/2012/03/how-voter-id-laws-are-being-used-to-disenfranchise-minorities-and-the-poor/254572/> (accessed July 17, 2015); Trip Gabriel and Manny Fernandez, “Voter ID Laws Scrutinized for Impact on Midterms,” *The New York Times*, November 18, 2014, [http://www.nytimes.com/2014/11/19/us/voter-id-laws-midterm-elections.html?\\_r=0](http://www.nytimes.com/2014/11/19/us/voter-id-laws-midterm-elections.html?_r=0) (accessed July 17, 2015).

2. Tex. Elec. Code Ann. §63.0101.

3. *Ibid.*, §65.054(b)(2)(B) and (b)(2)(C), §13.002(i), and §63.001(h); see also §82.002.

4. *Ibid.*, §82.003.

5. Tex. Health & Safety Code Ann. §191.0045.

6. 25 Tex. Admin. Code §181.22(c), (t); 38 Tex. Reg. 7307 (Oct. 18, 2013).

7. Senate Bill 983, Act of May 25, 2015, 84th Leg., R.S., ch. 130.

8. 37 Tex. Admin. Code §15.181, §15.182(1).

9. *Ibid.*, §15.182(2).

10. *Ibid.*, §15.182(3).

11. *Ibid.*, §15.182(4).

Finally, Texas provides a provisional ballot to any voter who comes to a polling place without an ID.<sup>12</sup> In such a scenario, the precinct election official is required to give that voter written information that describes the ID requirement, the procedure for presenting an ID, a map showing the location where an ID can be presented, and notice that if these procedures are followed within six days after the election, the vote will count.<sup>13</sup>

Given how easy it is to obtain a voter ID for the few individuals in Texas who do not already have one, it should come as no surprise that turnout does not seem to have been adversely affected by the new law. In fact, there are so few Texans who do not already possess a photographic ID that as of April 17, 2015, the Texas Department of Public Safety reported that “fewer than twenty individuals statewide have been issued an EIC.”<sup>14</sup>

### 2013 State Election

Although the Texas voter ID legislation was passed in 2011, as a result of an objection filed by former U.S. Attorney General Eric Holder under Section 5 of the Voting Rights Act, the law was not in effect for the 2012 presidential election.<sup>15</sup> However, that objection became moot in 2013 when the U.S. Supreme Court held in *Shelby County v. Holder* that the coverage formula for Section 5, which dictated the state’s inclusion under the Section 5 preclearance regime, was unconstitutional.<sup>16</sup> Thus, the law was in effect for the Texas constitutional state election in November 2013 and the midterm congressional elections in 2014.

As explained in an earlier Heritage study, turnout in the 2013 state election on nine constitutional

amendments almost doubled, in comparison to the 2011 state election on 10 amendments when the ID law was not in effect.<sup>17</sup> As that paper outlined:

The number of registered voters in Texas in 2011, when the voter ID law was not in effect, was 12,841,808. In 2013, after the law had been implemented, there were 13,445,285 registered voters by the November elections.

Statewide turnout among registered voters for the 2013 constitutional election in Texas was 8.55 percent (1,149,337 voters)—a number remarkably higher than the turnout in 2011, which was only 5.37 percent (690,052 voters) of registered voters. The turnout of the voting-age population in 2013 was 7.93 percent, compared to only 3.77 percent in the 2011 election. It is hard to equate a doubling of the percentage increase in voter turnout with any form of voter suppression, particularly when the Census estimates that there was only a 5.2 percent increase in the total Texas population from April 1, 2010, to July 1, 2013.<sup>18</sup>

Some counties with large minority populations like Webb County and Hidalgo County, which are 95 percent and 91 percent Hispanic, respectively, had even bigger increases in turnout.<sup>19</sup>

### 2014 Midterm Elections

In the 2010 midterm congressional election, one year before Texas passed its voter identification law, the turnout of the Voting-Eligible Population (VEP) in Texas was 32.1 percent.<sup>20</sup> In the 2014 midterm

12. Tex. Elec. Code Ann. §63.001(g).

13. *Ibid.*, §63.001(g), §65.0541.

14. Texas Department of State Health Services, “Birth Certificate for Election Identification,” <http://www.dshs.state.tx.us/vs/field/Birth-Certificate-for-Election-Identification/> (accessed July 21, 2015).

15. *Texas v. Holder*, 888 F. Supp.2d 113 (D.D.C. 2012).

16. *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). Based on *Shelby County*, the Supreme Court vacated the Texas decision; see *Texas v. Holder*, 133 S. Ct. 2886.

17. Hans A. von Spakovsky, “Lessons from the Voter ID Experience in Texas,” Heritage Foundation *Issue Brief* No. 4146, February 11, 2014, <http://www.heritage.org/research/reports/2014/02/lessons-from-the-voter-id-experience-in-texas>.

18. *Ibid.*, pp. 1-2.

19. *Ibid.*, p. 2.

20. The Voting-Eligible Population is the voting-age population minus all individuals of voting age who are ineligible to vote, such as noncitizens and felons. VEP is usually the most accurate measure of turnout. The VEP numbers used in this paper are the “VEP Highest Office” turnout rates from the United States Election Project. See United States Election Project, University of Florida, website, <http://www.electproject.org/home/voter-turnout/voter-turnout-data> (accessed June 9, 2015).

congressional election—conducted with the ID requirement in place—the VEP turnout was 28.3 percent, a slight decrease of 3.8 percentage points in a year in which Texas did not have a competitive statewide race. In the same two elections, the VEP turnout for the United States as a whole fell 5.0 percentage points, so the decline in turnout in Texas was actually less than the overall national decline in turnout.<sup>21</sup>

Thirty-three states currently have some form of voter identification requirement.<sup>22</sup> By analyzing the decline in turnout throughout the 17 states that lack a voter ID requirement, it is clear that many of those states experienced a much more significant decline in turnout than Texas experienced in the 2014 election.

Fifteen of the 17 states experienced decreased VEP turnout between 2010 and 2014, and 12 of those 17 states experienced a greater decline in VEP turnout than Texas did in those same years. While turnout in Texas decreased by 3.8 percentage points, the decline in several of these states was much more dramatic: Turnout fell 14 points in California, 12.3 points in Nevada, and 10.6 points in Vermont.

Moreover, among the 17 states without a voter ID law, the average change in VEP turnout between 2010 and 2014 was a 5.15 percent decrease, which was greater than the decrease in both Texas and the United States as a whole.<sup>23</sup> Among the 33 states that do have some form of voter identification requirement, the average change in VEP turnout between 2010 and 2014 was a decrease of only 3.65 points.

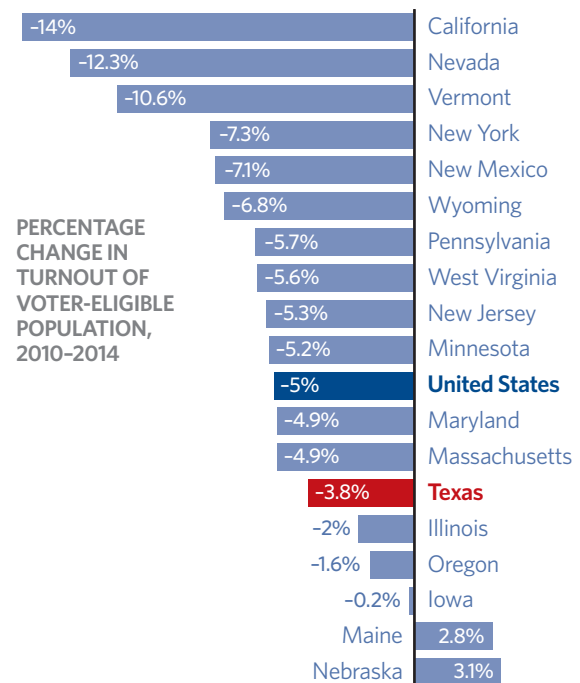
### Texas Voter ID Lawsuit

It should be noted that while the original objection by former Attorney General Holder was mooted by the *Shelby County* decision, an injunction against the Texas ID law was issued on October 9, 2014, by a federal district court judge in Corpus Christi.<sup>24</sup> However, the Fifth Circuit Court of Appeals issued a stay and lifted the injunction, leaving the voter ID requirement in place for the 2014 and subsequent

CHART 1

### Comparing Texas to States with No Voter ID Requirements

In 2011, Texas implemented its voter ID law, and three years later it registered a modest decline in the turnout of voter-eligible population. However, 12 of 17 states with *no* voter ID requirements had *larger* declines over the same period, and Texas’s decline was smaller than the U.S. total.



Source: United States Elections Project, State Turnout rates, “VEP Highest Office,” <http://www.electproject.org/home/voter-turnout/voter-turnout-data> (accessed July 2, 2015).

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elections, although the judgment against Texas remains on appeal before the Fifth Circuit.<sup>25</sup>

As Texas pointed out in its brief in the Fifth Circuit, the Justice Department and other advocacy organizations involved in the lawsuit “crisscrossed

21. Ibid.

22. Wendy Underhill, “Voter Identification Requirements: Voter ID Laws,” National Conference of State Legislatures, <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Details> (accessed June 10, 2015).

23. United States Election Project, <http://www.electproject.org/> (accessed July 13, 2015).

24. *Veasey v. Perry*, 2014 WL 5090258 (S.D. Tex. 2014).

25. *Veasey v. Perry*, 769 F.3d 890 (5th Cir. 2014), *stay denied*, 135 S. Ct. 9 (2014).

Texas” with a “microphone in hand, searching for voters ‘disenfranchised’” by the voter ID law without success.<sup>26</sup> The judge claimed the voter ID law had a racially discriminatory purpose but admitted that there were “no ‘smoking guns’ in the form” of any racist or even racially tinged remarks by any of the sponsors of the ID bill.<sup>27</sup>

Apparently, the judge made this assumption based on her belief that voter ID is not justified as a matter of policy—a conclusion with which the U.S. Supreme Court disagreed in *Crawford v. Marion County*<sup>28</sup>—and because two Democratic opponents of voter ID claimed, without offering any supporting evidence, that the legislative session in which the law was passed was a “racially charged environment.”<sup>29</sup> In the same decision the judge held that any effort to “abolish sanctuary cities” in Texas—to refuse to allow cities to violate federal immigration laws—was a sign of “anti-Hispanic sentiment” as opposed to an effort by legislators to have local officials comply with federal law.<sup>30</sup>

## The Effects of Voter ID

Contrary to the claims made by opponents, there is no evidence that implementation of a voter ID law in Texas has had any effect in suppressing voter turnout across the state. In the 2013 state election, turnout increased—despite the enactment of the new voter ID requirement. Likewise, during the 2014 midterm elections—a contest that saw voter participation plummet across the U.S.—turnout in Texas declined at a smaller rate than the national average<sup>31</sup> and a smaller rate than the rate in 12 states that have no ID requirement.

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26. Brief for Appellants at 20, *Veasey v. Perry*, 769 F.3d 890 (2015) (No. 14-41127).

27. *Veasey*, 2014 WL 5090258, p. 55.

28. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008).

29. *Veasey*, 2014 WL 5090258, p. 55.

30. *Ibid.*

31. It should be noted that while turnout was generally down nationally, “14 states had higher turnout compared with the 2010 midterms. All featured highly competitive governor’s races or figured in the battle for Senate control, which brought a deluge of outside spending on TV ads and intense news coverage.” Gabriel and Fernandez, “Voter ID Laws Scrutinized for Impact on Midterms.”