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STEAL THE VOTE

Voter Suppression in the 21st Century

By James P. Hare

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The Rosa Luxemburg Foundation is an internationally operating, progressive non-profit institution for civic education. In cooperation with many organizations around the globe, it works on democratic and social participation, empowerment of disadvantaged groups, alternatives for economic and social development, and peaceful conflict resolution.

The New York Office serves two major tasks: to work around issues concerning the United Nations and to engage in dialogue with North American progressives in universities, unions, social movements, and politics.

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An Attack on U.S. Democracy

Elections alone do not make a democracy, but without elections, there can be no democracy, because the right to vote is the foundation of republican self-governance.

For decades, the United States has had among the lowest voter participation rates of any democracy. In addition, the people who participate in elections are whiter, richer, and have benefitted from more formal education than the average voting-age citizen. More than other democratic nations, the United States gives the *haves* more of an electoral voice than the *have-nots*.

On top of this, a wave of voter suppression laws has recently swept the United States. In the last two years, state office holders of the Republican Party have repeatedly sought to keep likely Democratic voters—in particular (but not only) African American and Latino voters—away from the polls. These laws have spread from statehouse to statehouse through the efforts of the *American Legislative Exchange Council*, a group funded by the Koch brothers that also supports efforts to expand gun rights and roll back environmental regulations.

There is, of course, a reason for this. The Republican Party in recent years has significantly shifted to the right. This in turn means that its core constituency has shrunk to white males. In a country whose demographic composition is changing rapidly, with the rise of minorities, in particular of the Latino population, this party seems to realize that it can only win future elections by reducing the size of the electorate—hence the attack on the right to vote.

In this paper, James P. Hare, Project Manager at the Rosa Luxemburg Foundation's New York Office, considers current voter suppression efforts. These efforts—including voter ID requirements, voter roll purges, obstacles to registration, and reducing early voter hours—could affect millions of potential voters and alter the outcome of the 2012 election.

However, this brazen campaign of voter suppression is not just about the 2012 election. It represents a dangerous attempt to undermine democracy and advance a reactionary agenda across the country.

*Stefanie Ehmsen and Albert Scharenberg
Co-Directors of New York Office, October 2012*

Steal the Vote

Voter Suppression in the 21st Century

By James P. Hare

In a hotly contested election, both major parties are attempting to mobilize their supporters, but there have also been less savory efforts from the Right to discourage and even disenfranchise likely Democratic voters, particularly young people, people of color, low-income people, and people with disabilities. These efforts have been widely reported in the media, but most accounts fail to portray the scale of this systematic attack on democracy. With as many as five million voters likely to be affected, there is a very real possibility of altering the outcome of the election. Taken together, these efforts represent an assault on fundamental democratic rights. They are an attempt to undo one of the key achievements of the civil rights movement and to tilt the entire political system rightward.

For decades, voter suppression has not been a major concern in the United States. With the 1965 Voting Rights Act and the 26th Amendment, which in 1971 set the voting age at 18, the United States achieved at least a close approximation of universal adult suffrage. The major exception to this achievement has been the disenfranchisement of many citizens who have been convicted of felonies. Starting with the midterm elections of 2010, however, many states began passing laws or regulations that would make ballot access more difficult for potential voters, keeping underrepresented groups away from the polls. The civil rights movement and the student activism of the 1960s resulted in a historic expansion of the franchise. Now these achievements are under threat.

The dominant narrative casts U.S. history as a continuous process of increasingly inclusive democracy. There is some truth behind this narrative, but it has certainly not been a historically linear process, as there have been setbacks and reversals along the way. Voter suppression has a long history in the United States. It is one ingredient in a larger project of social control that has effectively excluded entire segments of American society from meaningful participation in the public sphere. At the precise moments when democratic politics seemed most capable of addressing the needs and desires of society's have-nots, concerted efforts have arisen to limit their participation in the political process.

Voter suppression has not gone unnoticed. Journalists, academics, and even comedians¹ have reported, analyzed, and mocked these efforts. Alexander Keyssar, a Harvard political scientist who has written extensively on the history of suffrage, describes some of the efforts at voter suppression that have become increasingly common since Republicans won control of many statehouses and governorships in 2010. These efforts include effectively closing down voter registration drives, shortening early voting hours, requiring documentary proof of citizenship, and tightening identification rules. Wendy R. Weiser and Lawrence Norden, of NYU's Brennan Center for Justice, have carefully cataloged the many new obstacles to voting. In addition

¹ Jon Stewart compared passing laws to prevent ostensible voter fraud to making peanut butter with large amounts of hydrochloric acid in order to dissolve any potential dragon bones.

to the efforts described by Keyssar, they note that two states—Florida and Iowa—have disenfranchised millions of people with criminal convictions who had previously been able to vote. These “new restrictions fall most heavily on young, minority, and low-income voters, as well as on voters with disabilities.” In short, voter suppression is not a fringe phenomenon but rather a widespread and well-coordinated effort to exclude entire classes of citizens from the electorate.

These efforts to place obstacles in the path of certain potential voters are part of an attempt to turn the upcoming elections into what Bill

Fletcher, Jr. and Carl Davidson call a “repudiation of the changing demographics of the U.S. and an opportunity to reaffirm not only the empire but also white racial supremacy.” Echoing earlier, successful efforts at disenfranchisement at the end of the nineteenth century, this round of voter suppression follows a period of mass immigration and the expansion of the franchise to African Americans in the South following the civil rights movement and the 1965 Voting Rights Act. Sensing a threat to elite privileges from the democratic process, the Right seeks to exclude large numbers of potential voters from the franchise, or at least to discourage them from participating.

Identifying Fraud

The most prominent legislative effort at voter suppression has been the proliferation of voter identification laws. These laws require voters to present a government-issued photo ID at the polls, ostensibly to prevent voter impersonation fraud. For most voters—those who already possess a driver’s license or passport²—these laws will be insignificant, but people without these documents “will now be obliged to assemble various other pieces of paper (birth certificates, naturalization forms, proof of residence, etc.) and make their way (presumably without a car) to a government office that can issue an official photo ID” (Keyssar 2012). According to studies, as well as the Department of Justice which is challenging these laws in some states, these prospective voters are more likely to be young or elderly, poor or working class, African American, and Latino. In other words, they are probable Democratic voters.

Not all African American or Latina voters, much less young or elderly voters, vote for the Dem-

ocratic Party. Indeed, voters over 65 were the only age group to decisively choose John McCain in the 2008 election. Still, elderly people without an ID are likely to also be low-income, and sixty percent of low or moderate income people (those making less than \$50,000 a year) voted for Obama. 66% of Hispanics and 95% of African Americans voted for him in 2008, reflecting substantial gains since John Kerry’s run in 2004. The main factor in Obama’s victory, however, was the enthusiasm of younger voters: 66% of 18-29 year olds voted for him.

Voter ID laws have spread from state to state largely through the efforts of the American Legislative Exchange Council (ALEC), which has advocated for these laws on the basis of allegedly widespread election fraud. The ostensibly non-partisan ALEC promotes networking among conservative legislators across state lines and offers model bills to be enacted into law. In addition to voter ID laws, these laws include attempts to limit the role of government and to expand gun rights. ALEC became notorious after Florida’s “stand-your-ground” law,

² In Texas, a concealed weapons permit also meets the requirement.

based on one of their model bills, played a tragic role in the murder of Trayvon Martin.

In principle, there is nothing wrong with seeking to prevent voter fraud and ensure honest elections. However, there is little evidence of election fraud in the United States, and voter ID laws would only prevent a single type of fraud, voter impersonation. Independent observers have noted that voter impersonation is vanishingly rare. *News21* analyzed 2,068 reported fraud cases since 2000 and found ten cases of alleged voter impersonation. There are 146 million registered voters in the United States, so these ten cases represent approximately one case of voter fraud for every 15 million voters (Khan and Carson 2012). In Indiana, Republicans in the legislature pushed through an ID

law in 2005 despite not a single known instance of voter impersonation in the state's history.

Therefore, it is difficult to take seriously claims that the advocates of voter ID laws are concerned about fraud. These laws could affect millions of eligible voters while solving a non-problem. While some supporters of voter ID requirements may be motivated by a genuine concern for honest elections, advocates for these laws have not shied away from rhetoric implying that a racially construed and criminalized "other" has conspired to illegitimately wrest control of the electoral process from "real" Americans. Part of this rhetoric has been the accusation that undocumented immigrants have tried to fraudulently influence U.S. elections.³

Purging Voters

Accusations that non-citizens have been voting have justified purges of suspected non-citizens from voter rolls, most notably in Florida. As in the case of voter ID, there is little evidence that non-citizens are casting votes, but the proposed remedy places burdens disproportionately on Latino and African American voters. In Florida, at the direction of Governor Rick Scott and Secretary of State Ken Detzner (both Republicans), the state sought to review the status of 180,000 suspected non-citizens who had registered to vote, disproportionately citizens of color. After reducing this list to 2,600 suspected non-citizens, the state continued to investigate, seeking ultimately to remove their names from the rolls, over objections from the U.S. Department of Justice, which accused the state of violating the 1965 Voting Rights Act and the 1993 National Voter Registration Act (Ross 2012). The Justice Department blocked the process from going forward in the counties

subject to preclearance under the Voting Rights Act, but following a suspension, the purge has continued in the rest of the state (Peltier 2012). By September, months of searching had resulted in the conviction of just one non-citizen for fraudulently casting a vote. Florida's voter purge follows from and contributes to stereotypes of criminal foreigners seeking to overwhelm and displace "real" Americans. Thanks to federal intervention, it seems unlikely that this investigation will disenfranchise many voters, but the rhetorical damage may be more pernicious and long-lasting.⁴ Still, in a sharply contested swing state, even a few votes could

3 For example, representatives of True the Vote, about whom more below, allege that a busload of people "who did not appear to be from this country" showed up to vote at various polling sites during the 2010 election. No one has been able to find any evidence for the existence of this bus (Saul 2012).

4 As we will see, the legal basis for this intervention is itself under threat.

make a difference, as we saw in 2000, when a razor-close election was ultimately decided

by a partisan five to four vote in the Supreme Court.

Obstructing Registration

A more widespread form of voter suppression, however, is the creation of obstacles to registration. Nationwide, at least 51 million potential voters—about 25 percent of the voting-age population—are not registered. In the United States, the burden of registration falls entirely on the individual voter. Community-based registration drives have been essential in helping to alleviate the deficiencies of this system. Most states have some regulation of community-based voter registration drives, but in some states—notably Florida, Texas, Colorado, and New Mexico—these laws present unreasonable and onerous burdens.

Perhaps unsurprisingly, Florida seems to be at the vanguard of efforts to restrict voter registration. “In 2011,” according to the Brennan Center for Justice, “Florida enacted harsh restrictions that forced the League of Women Voters of Florida and Rock the Vote to abandon voter registration programs and severely curtailed voter registration efforts by other groups. These onerous measures crippled many registration efforts, especially those targeting minorities.” A federal court ruled that Florida imposed “‘harsh,’ ‘impractical,’ and ‘burdensome’ requirements on voter registration drives” that “served ‘little if any purpose’” and declared these requirements to be unconstitutional and in violation of the National Voter Registration Act (Kasdan 2012). While the courts may have overturned these regulations, they had already largely achieved their purpose by keeping many potential voters unregistered. By forcing community groups to suspend registration drives for nearly a year, the state of Florida has managed to sharply reduce the number of newly registered Demo-

crats. In the thirteen months ending in August 2012, 11,365 people registered as Democrats, far less than the average of 209,425 who registered during the same periods prior to the previous two presidential elections. Republicans are less likely to register through registration drives, and indeed, during the same period 128,039 Republicans registered, compared to an average of 103,555 before the 2004 and 2008 elections (Huffington Post, 9/16/2012). Groups who should have been working to register new voters were forced to fight a purely defensive action, and the result has been another blow against participation in the democratic process.

These restrictions violate the spirit—and oftentimes the letter—of the 1993 National Voter Registration Act, popularly known as Motor Voter. This law requires that voter registration be available in agencies serving poor and disabled Americans. It also allows people to register when getting or renewing a driver’s license, as well as by mail. According to Frances Fox Piven and Richard A. Cloward, “With this reform, historic barriers to voter registrations that had kept voting down among blacks and many poor whites in the South and among many in the northern industrial working class were largely abolished” (2000, 1–2). While this act succeeded in achieving record increases in registered voters, the rate of participation in elections did not increase. Still, if there is to be a remobilization of voters in the United States, registration is an essential prerequisite—necessary even if not sufficient. By purging registered voters and obstructing registration drives, Republicans in Florida and elsewhere seek to keep entire classes of people off the rolls.

Closing the Polls

In addition to making it more difficult to register, several states have made it more difficult to vote. Republican legislatures in five states—Ohio, Florida, Georgia, Tennessee, and West Virginia—have cut back on early voting hours “as part of what can only be explained as a concerted effort to suppress the votes of Democratic-leaning voters” (Froomkin 2012).

In Ohio, there was a particularly egregious attempt to restrict early voting hours in Democratic-leaning districts while maintaining longer hours in Republican districts. During the 2008 election, African American voters made up a disproportionate share of early voters, especially in urban districts. If this effort had succeeded, then early voting in urban counties would have been limited to 8 AM until 5 PM on weekdays, while suburban and rural counties would have had early voting hours on weekends and evenings. In Ohio, county election boards are even-

ly split between Republicans and Democrats. In the case of a tie, the deciding vote goes to the Secretary of State, Republican Jon Husted. Democratic commissioners generally supported extended early voting hours throughout the state, but Republican officials in predominately Democratic districts blocked extended hours, allowing the Secretary of State to consistently break the tie in his own party's favor (Berman 2012). Ohio also attempted to eliminate early voting on the weekend prior to Election Day, a move widely seen as an attempt to block the mobilization of churchgoing African American voters, who had previously taken advantage of early voting to visit the polls en masse on Sunday after church. A federal judge, however, ruled this decision to be capricious and ordered the state to allow early voting on the three days prior to the election. The secretary of state continued to resist implementing this decision until October 16, when the Supreme Court upheld the lower court's ruling.

Outright Disenfranchisement

Other states have made it harder—or impossible—for those convicted of felonies to regain their right to vote. Approximately 5.3 million Americans cannot vote due to laws prohibiting voting by people with felony convictions. Because of racial disparities in the U.S. criminal justice system, an estimated 13% of African American men are prohibited from voting. In several states, including Florida, nearly one in three African American men are denied the vote. Restrictions on voting by citizens with felony convictions vary widely from state to state. In two states—Maine and Vermont—there are no limits to voting after a criminal conviction, and even prisoners can vote. In most states,

voting rights are automatically restored at some point, but twelve states make it difficult or impossible for those who have lost the right to vote to regain it. Two of these twelve—Florida and Iowa—joined this list in 2011 and now effectively disenfranchise people with felony convictions for life. South Dakota, which had previously disenfranchised those convicted of felonies during their period of imprisonment or parole, began denying the right to vote to those on probation (Weiser and Norden 2012). Felony disenfranchisement is an ongoing issue that predates the current round of voter suppression legislation. Disenfranchisement goes beyond suppression. It is not simply a matter

of placing obstacles in the path of potential voters. Rather, disenfranchisement means that certain citizens lose their right to vote entirely. Disenfranchising citizens with felony convictions means that those individuals who have personally encountered the most repressive institution in U.S. society have no political voice. Moreover, this exclusion adds one more ob-

stacle to released prisoners' successful reintegration into their communities. This goes even further than voter suppression—it is outright disenfranchisement of millions of Americans, predominately black working-class men and women. This belies the claim that the United States has achieved universal adult suffrage in the first place.

The Long and Winding Road toward Democracy

The United States has long seen itself as a model democracy, but U.S. history reveals a decidedly more checkered past. The United States was, indeed, the first nation in the world in which the vote was extended to a large portion of the population. Despite this head start, the U.S.

did not possess anything even approximating universal adult suffrage until the late 1960s—even though universal suffrage is commonly regarded as an essential ingredient of democracy [...] It took many decades of mobilization and struggle for voting rights in all states to be extended to African Americans, women, Native Americans, and those who lacked property (Keyssar 2012).

Apart from the issue of formal enfranchisement, by the beginning of the twentieth century voter turnout had plummeted. A number of changes in election administration, including:

the reintroduction of literacy tests and poll taxes, the invention of cumbersome voter registration requirements, and the subsequent withering of party efforts to mobilize those who were confronted by these barriers [...] led to] sharply reduced voting by the northern immigrant working class and virtually eliminated voting by blacks and poor whites in the South. By World War I, turnout rates had fallen to half the eligible electorate and, despite some rises and dips, they have never recovered (Piven and Cloward 2000, 5-6).

The most notorious example of voter suppression and disenfranchisement in U.S. his-

tory took place after Reconstruction when white Democrats in the South used a variety of legal and extralegal methods to undo the 15th Amendment's extension of voting rights to African American men. Through legal innovations such as the all-white Democratic primary, this "vote suppression" (widespread use of the term dates to the 1880s) devolved into outright disenfranchisement. The denial of voting rights was a key feature of the Jim Crow South and lasted until the civil rights movement and the 1965 Voting Rights Act effectively abolished these restrictions on voting.

This historic law, however, is currently facing a Supreme Court challenge. In 2009, the Court signaled that it had reservations with the Voting Rights Act's "pre-clearance" clause, which requires states and parts of states with a history of racially motivated exclusion—mostly in the South—to receive approval from the Justice Department before they make any changes to their voting procedures. During the current term, the Supreme Court is expected to hear arguments that this requirement is unconstitutional (Liptak 2012). If the Court does overturn this key provision of the Voting Rights Act, it would remove an important mechanism that the Justice Department and the courts have used to blunt the impact of the current wave of voter suppression laws.

Voter suppression has not been limited to the South. Between the Civil War and World War I, northern states also placed obstacles in the path of voters, especially immigrant workers:

California and New Jersey, for example, began to require that immigrants present their original, sealed naturalization papers at the polls; various states limited the hours that polling places or registration offices were open (at a time when the 10-hour work day was common), while simultaneously requiring annual registration in large cities but not in towns. In New York, in 1908, authorities sought to winnow out Jewish voters—many of whom were socialists—by designating Saturdays and Yom Kippur as registration days. Such measures were commonly justified as necessary to prevent fraud (Keyssar 2012).

Conclusion: Beyond 2012

Voter suppression is an attempt to undermine the very basis of representative democracy: the right to vote. It is an attempt to exclude particular groups from the effective exercise of the franchise and as such is an attack on the most basic ideals of republican governance. But voter suppression is also an attempt to tilt the political playing field. Low voter turnout has benefitted entrenched political interests across the spectrum while also shifting the entire spectrum to the right. Voter suppression maintains and exacerbates this trend. “It may not be a coincidence,” Keyssar (2012) notes,

that the phrase ‘voter suppression’—like ‘vote suppression’ in the 1880s—has become a prominent part of our political vocabulary during an era of large-scale immigration and in the wake of a dramatic extension of voting rights to African Americans.

Piven and Cloward survey a nation in which “about half of the eligible population votes in presidential elections, and far fewer vote in off-

While the general long-term trend in U.S. history has been toward a more inclusive franchise, there is nothing inevitable about this trend, and it has not been as steady as is sometimes imagined. On several occasions, entire categories of people have lost the right to vote, including African Americans in some northern states before the Civil War and in all southern states in the late nineteenth century, women in New Jersey in the early 1800s, men who became “paupers” because of economic downturns, citizens who could not pay poll taxes or (for various reasons) pass literacy tests, and most recently, in 2000 Massachusetts prisoners (Keyssar 2012). The arc of the moral universe may bend toward justice, but it is indeed long, and sometimes crooked.

year elections” and conclude that the United States “is the only major democratic nation in which the less-well-off, as well as the young and minorities, are substantially underrepresented in the electorate” (2000, 3). They compellingly argue that the “purging of lower-strata voters from the electorate” occurred precisely because the possibilities of democratic politics were expanding. At around the turn of the twentieth century, increasing governmental intervention in the economy, new popular political ideas, more effective organizational capacities, and the emergence of new solidarities as the basis for political action combined to create new paths to social change (ibid., 6). The question of who votes and who does not is indeed a question of basic rights, but it is also a question of power. It is doubtful that the Republican legislators and officials who support voter suppression legislation have ever lost sight of this.

The current round of voter suppression laws is not just about the outcome of the 2012 elec-

tion. It is a challenge to the core of the democratic system. As people of color increase as a proportion of the population, we are likely to see more attempts to limit their participation in the political process, not least the Supreme Court's reconsideration of the Voting Rights Act (Drew 2012).

Since the mid-term elections in 2010, Republicans throughout the country have pursued an agenda of voter suppression through legal channels. There are alarming signs that right-wing groups will also attempt to suppress voter turnout through extralegal means. True the Vote, an ostensibly non-partisan national group which grew out of the King Street Patriots, a Tea Party organization, seeks to prevent supposed efforts to subvert the election. This group has been scouring voting rolls and challenging registrations, nearly always on erroneous grounds. True the Vote has gone beyond watchdog-type activities and engaged in voter harassment. In 2008, large numbers of white volunteers from the King Street Patriots challenged voters in minority neighborhoods in Houston, Texas, bringing back memories of the Jim Crow era. During the Wisconsin recall election, volunteers from True the Vote showed up at Lawrence University to challenge voters who tried to register and vote on the same day. Their disruptive activities

brought the registration line to a near standstill and led some students to leave without voting (Saul 2012). By discouraging students, African Americans, and others likely to vote Democratic, such groups could have a decisive impact in closely contested districts and states.

While not unprecedented, the efforts at voter suppression that have emerged since the 2010 election are something new in modern American politics. Since the abolition of *de jure* disenfranchisement of African Americans in the South, the overall trend has been toward more inclusive access to the ballot. While the National Voter Registration Act of 1993 became law despite major Republican opposition—including two presidential vetoes—both houses of Congress overwhelmingly approved the 2006 extension of the Voting Rights Act (98-0 in the Senate and 390-33 in the House), and President George W. Bush ceremoniously signed this critical piece of legislation ("Bush Signs Voting Rights Act Extension" 2006). It is not as though there was not conservative opposition to this extension—and indeed some provisions of the act were weakened—but very few members of Congress saw opposition to voting rights as a winning position. It is troubling for the future of American democracy that one of the major political parties no longer seems to hold this position.

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