



How Fair Rules Can be Designed for Photo Identification at the Ballot Box

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Requiring state-issued photo identification cards to be presented at balloting places before citizens can vote is a controversial practice in current U.S. election law. New rules requiring specific photo cards have spread to more than a dozen states, touted by proponents as a way to prevent in-person voter fraud. But opponents point out that these rules make it harder for many groups of Americans to vote. In this brief, I suggest straightforward compromises to satisfy the stated concerns of both camps.

Voter Access and Ballot Security

There is no “right to vote” in the U.S. Constitution. This might surprise those who are acquainted with the gradual history of the expansion of the franchise in America – first to non-property owning white males, then to minority males, then to women, and lastly to 18, 19, and 20-year olds. Along the way, literacy tests and poll taxes were eliminated. By now, Americans universally expect that all adult citizens have the right to vote. But an effective democracy must also ensure that votes are fairly cast and accurately counted. Ballot security measures can sometimes conflict with assuring that everyone has the right to vote.

Perhaps the best example of this conflict in the United States is the widespread requirement that would-be voters register in advance. States enacted registration rules to reduce election fraud, but the need for people to register separately from voting is a primary reason why voter turnout is lower in America than in other advanced democracies. Other nations automatically register all adults to enable universal voting. In addition, the current push in many states to require even previously registered voters to present photo identification at the balloting place means that new security measures are further hindering voter access.

Photo identification rules have been challenged in the courts, but so far with little success. In a 2008 case from Indiana, the U.S. Supreme Court ruled that the state could require a photo card for voting even though some eligible adults might be denied the vote and even though the state could not provide any evidence that photo cards would prevent fraud. Although at least two of the judges involved in the Indiana case have since acknowledged that the case may have been wrongly decided, photo identification rules remain legal and are still spreading.

Why Photo Identification Rules May Be Here to Stay

Middle-class Americans are so used to using a driver’s license or other photo identification in daily living that they think “what is the big deal” about this rule? Most do not know that these rules amount to costly and unfair solutions to largely nonexistent voting problems.

- Reliable testimony in Federal court has demonstrated that many would-be voters do not have and cannot easily get approved identifications, including many elderly minority citizens with limited mobility. In Texas, for example, about 1.4 million eligible voters – disproportionately minorities -- do not have photo identifications that comply with strict rules.
- Evidence presented in numerous court cases establishes that impersonation fraud at balloting places is extremely rare or nonexistent. A person trying to vote under a false identity risks being caught committing a felony and gains only one vote for a preferred candidate or party. The benefit is simply not worth the risk. Concern about this virtually nonexistent type of fraud distracts public attention from fraud in absentee balloting or corrupt acts by election officials.

Nevertheless, Republican state legislators and governors continue to push for the enactment of photo identification laws, and the courts have not been able or willing to ensure full and fair access to the right to vote. Americans who care about voter access may need to learn to live with photo requirements.

Toward Common-Ground Compromises

Although I do not believe photo identification laws are justified, there are ways to implement such rules without harming anyone's legitimate right to vote or discouraging turnout. Laws can allow for the use of a wide range of types of photo identification, as the states of Georgia and New Hampshire already do. Allowing the use of photo student identification cards from public colleges and universities significantly expands the proportion of eligible adults with appropriate government-issued identifications. In addition, any citizens should be able to obtain an approved identification free of charge at election offices and other convenient public offices.

However, many people want to register to vote online, by mail, or during registration drives. And millions of previous voters who lack the required new kinds of identification may think they are registered only to find out otherwise on Election Day. There is an easy corrective:

- Every early voting sites and Election Day voting places should be equipped with inexpensive digital cameras. When a person comes in to vote without mandated photo identification, election officials should take their picture and allow them to vote. The ballot could be "provisional" – but only to allow a few days for evidence of impersonation fraud to be uncovered. Otherwise, election officials would have to count the ballot without any discretion.
- After the election, the state could use the photo to make a "for voting only" identification card and mail it to the address of the voter, to be available for the next election.

Notice the advantages of this minimally costly system. Fraud would be discouraged, because few would risk having their picture taken in the act of a felony. And detection would be improved, because a voter who gets a new identification card in the mail could report any impersonation to authorities. In the first couple of elections, many previously registered voters would need the new photo cards, but in subsequent elections the need would be limited to new voters who register by mail, on the Internet, or in registration drives.

No one should dismiss the inconvenience to citizens of being photographed and perhaps being asked to put the ballot in a provisional voting envelope. But this compromise approach to photo identification for voters accommodates those who say they want to prevent fraud without preventing entire groups of citizens from exercising their right to vote.