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# The evolution of early voting

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Thesis

**THE EVOLUTION OF EARLY VOTING**

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# **THE EVOLUTION OF EARLY VOTING**

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## **ABSTRACT**

Over the course of the past 30 years, states across the nation have adopted early in-person voting laws. The bulk of academic literature on early in-person voting revolves around the policy's effect on turnout. This research was conducted over the course of several decades, in different electoral contexts, measuring a diverse array of laws, and remains inconclusive. Meanwhile, the political discussion of voting rights and electoral reform has become increasingly polarized. The divisive views on early voting both in the academic community and in the political realm are indicators of a distinctive evolution of early voting. I argue that early voting reforms were implemented in three unique eras, characterized by different political motivations and an evolving early electorate. I use case studies in Texas, Florida, Missouri, and Massachusetts to explain this theory and provide a framework for more ordered future research.

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## INTRODUCTION

Since its development in the late 1980s in Texas, early voting has spread across the country. The policy has been implemented in 34 states and D.C., ranging from Vermont to Louisiana.<sup>1</sup> Along with absentee voting, early voting has fundamentally changed the experience of voting and ballot counting. By stretching the voting period from one day to up 45, early voting has altered the ways in which voters, campaigns, and administrators interact. And voters seem to like it. Voters in 1994 Texas praised early voting with the same positivity as voters in 2012 Colorado—an approval that is reflected in the steady increase in the usage of early voting.<sup>2</sup> In states where early voting has been rolled back, there has been public outrage, especially once voters are consolidated into shorter voting periods and lines appear longer.<sup>3</sup>

In contrast, the policymaker's view of early voting is not linear over time. Although the 1990s and 2000s saw a proliferation of early voting policies across a diverse array of states, the impetuses for these reforms have ranged from convenience for individual legislators to the reduction of lines to simply bringing the state in line with surrounding states. In recent years, however, early voting has hit a wall. While more voters in states with the policy are consistently taking advantage of early voting, states

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<sup>1</sup> "Absentee and Early Voting." National Conference of State Legislators. January 5, 2016. Accessed March 16, 2016. <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>. Accessed April 2, 2016.

<sup>2</sup> Stein, Robert M., and Patricia A. Garcia-Monet. "Voting early but not often." *Social Science Quarterly* (1997): 657-671. Burden, Barry C., and Kenneth R. Mayer. "Voting Early, but Not So Often." *The New York Times*. October 24, 2010. Accessed April 2, 2016. [http://www.nytimes.com/2010/10/25/opinion/25mayer.html?\\_r=0](http://www.nytimes.com/2010/10/25/opinion/25mayer.html?_r=0).

<sup>3</sup> Lim, Andra. "Why Four of Austin's Early Voting Sites Aren't Open at 7 A.M. Weekdays." *Austin American-Statesman*. February 17, 2016. Accessed April 6, 2016. <http://www.mystatesman.com/news/news/local-govt-politics/why-four-of-austins-early-voting-sites-arent-open-/nqRwf/>.

without the policy in place have repeatedly failed to pass early voting legislation, often times after heated policy debates. Furthermore, existing states with early voting have all either attempted or successfully rolled back parts of their laws.

These disagreements amongst legislators are aided by an inconsistent academic literature on the subject. Opponents and proponents of early voting can find a solid foundation for their arguments in conflicting studies on a number of key aspects of early voting: its effect on turnout, who votes early, and what party benefits. Some academics argue that the debate on early voting is settled—it has negligible effects on turnout, wealthy and educated people use it, and neither party benefits.<sup>4</sup> Others would argue that the inconsistency in many studies of early voting points to the fact that policies vary across states and time, and its effects may be quite the opposite.<sup>5</sup>

Why has the proliferation of early voting policies slowed, while usage has increased across the country? When one considers the important factors of diverse state policies and evolving usage over time, the stunted expansion of early voting is indicative of a larger development of the policy, one backed consistently by academic literature that helps explain the dissonance between voter preferences and their legislators. Legislators set electoral policy and their interests play a major role in that process. Early voting is no exception. As who votes early, and at what rates, changes, lawmakers have responded with different kinds of legislation, or seek to remake early voting policies more to their liking.

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<sup>4</sup> Berinsky, Adam J. "The perverse consequences of electoral reform in the United States." *American Politics Research* 33, no. 4 (2005): 471-491.

<sup>5</sup> Alvarez, R. Michael, Ines Levin, and J. Andrew Sinclair. "Making Voting Easier Convenience Voting in the 2008 Presidential Election." *Political Research Quarterly* 65, no. 2 (2012): 248-262.

This paper provides a theory to explain the spread of early voting. The fact that analyses on the above aspects of early voting are not consistent does not denote that early voting is insignificant or neutral, but that these diverse state policies have unique effects at different points in time and in distinct elections. By placing existing analyses of early voting in the proper historical and electoral contexts, a clear story is formed. Three eras of early voting laws can be discerned, defined by two distinct concepts: lawmakers motivations and views of the policy, and voters' usage. The first stretches from the policy's beginning in Texas in the late 1980s to 1999, characterized by lawmakers' focus on making voting more convenient by experimenting with electoral policy and its usage by highly engaged voters. The second era was initiated by the scandals of the 2000 presidential election, compelling legislators to consider electoral reforms that would prevent embarrassing election crises and an evolving early electorate. The third commenced in 2008 and continues to the present, and is characterized by high usage and high partisanship around the idea of early voting.

In order to develop this theory, I categorize existing academic literature on the effect of early voting on turnout, its users, and party benefits based on the date of the examined elections. To fully understand the complexities of the motivation for, implementation of, and subsequent usage of early voting, I employ case studies of Texas, Florida, Missouri, and Massachusetts. By investigating individual states in depth, one can appreciate the important distinction between statutes, legislators, and voters that are not highlighted in most academic studies of early voting. I selected states with relatively high usage of early voting, which is usually reflected in the heightened scrutiny that

academics and lawmakers give early voting in that state. With the least historical precedence for early voting, Texas was chosen to explain the first era of early voting. There, the incentives of the legislators can be most clearly seen. Florida experienced the greatest pressure for reform after the 2000 election, and the evolving early electorate helps us understand the growing partisanship that occurred in the second era. Massachusetts is the only state that passed an early law after 2008, and Missouri failed to authorize early voting bills three times, providing an interesting contrast for analysis. Taken as a whole, these states play different roles in the presidential elections and their electorates have distinctive racial and partisan makeups.

By applying this “three era” framework, we can understand the real effects of early voting over time and how legislators have reacted. At its onset, the policy, even when the differences between laws are taken into consideration, served mainly to make voting more convenient for highly motivated participators and thus had a negligible effect on turnout. Lawmakers in the first and second eras shared similar incentives to make voting more convenient. But as early voters increased and diversified, the possibility of greater partisan mobilization changed the calculus of many state lawmakers. Today, early voting is caught in the hairs of a larger debate on voting rights as lawmakers and activists watch warily as the electorate shifts depending on the how electoral law is administered.

## **UNDERSTANDING EARLY VOTING**

First, it is important to define “early voting.” Most states have a means for voters to cast their ballots before Election Day, largely through mail or at a location other than

one's local precinct.<sup>6</sup> There are a number of types of this so-called "convenience voting", including traditional absentee voting, no-excuse absentee voting, vote-by-mail, and in-person early voting. To vote by *traditional absentee*, one must apply for an absentee ballot, providing one of a limited number of excuses, such as illness or temporarily living elsewhere. Voters are then sent a ballot that they can fill out and mail in. *No-excuse absentee* voting is similar, but the law does not require a voter to qualify for a pre-determined excuse. Some states also allow for permanent absentee status so that voters do not have to reapply every election.<sup>7</sup> In *vote-by-mail* states, which is considered by many to be the gold standard for convenience voting, all registered voters receive a ballot approximately two weeks before Election Day and can be dropped off designated locations or returned by mail.<sup>8</sup> Other less common forms of convenience voting include voting by phone, by fax, and online. *In-person early voting* or *advance voting* (for the purposes of this paper, simply "early voting") refers to a period before Election Day during which eligible voters can visit the election administrator's office or an alternative satellite location in order to cast their ballot.<sup>9</sup>

Three states offer full vote-by-mail, 27 states and D.C. have no-excuse absentee voting, twenty have traditional absentee voting, seven states and D.C. have permanent

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<sup>6</sup> "Absentee and Early Voting." National Conference of State Legislators.

<sup>7</sup> Gronke, Paul, Eva Galanes-Rosenbaum, Peter A. Miller, and Daniel Toffey. "Convenience Voting." *Annual Review of Political Science* *Annu. Rev. Polit. Sci.* 11, no. 1 (2008): 437-55. Accessed March 16, 2016.

<sup>8</sup> Keisling, Phil. "Beyond Groupthink: The Real Way to Reform Voting." *Beyond Groupthink: The Real Way to Reform Voting*. February 13, 2014. Accessed April 02, 2016.

<http://www.governing.com/columns/smart-mgmt/col-elections-reform-universal-voting-by-mail.html>.

<sup>9</sup> Gronke, Galanes-Rosenbaum, Milley, Toffey, p. 441.

absentee status, and 34 states and D.C. have early voting.<sup>10</sup> These policies share a number of important characteristics, including extended time periods during which someone can vote and the location at which that happens. Taken as a whole, 31.6 percent of votes cast in the 2012 presidential election were cast before Election Day.<sup>11</sup> This paper focuses entirely on early voting, although a lot of the academic literature on the subject groups many of these reforms together. I do my best to draw entirely on early voting literature and parse out some worthwhile conclusions from the more inclusive studies.

### **Variable Characteristics**

Early voting laws vary a great deal from state to state due to the decentralized and discretionary nature of American electoral policy.<sup>12</sup> In my survey of the literature on early voting, no one has endeavored to comprehensively define and map out the variable characteristics of early voting policies, an explanation I will provide here. The components of an early voting statute include the length of the early voting period, the option of requiring population floors to determine the number of alternative locations to be provided, requirements for an equitable distribution of such sites, and provisions that set standards for weekday hours and weekend times. A full description of early voting laws at the time of their enactment can be found in Appendix Table 1.

The length of early voting periods varies across states Election Day. Vermont has a 45-day early voting period, while Oklahoma's lasts only three. They can be continuous,

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<sup>10</sup> "Absentee and Early Voting." National Conference of State Legislators.

<sup>11</sup> United States. Presidential Commission on Election Administration. *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*. 2014.

<sup>12</sup> Woodwell, William, Jr. "Thinking Outside the Ballot Box: Innovations for the Polling Place." League of Women Voters. October 2006.

or exclude weekends or the days immediately precede Election Day. Some states require or permit early voting to be available on Saturdays, Sundays, or both, as well. Analyses of Florida reveal some of the potential negative effects of shortening early voting period, but there is no definitive analysis of the “optimal” early voting period.<sup>13</sup> According to Gronke and Stewart, early voting usage increases over the period.<sup>14</sup> Some evidence suggests weekend voting favors black and Latino voters.<sup>15</sup>

Hours are another factor in how early voting is administered. In more rural, low turnout areas, standard business hours are typical. They are regulated in different ways, either by a cap, floor, or both for the total number of hours for the week or leaving it up to administrators’ discretion. There is no literature that focuses entirely on the hourly usage of early voting in a day,<sup>16</sup> although interviews with election administrators in more urban areas reveal distinctive “high traffic” times of day, generally around lunchtime.<sup>17</sup>

Most early voting sites are at the election administrator’s office, typically the office of the county clerk. However, most laws grant the election administrators the discretion to establish alternative or satellite locations for the length of the early voting period. Some go so far as to require different categorizations of counties based on their population, mandating a certain number of alternative locations that mimic the distribution of polling sites on a standard Election Day. These alternative locations can

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<sup>13</sup> Herron, Michael C., and Daniel A. Smith. "Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election." *Political Research Quarterly* 67, no. 3 (2014): 646-665.

<sup>14</sup> Gronke, Paul, Benjamin Bishin, Daniel Stevens, and Eva Galanes-Rosenbaum. "Early voting in Florida, 2004." In *Annual Meeting of the American Political Science Association, Washington, DC*. 2005.

<sup>15</sup> Herron and Smith. "Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election."

<sup>16</sup> Ibid.

<sup>17</sup> Hardiman, Maria B., Laura Ciancolo, Eric Kashdan, and Pam Wilmot. "Early Voting: What Other States Can Teach Massachusetts." *Common Cause Massachusetts*. November 2015. Accessed February 04, 2016.

range from a grocery store to any public building, depending on the authorization of the laws. Regardless of a population floor mandate, many states require that any such alternative locations be equitably distributed. The principal work on the role of alternative locations in early voting was written in 1996 on the 1994 midterm election in Tennessee.<sup>18</sup> Since then, only anecdotal work has been compiled on presidential elections in Florida, which found that reducing the number of alternative sites created longer lines.<sup>19</sup>

These variable characteristics of early voting are at times defined by law, but are often determined simply by the enthusiasm of the election administrator. The Brennan Center for Justice and Common Cause Massachusetts have both interviewed early voting administrators across the country and found wide variation.<sup>20</sup> The former registrar of voters in Washoe County, Nevada believed himself responsible to “try to make sure that no voter is more than three miles from an early voting center,” an obligation not mandated by the Nevada early voting statute.<sup>21</sup> The town clerk of Wilmington, Massachusetts was less excited at the prospect of integrating early voting into her duties, because “It’s going to cost municipalities more money.”<sup>22</sup>

Beyond the uneven implementation within states and across the country, these variable characteristics are the areas subject to repeal or expansion over time, as demand

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<sup>18</sup> Richardson Jr, Lilliard E., and Grant W. Neeley. "The impact of early voting on turnout: The 1994 elections in Tennessee." *State & Local Government Review* (1996): 173-179.

<sup>19</sup> Gronke and Stewart, "Early Voting in Florida, 2004."

<sup>20</sup> Hardiman, Ciancolo, Kashdan, Wilmot.

<sup>21</sup> Daniel Burke in Kasdan, Diana. "Early Voting: What Works." The Brennan Center for Justice. October 31, 2013.

<sup>22</sup> Sharon George in Greenhalgh, Nicholas. "Early Voting Coming to Massachusetts in 2016." Woburn Advocate. November 19, 2015. Accessed April 02, 2016.

<http://woburn.wickedlocal.com/article/20151119/NEWS/151115735/?Start=2>.



and partisan motivations have changed. Wisconsin banned early voting on weekends in 2014.<sup>23</sup> Massachusetts municipalities are awaiting recommendations from the Secretary of State to base their interpretation of the law.<sup>24</sup> A North Carolina law that reduced the early voting period from seventeen days to ten is currently being challenged in the courts.<sup>25</sup> These are major statutory differences that have gone largely unexplored on their own. If studied at all, most of the variable characteristics of early voting have been found to be impactful upon their repeal, but they were not subject to much scrutiny upon implementation. In contrast, an increasing number of early voting-related bills have sought to tweak these facets of the policy (see Figures 3 and 4).<sup>26</sup>

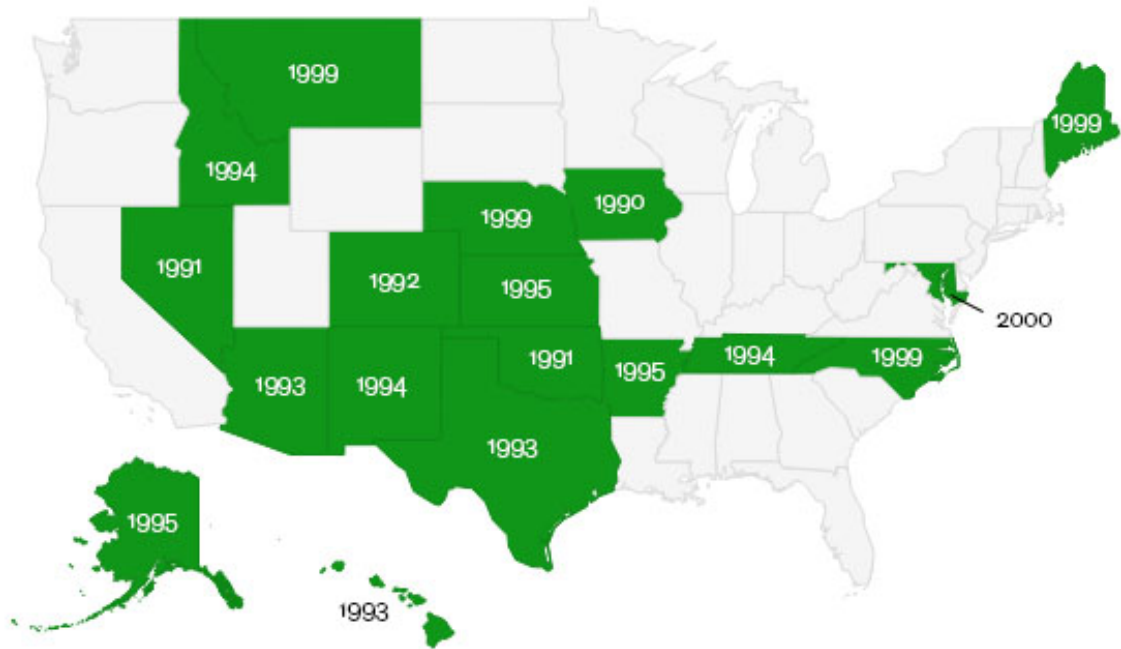
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<sup>23</sup> Stein, Jason, and Don Walker. "Scott Walker Signs Early-voting Bill; Partial Veto Extends Voting Hours." *Milwaukee Journal-Sentinel*. March 27, 2014. Accessed April 2, 2016. <http://www.jsonline.com/news/statepolitics/scott-walker-signs-asbestos-lawsuit-bill-b99234687z1-252672541.html>.

<sup>24</sup> Greenhalgh.

<sup>25</sup> Fausset, Richard. "North Carolina Exemplifies National Battles Over Voting Laws." *The New York Times*. March 10, 2016. Accessed April 02, 2016. <http://www.nytimes.com/2016/03/11/us/north-carolina-voting-rights-redistricting-battles.html>.

<sup>26</sup> Stein and Walker.



**Figure 1: States that passed early voting laws in the first era, 1990 to 1999.** Source: National Conference of State Legislatures.

## THE THEORY OF THREE ERAS

### First Era

In contrast to the highly partisan conversations that go on about electoral reform today, early voting as a policy developed in a relatively innocuous way. Absentee voting can be traced as far back as the Civil War, when Union and Confederate soldiers were able to vote in special remote polling places or by mailing their ballots home. New York held its legislative elections over a three-day period in 1800.<sup>27</sup> It was not until 1845 that Congress adopted a law requiring a uniform Election Day for electors to the Electoral

<sup>27</sup> Lee, Duncan Campbell. "Absent Voting," *Journal of the Society of Comparative Legislation* 16, no. 2 (1916): 333-45.

College.<sup>28</sup> Early voting, as it is known today, was developed in Texas, as the legislature slowly altered its absentee voting laws, proceeding to no longer require excuses and provide for fixed alternative locations for pre-Election Day voting.<sup>29</sup> These reforms took place between 1988 and 1993, and the state continued the policy for the next decade. Seventeen states followed suit throughout the 1990s. Most of these states are located in the South or Midwest, many of them physically large and rural.<sup>30</sup>

With these obstacles to voting in mind, this era of reforms was prompted by lawmakers' interest in making voting more convenient. Early voting in the 1990s was inherently experimental. Gronke and Hicks note that the origins of early voting are difficult to discern, largely because of "the extreme decentralization of election administration."<sup>31</sup> It is from this period that scholars began to group early in-person voting, absentee voting, and vote-by-mail as "convenience voting." Election administrators, party officials, and voters in Texas and Tennessee reinforced this narrative, telling academics and newspapers, "It is the convenience of voting while you are shopping"<sup>32</sup> and that "Convenience sells, no matter what business you're in."<sup>33</sup> These first states fast attachment to the concept of early voting is indicative of its easy popularity amongst voters. Its low salience as a political issue makes it easy to evaluate

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<sup>28</sup> 3 U.S.C. §§ 1.

<sup>29</sup> United States. Election Assistance Commission. *Alternative Voting Methods*. Washington, DC: U.S. Election Assistance Commission, 2008, p. 3.

<sup>30</sup> Gronke, Paul, Eva Galanes-Rosenbaum, Peter A. Miller, and Daniel Toffey. "Convenience Voting." *Annual Review of Political Science Annu. Rev. Polit. Sci.* 11, no. 1 (2008): 437-55.

<sup>31</sup> Gronke, Paul and James Hicks, "Bush v. Gore: A Critical Junction for Early Voting?" 2004, p. 2.

<sup>32</sup> Gronke, Paul. "Early Voting Reforms and American Elections." *William & Mary Bill of Rights Journal* 17, no. 2 (2008): 423-51.

<sup>33</sup> "States Innovate to Battle Low Turnout." *The New York Times*. October 23, 1994. Accessed February 15, 2016. <http://www.nytimes.com/1994/10/24/us/the-1994-campaign-the-voters-states-innovate-to-battle-low-turnout.html>.

early voting as a consumable policy in the first era. In 1994, the Federal Election Commission released a report entitled “Innovations in Election Administration” that detailed the establishment and effects of the reform in the first states to experiment with it. The authors claim that once introduced, early voting cannot be stopped. “Voters love it...They do not know or care about any of the problems it may create for campaigns or administrators...Everyone believes withdrawing it would be political suicide.”<sup>34</sup>

Evidence for early voting’s insignificant effect on turnout comes from almost exclusively from the first era. A 1996 study found voting by mail in Oregon only increased turnout insofar that it retained voters.<sup>35</sup> Two separate examinations of early voting in Texas, one in 1992 and the other in 1994, showed that early voting had an insignificant effect on turnout.<sup>36</sup> By studying national turnout from 1980 to 2004, Gronke demonstrated that the only form of convenience voting that positively and significantly increased turnout was vote-by-mail.<sup>37</sup>

Early voting did little to alter the composition of the electorate at this time, however convenient it was described to be. Long-term influences like partisanship and ideology influence those who decide early more intensely, in contrast to late-deciders,

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<sup>34</sup> Rosenfield, Margaret. "Innovations in election administration: Early voting." *Washington, DC: National Clearinghouse on Election Administration, Federal Election Administration, Federal Election Commission* (1994), p. 4.

<sup>35</sup> Berinsky, Adam J., Nancy Burns, and Michael W. Traugott. "Who votes by mail?: A dynamic model of the individual-level consequences of voting-by-mail systems." *Public Opinion Quarterly* 65, no. 2 (2001): 178-197.

<sup>36</sup> Stein, Robert M. "Introduction: early voting." *The Public Opinion Quarterly* 62, no. 1 (1998): 57-69. Stein and Garcia-Monet, 1997.

<sup>37</sup> Gronke, Paul and Peter Miller. *Early voting and turnout: a replication and extension*. Presented at Annual Meeting American Political Science Association, Chicago. 2007.

who can be nudged more so by short-term campaign effects.<sup>38</sup> This is less true in high-intensity contests, where the close election makes new information, debates, and party mobilization become more impactful for voters.<sup>39</sup> Most examinations of early voters confirm the deduction that they are more partisan.<sup>40</sup> With partisanship come other indications of higher incomes, whiteness, and higher education levels. Stein and Garcia-Monet find a positive relationship between income and likelihood to vote early in the 1992 presidential election in Texas,<sup>41</sup> as does Gronke and others (including Stein in a different study of the 1994 presidential election in Texas) have found no significant difference across income groups.<sup>42</sup> Lyons and Sheb found that early voters were disproportionately older in the 1996 presidential election in Louisiana.<sup>43</sup>

Although the general consensus from first era literature seems to find only small effects of early voting on the electorate, we do see examples of political parties and campaigns adapting to the new voting period. It seems that campaigns took note of the partisanship of early voters and sought to turn them out.<sup>44</sup> A study published in 2000 using National Election Studies data, found that Republicans were favored in races with

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<sup>38</sup> Box-Steffensmeier, Janet M., and David Kimball. "The timing of voting decisions in presidential campaigns." In *Annual Meeting of the Midwest Political Science Association*, Chicago, 1999.

<sup>39</sup> Alvarez, R. Michael. *Information and elections*. University of Michigan Press, 1998.

<sup>40</sup> Gronke, Paul, Eva Galanes-Rosenbaum, Peter A. Miller, and Daniel Toffey.

<sup>41</sup> Stein and Garcia-Monet.

<sup>42</sup> Knack, Stephen. "Election-day Registration The Second Wave." *American Politics Research* 29, no. 1 (2001): 65-78.

<sup>43</sup> Lyons, William, and John M. Scheb. "Early Voting and the Timing of the Vote: Unanticipated Consequences of Electoral Reform." *State & Local Government Review* (1999): 147-152.

<sup>44</sup> Holbrook, Thomas M., and Scott D. McClurg. "The mobilization of core supporters: Campaigns, turnout, and electoral composition in United States presidential elections." *American Journal of Political Science* 49, no. 4 (2005): 689-703.

early voting.<sup>45</sup> In general, Gronke argues that early voting increases uncertainty for campaigns, causing them to spend more money in their efforts to turn out the early vote. Perhaps most telling is the finding that the party that benefits the most is the party that is better organized and funded.<sup>46</sup>

In the first era, most surveys of who votes early would suggest that early voting is simply making voting easier for those who would have voted anyways. If such trends are true, Berinsky argues that early voting will exacerbate political inequality along socioeconomic lines.<sup>47</sup> Rigby and Springer find some evidence of worsening biases due to early voting using data from the Voter Supplement to the Current Population Survey from 1978 to 2008, noting that “convenience voting reforms may exacerbate registration bias and, as a result, increase voting bias, depending on the level of preexisting registration bias in the state.”<sup>48</sup> The bulk of the literature on the early electorate from this period focused relatively racially homogeneous states, making it difficult to discern whether more voters of color would use early voting should they have that option.<sup>49</sup> Additionally, some of these inferences are not nuanced, as they do not take the date of the vote into their analysis, or other circumstances of the election.<sup>50</sup>

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<sup>45</sup> Karp, Jeffrey A., and Susan A. Banducci. "Absentee voting, mobilization, and participation." *American Politics Research* 29, no. 2 (2001): 183-195.

<sup>46</sup> Stein, Robert M., Jan Leighley, and Christopher Owens. "Voting, early voting and the determinants of vote choice: Is timing everything." In *annual meeting of the Midwest Political Science Association, April*, pp. 15-18. 2004.

<sup>47</sup> Berinsky.

<sup>48</sup> Rigby, Elizabeth, and Melanie J. Springer. "Does electoral reform increase (or decrease) political equality?" *Political Research Quarterly* (2010), p. 429.

<sup>49</sup> Herron, Michael C., and Daniel A. Smith. "Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election," p. 648.

<sup>50</sup> Stein and Garcia-Monet.

*Convenient, but for the Few: Texas in the First Era*

Texas was the first state to implement early voting. The policy developed over several decades to address some of the inconvenient aspects of voting unique to the state—Texas is large and rural, and reaching a polling place can be a challenge.<sup>51</sup> However, it was not the voters of Texas crying out for reform—it was the legislators. In 1963, a small provision was passed to provide for one alternative absentee voting site in counties where the county seat was not the largest town in the county. This clause received little attention until 1986, when a legislator became irritated at the idea of lying in order to provide an excuse to obtain an absentee ballot. The following year, he introduced legislation that would establish no-excuse, in-person absentee voting—essentially, early voting. County clerks were now statutorily required to provide in-person voting from the twentieth to the fourth day before the election at the clerk's office, any subsidiary locations, and discretionary temporary sites provided for in the 1963 law. Both permanent and temporary early polling places were mandated to be open as long as the clerk's office remained open.

In 1988, on the fourth day before Election Day, just five minutes before the clerk's office closed at 4:30pm, another inconvenienced legislator hurried to submit his absentee ballot in the final minutes of the Texas early voting period. The rushed legislator then sponsored legislation that required the most populous counties to hold extended hours in the final week before Election Day. By 1989, Texas early voting sites were open 7am to 7pm, including the Saturday before Election Day.

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<sup>51</sup> Richardson Jr, Lilliard E., and Grant W. Neeley. "The impact of early voting on turnout: The 1994 elections in Tennessee." *State & Local Government Review* (1996): 173-179.

The Texas legislature passed a law that changed the name of the new popular voting method from “absentee voting” to “early voting”. In the years that followed, Texas lowered the county population threshold for mandated alternative locations from 200,000 to 100,000. Extended hours were required in populous counties, as well, and allowed for counties to utilize grocery stores and malls as polling sites. “Retail voting” continues to be popular in Texas.<sup>52</sup> Texas also pioneered mobile voting in sparsely populated counties, where vans would drive around and operate as temporary alternative locations, an innovation that is used in many states across the country.<sup>53</sup> 226 of Texas’ 254 counties hardly altered their election administration practices because so few people lived in them. The remaining 28, however, were able to serve their dense, urban populations with a number of alternative locations. All voters were given access to absentee voting, and Texas established temporary non-precinct voting locations by law in 1991, realizing the first early voting policy.<sup>54</sup>

Throughout the 1990s, early voting usage increased. Data provided by the Office of the Texas Secretary of State shows that between 1994 and 2000, early voting usage increased from 30 percent to 40 percent.<sup>55</sup> As can be seen in Figure 1, early voting policies radiated out of Texas to the surrounding states to states similar in size and region. Colorado, Washington, Oregon, and parts of California adopted vote-by-mail in this time,

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<sup>52</sup> "Grocery Store Polling Locations Critical for Voter Access." Travis County Clerk. 2016. Accessed April 2, 2016. <http://traviscountyclerk.org/eclerk/Content.do?code=news.groceryawards>.

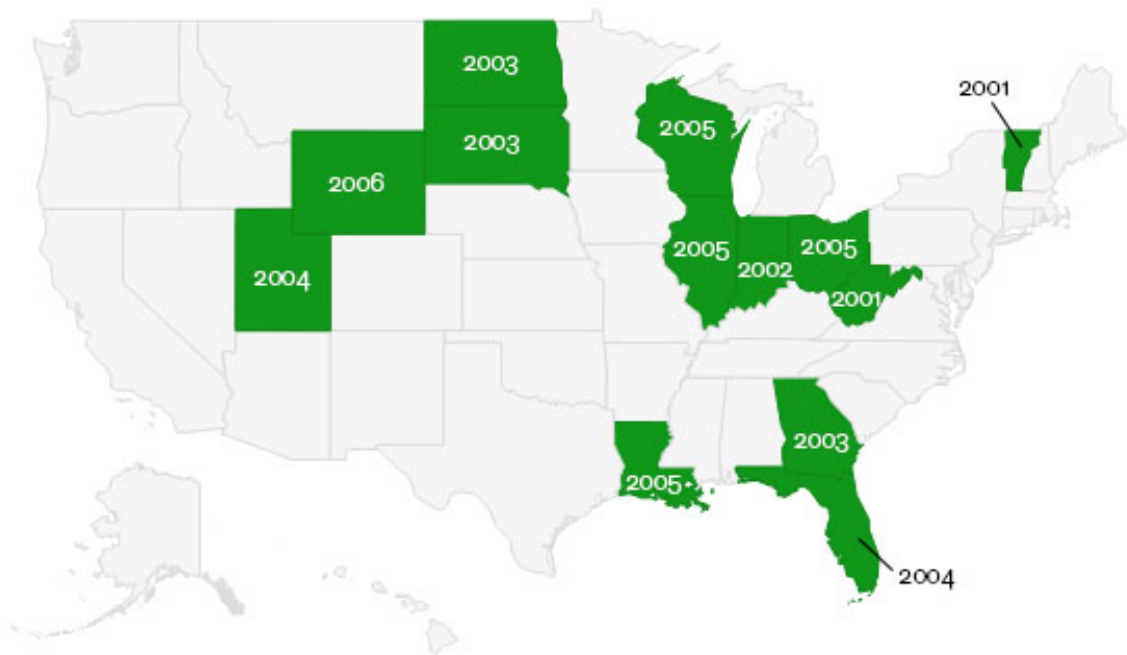
<sup>53</sup> Underhill, Wendy. "Voting for Residents of Long Term Care Facilities." National Conference of State Legislators. December 16, 2013. Accessed April 2, 2016. <http://www.ncsl.org/research/elections-and-campaigns/voting-for-residents-of-long-term-care-facilities.aspx>.

<sup>54</sup> United States. Election Assistance Commission. *Alternative Voting Methods*. Washington, DC: U.S. Election Assistance Commission, 2008, 2-9.

<sup>55</sup> "Early Voting Information." Texas Secretary of State. 2014. Accessed April 06, 2016. <http://www.sos.state.tx.us/elections/historical/earlyvotinginfo.shtml>.



as well. Generally, effects on turnout seem insignificant, and early voters were relatively highly motivated. As lawmakers experimented with electoral reforms, campaigns adapted. But the debate on early voting was not settled in the 1990s.



**Figure 2: States that passed early voting laws in the second era, 2000 to 2007.**  
Source: National Conference of State Legislatures.

### Second Era

The way academics and activists talked about election reform changed in 2000. The election of George W. Bush was controversial, and cast a light on the many opportunities for fraud, mismanagement, and disenfranchisement in local election administration. The subsequent recount, culminating in *Bush v. Gore*, drew national

attention to the flaws in the American election system, particularly in Florida, and provided an opportunity for reform.<sup>56</sup>

Purged voter rolls, machine failures, and confusing ballot design were the primary issues. However, absentee voting, then available in Florida with an excuse, played a small but intriguing role in the controversy. Scrutiny of the presidential election in the Sunshine State revealed that the enforcement of the excuse requirements for absentee ballots was uneven, depending on the county. Al Gore even challenged the counting of Republican absentee ballots in Seminole County, which became another arena for a contentious partisan battle for Florida's electoral votes.<sup>57</sup> The Florida election undermined the legitimacy of American elections in the eyes of many Americans, especially black Americans. A Gallop poll conducted in December 2000 found that nearly 70 percent of Americans had some, very little, or no confidence in the electoral system.<sup>58</sup>

These events translated into legislation on the national level. In the shadow of the contentious *Bush v. Gore* decision, Congress passed the Help America Vote Act (HAVA) in 2002. The legislation required states to establish a statewide voter registration system by 2006, guarantee access to polling places to people with disabilities, and providing for mandatory standards for voting technology. HAVA also provided for funding for new

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<sup>56</sup> Stewart III, Charles. "What hath HAVA wrought? Consequences, intended and not, of the Post-Bush v. Gore Reforms." (2011).

<sup>57</sup> Cooper, Michael. "Contesting the Vote: Seminole County; Democrats Look to Another Trial." *New York Times*, December 6, 2000. Accessed April 2, 2016. <http://www.nytimes.com/2000/12/06/us/contesting-the-vote-seminole-county-democrats-look-to-another-trial.html?pagewanted=all>.

<sup>58</sup> Simmons, Wendy W. "Black Americans Feel 'Cheated' by Election 2000." Gallup. December 20, 2000. Accessed April 2, 2016. <http://www.gallup.com/poll/2188/black-americans-feel-cheated-election-2000.aspx/> Bowman, Karlyn. "Vote of Confidence." *Public Perspective*, March/April 2012, 10-13.

technology, notably direct-recording electronic voting machines that facilitated early voting at alternative locations.<sup>59</sup>

Nineteen states had implemented some kind of early voting law at this point. Biggers and Hanmer surveyed these states and found that partisan politics had little to do with the passage of early voting legislation. While political influence was minimal, the states with large elderly populations, states in the west, large geographic states, and states with neighbors with convenience voting were all more likely to adopt similar measures.<sup>60</sup> Whether states were experimenting or responding to the 2000 election, partisanship seemed to have little to do with the passage of early voting laws. The need for reform radiated out of Florida, the state at the center of *Bush v. Gore* and much of the media coverage from the election.

Studies conducted by Gronke on the impact of HAVA on early voting did not find a direct link between the legislation and the proliferation of early voting that followed, particularly in 2004. However, Gronke does assert that HAVA had a substantial, yet indirect, effect on electoral reform in the states regarding early voting, and “the process of reform ran more quickly, accelerating and broadening the pace of change.”<sup>61</sup> The “low-hanging fruit” of the populist, reform-minded states of the West had already begun experimenting with convenience voting before 2000,<sup>62</sup> but HAVA and the national emphasis on election reform prompted more hesitant states, particularly in the South, to

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<sup>59</sup> U.S.C. § 15301-15545

<sup>60</sup> Biggers and Hanmer, p. 201.

<sup>61</sup> Gronke in Alvarez, R. Michael. *Election Administration in the United States*. Cambridge University Press, 2014, p. 121.

<sup>62</sup> Gronke, Galanes-Rosenbaum, Miller, and Toffey.

look to implement reforms that would add credibility and convenience to the voting experience, leading up to the 2008 election. In Florida, the task force that made recommendations for state-level electoral reform advocated relaxing absentee voting laws, which many saw as an attempt at bipartisanship in a heated political environment.<sup>63</sup> After 2000, election officials saw convenience voting as a means to reduce wait times, while also establishing a period where administrators could troubleshoot issues before Election Day, including sorting out ambiguous ballots.<sup>64</sup> Nationwide, the number of non-precinct voters doubled between 2000 and 2008, from 14 percent to 30 percent, according to the Early Voting Information Center.<sup>65</sup> Twelve states responded to the controversial election with liberalized voting periods.<sup>66</sup> This historical context is important to consider when evaluating post-2000 electoral reform.

#### *A Response to Scandal: Florida in the Second Era*

After Texas, early voting spread across the country. The 2000 presidential election prompted a wave of election reform at multiple levels of government. Nowhere was the need for reform starker than in Florida after 2000. Despite his 500,000 national popular vote lead, Al Gore lost the Electoral College by four votes, stemming from his 537-vote loss in Florida. The Florida election was riddled with controversy—black voters’ ballots were more likely to be rejected than white voters’, lines were long, Pat Buchanan had an unusually high vote share in key counties, and confusing ballots made it difficult for voters to express their presidential preference. Taken together, along with

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<sup>63</sup> Stewart, p. 83.

<sup>64</sup> Gronke in Alvarez, p. 129.

<sup>65</sup> Gronke, “Early Voting and American Elections,” 2008, p. 429.

<sup>66</sup> Gronke and Toffey, “The Psychological and Institutional Determinants of Early Voting,” 2007, p. 504.

the Supreme Court's decision in *Bush v. Gore*, these issues painted a picture of poor administration, and potentially fraud.<sup>67</sup>

The 2000 election in Florida reverberated across the country, but the need for reform was felt most acutely in Florida. The handling of the election was viewed as a national embarrassment and disenfranchising. The election served as a focusing event—pushing the otherwise low priority issue of election administration to the forefront of the public mind, creating an opportunity for policy change.<sup>68</sup> The recount brought heightened scrutiny from the political science community and legislators in Florida to electoral reform and the government took up the issue.<sup>69</sup>

Many reforms followed in the years that followed that pivotal election. Governor Jeb Bush called for a bipartisan task force to make recommendations for election reform in Florida, and asked the nonpartisan Collins Center for Public Policy, Inc. to provide staff. Within two months, the task force released an extensive report with thirty-five recommendations for reform, just in time for the 2001 Florida legislative session.<sup>70</sup> Entitled “Revitalizing Democracy in Florida”, the assessment focused primarily on poll worker training and ballot reform. The task force insisted, “Improved convenience voting should be promoted as a good way to help improve voter turnout and voter

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<sup>67</sup> Agresti, Alan, and Brett Presnell. "Misvotes, undervotes and overvotes: The 2000 presidential election in Florida." *Statistical Science* (2002): 436-440. Lichtman, Allan J. "What really happened in Florida's 2000 presidential election." *The Journal of Legal Studies* 32, no. 1 (2003): 221-243.

<sup>68</sup> Kingdon, John W., and James A. Thurber. *Agendas, alternatives, and public policies*. Vol. 45. Boston: Little, Brown, 1984.

<sup>69</sup> Palazzolo, Daniel J., and Vincent G. Moscardelli. "Policy crisis and political leadership: Election law reform in the states after the 2000 presidential election." *State Politics & Policy Quarterly* 6, no. 3 (2006): 300-321.

<sup>70</sup> Foote, E., and J. Smith. "Revitalizing Democracy in Florida: The Governor's Select Task Force on Election Procedures, Standards and Technology." (2001).

satisfaction” and offered a series of reforms that would liberalize the absentee voting process, stopping short of endorsing full early voting.<sup>71</sup> Many of these reforms were consequently authorized in the year that followed.<sup>72</sup>

In 2004, the Florida legislature passed a bipartisan and nearly unanimous amendment to its election laws to mandate and standardize early voting across the state in time for the 2004 presidential election.<sup>73</sup> Public response at the time was positive. The *Palm Beach Post* published an editorial in favor of the move, drawing the connection between the 2000 “meltdown” and the reforms, writing “Floridians have learned anything about voting since 2000 it’s that [Florida] cannot run elections on the cheap and that the more safeguards built into the system, the better.”<sup>74</sup>

Gronke argues that these reforms were enacted hastily and resulted in a policy that was not built for the strains of a presidential election, especially in a state as populous and historically problematic as Florida. Secretary of State Glenda Hood exempted early voting sites from the 50-foot barrier that prevents campaign supporters from soliciting voters at polling locations. Florida also made a large investment in new voting technology that was largely untested. Many of the usually elderly volunteers were uncomfortable with the new electronic voting machines and there were reports of delays.<sup>75</sup>

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<sup>71</sup> Ibid.

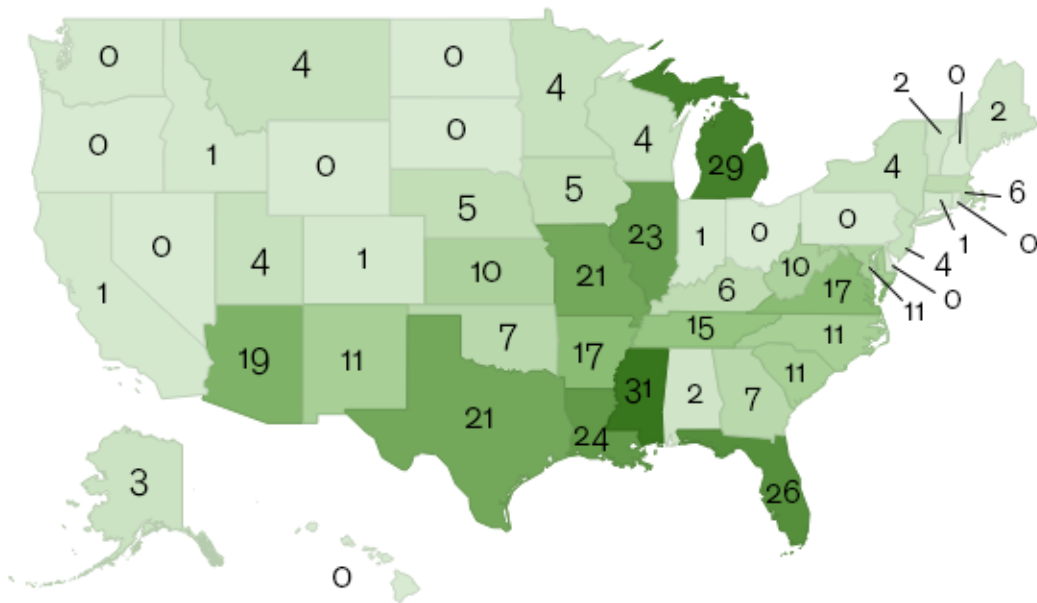
<sup>72</sup> Alvarez, R. Michael. *Election Administration in the United States*. Cambridge University Press, 2014.

<sup>73</sup> "The Effect of Early Voting on Turnout in Florida Elections, 2010 Update." *Florida Senate*, October 2010.

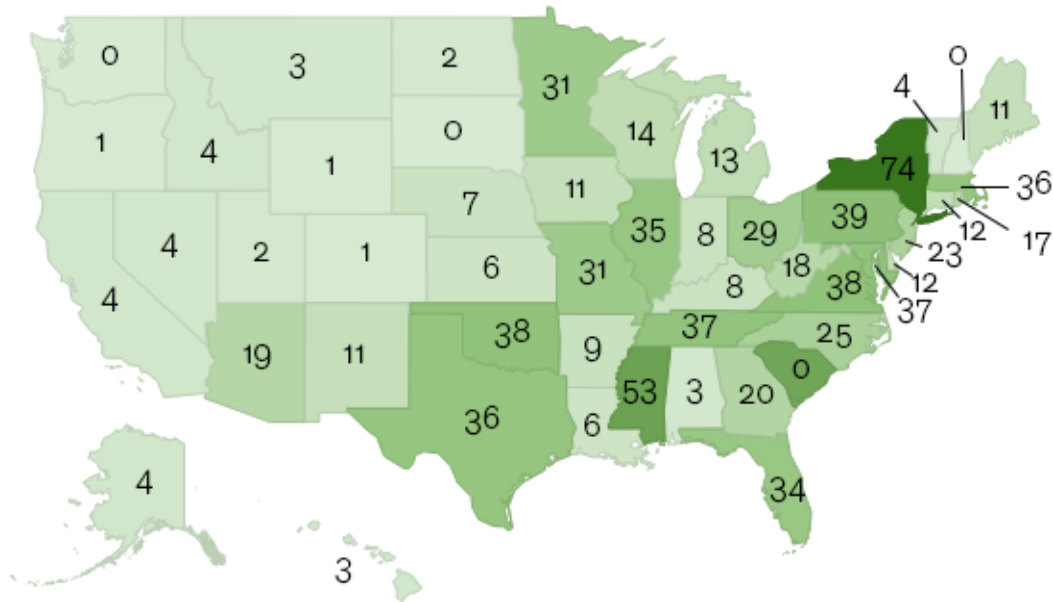
<sup>74</sup> "Voting Early and Uniformly." *Palm Beach Post*, January 27, 2004.

<sup>75</sup> Roberts, Joel. "More Florida Ballot Woes On Tap?" CBS News. July 20, 2004. Accessed April 2, 2016. <http://www.cbsnews.com/news/more-florida-ballot-woes-on-tap/>.

For all its flaws, the legislature integrated early voting into Florida elections. As I will discuss below in the third era, Florida voters quickly became attached to the opportunity to cast their votes in the days preceding Election Day at a number of sites. Like Texas before it, Florida’s early voting usage steadily increased in the elections that followed, and its users diversified over the course of the next several years. As can be seen in Figure 2, Florida was joined by other electorally important states in the second era, including Ohio, Indiana, Wisconsin, West Virginia, and Georgia. These states expanding not just the reach of early voting, but diversifying the electoral contexts in which the policy could be studied.



**Figure 3: Geographic Distribution of Second-Era Proposed Early Voting Legislation.** Distribution of early voting reforms proposed in the first wave, 2000 to 2007. A total of 382 early voting-related bills were proposed. Source: National Conference of State Legislatures.



**Figure 4: Geographic Distribution of Third-Era Proposed Early Voting Legislation.** Distribution of early voting reforms proposed in the first wave, 2008 to present. A total of 882 early voting-related bills were proposed—more than double in the previous era of the same length of time. Source: National Conference of State Legislatures.

### Third Era

The 2008 presidential election marks another change in the motivations (or lack thereof, in this case) to implement early voting. Election Day turnout was high, as black, Latino, and young voters flooded the polls to elect Barack Obama and express their concern over the economy and war. Early voting usage had been steadily increasing nationwide (with high statewide variation),<sup>76</sup> but there was a sharp uptick in usage in 2008. In 1992, national usage hovered around 10 percent. After 2000, total convenience

<sup>76</sup> Gronke, Paul, and Michael McDonald. "Tracking the early electorate." (2008).



voting usage reached around 20 percent. Between 2006 and 2008, usage went up ten points, without a single additional state adopting the practice.<sup>77</sup>

Much has been written about Barack Obama's winning campaign, from his defeat of party favorite Hillary Clinton to his strategy of microtargeting and extensive field operations.<sup>78</sup> In the general, black voters turned out at record rates. Given the historical nature of Obama's candidacy, this many come as no surprise. But evidence suggests that group identity is not the only predictor of black turnout, and that strategists can enhance turnout amongst black voters through traditional mobilization techniques.<sup>79</sup> In 2008, Obama did just that. Both in the primaries and in the general, the Obama campaign did extensive outreach with black voters, courting black churches and pushing registration in those communities.

Parties adapting and using early and absentee voting in their mobilization campaigns was not novel in 2008, but the policies again played a role in key states. Previous studies of party mobilization efforts to get out the early vote found that early voting policies favored Republicans (at least in the 1992 general election, using primarily absentee voting).<sup>80</sup> There is evidence to suggest that this fact is changing. As more voters opt to vote early, parties are adapting to integrate early voting more. A study conducted in 2008 found that the old assumptions that early voters share the same

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<sup>77</sup> Alvarez, R. Michael, Bernard Grofman, and Paul Gronke.

<sup>78</sup> Barbara Norrander, "Democratic Marathon, Republican Sprint: The 2008 Presidential Nominations." In *The American Elections of 2008*, eds. Janet M. Box-Steffensmeier and Steven E. Schier (2009). Heilemann, John, and Mark Halperin. *Game Change: Obama and the Clintons, McCain and Palin, and the Race of a Lifetime*. New York: Harper Perennial, 2010.

<sup>79</sup> Philpot, Tasha S., Daron R. Shaw, and Ernest B. McGowen. "Winning the race Black voter turnout in the 2008 presidential election." *Public Opinion Quarterly* 73, no. 5 (2009): 995-1022.

<sup>80</sup> Oliver, J. Eric. "The effects of eligibility restrictions and party activity on absentee voting and overall turnout." *American Journal of Political Science*(1996): 498-513.

attributes may no longer be true, and that the policy does not have strong partisan implications.<sup>81</sup>

Indeed, the Obama campaign did encourage voters, particularly black voters, to vote by this method. Turnout, particularly amongst voters of color, was high in 2008 and was an important part of many Democratic victories in key states like Florida, North Carolina, and Ohio.<sup>82</sup> At campaign events, Obama and his surrogates told voters to go vote immediately.<sup>83</sup> The campaign worked to identify voters that would potentially vote early and targeted them.<sup>84</sup> These efforts were successful. Democratic, African American, Hispanic, younger, and first-time voters were disproportionately more likely to vote early in 2008 in Florida.<sup>85</sup> A similar study found this to be true for Ohio, as well.<sup>86</sup> As diverse swing states, they serve as ideal case studies for the interactions between party mobilization and early voting usage.

Jim Messina, campaign manager of Barack Obama's reelection bid and the co-chairman of a super PAC spending on behalf of Hillary Clinton, observed, "In the old days, Democrats focused everything on persuasion. But when you have such a polarized electorate, getting from 41 to 43 [percent among whites] is much harder than figuring out

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<sup>81</sup> Alvarez, Levin, Sinclair.

<sup>82</sup> Herron, Michael C., and Daniel A. Smith. "Souls to the polls: Early voting in Florida in the shadow of House Bill 1355." *Election Law Journal* 11, no. 3 (2012): 331-347.

<sup>83</sup> "Michelle Obama: Now Go Vote." Gatorsports.com. October 22, 2008. Accessed March 27, 2016. <http://www.gatorsports.com/article/20081022/NEWS/810220905>.

<sup>84</sup> Firestone, David. "Obama's Early Voting Advantage. Taking Note Obamas Early Voting Advantage Comments." October 26, 2012. Accessed April 2, 2016. <http://takingnote.blogs.nytimes.com/2012/10/25/obamas-early-voting-advantage/>. Alexander, Sasha. "How Obama's Team Used Big Data to Rally Voters." MIT Technology Review. December 19, 2012. Accessed March 27, 2016. <https://www.technologyreview.com/s/509026/how-obamas-team-used-big-data-to-rally-voters/>.

<sup>85</sup> Herron and Smith. "Souls to the polls: Early voting in Florida in the shadow of House Bill 1355."

<sup>86</sup> Weaver, R. "The Racial Context of Convenience Voting Cutbacks: Early Voting in Ohio During the 2008 and 2012 U.S. Presidential Elections." *SAGE Open* 5, no. 3 (2015).

how to put the math together in various coalitions to expand the electorate.”<sup>87</sup>

Polarization has dragged the electorate apart, making voters’ views more static, and forcing parties to rely less on finding persuadable voters in order to win elections. Parties turned their attention to other aspects of elections, including the development of elaborate microtargeting apparatuses and the laws governing elections themselves. Electoral reforms in the last two decades have played out against this backdrop. The proliferation of photo identification laws are often branded as “voter suppression” for similar reasons.<sup>88</sup> Convenience voting largely escaped this scrutiny early on, when mentions of its usage brought to mind highly motivated voters, rather than the election of President Obama and the coalition that elected him.

Here we see how the changing usage of early voting has affected the motivations of policymakers. The focus of discussions of voting rights fundamentally changed at this time. While the scandals of Florida rang in the ears of politicians after the 2000 election, voter identification became a more salient subject after 2008.

Four states passed voter identification reforms in 2001 — some with majority Republican legislatures, some Democratic, some split—and all were clarifications of existing laws. There were some voter identification requirements in HAVA in 2002, but the specifics were largely left up to the states. In 2006, Indiana, Georgia, and Missouri passed the first laws requiring the presentation of government-issued photo identification

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<sup>87</sup> Brownstein, Ronald. "The Most Valuable Voters of 2016." *The Atlantic*. February 18, 2015. Accessed April 02, 2016. <http://www.theatlantic.com/politics/archive/2015/02/the-most-valuable-voters-of-2016/431865/>.

<sup>88</sup> Hajnal, Zoltan, Nezita Lajevardi, and Lindsay Nielson. "Voter Identification Laws and the Suppression of Minority Votes" (working paper, University of California San Diego, 2016.)

at the polls in order to vote. The courts blocked the latter two state laws, while the U.S. Supreme Court ultimately upheld the Indiana law in the landmark *Crawford v. Marion County Board of Elections*.<sup>89</sup> During this period, other states considered photo identification laws unsuccessfully. Erikson and Minnite found, “95.3 percent of 1,222 Republican legislators but just 2.1 percent of 796 Democrats voting on ten voter ID bills introduced by Republican state legislators between 2005 and 2007 supported them.”<sup>90</sup>

The newfound polarization of the issue was paralleled by its higher position on the Republican agenda in the 2010 midterms. Weiser and Norden attribute this trend to three key factors. First, Republicans increased their control of state legislatures from fourteen to twenty-six in 2010. Second, these newly elected legislators (and secretaries of state and governors) made voter identification a central point of the Republican agenda, discussing it on the campaign trails and pre-filing bills. Third, the American Legislative Exchange Council (ALEC), the conservative group of legislators and private interests to develop state policy, adopted a strict voter identification model law on its platform and advertised it on the cover of its member magazine in 2009.<sup>91</sup>

For the purposes of understanding the history of early voting, the rise of voter identification laws point to a heightened awareness of electoral reform amongst lawmakers, especially amongst conservatives. Early voting was not exempt from this polarization. In this new political climate, existing early voting laws were subject to partial repeals (like in Florida) and new early voting bills were defeated along partisan

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<sup>89</sup> Ibid.

<sup>90</sup> Erikson, Robert S., and Lorraine C. Minnite. "Modeling problems in the voter identification-voter turnout debate." *Election Law Journal* 8, no. 2 (2009): 85-101.

<sup>91</sup> Weiser and Norden, p. 11.

lines (Missouri is one of the most prominent examples of this). More laws that aim to both ease and restrict access to the polls are being proposed in legislatures across the U.S..<sup>92</sup>

The success of early voting, when measured by high usage, did not serve to bolster support for early voting laws. After 2008, only the District of Columbia and Massachusetts successfully implemented early voting policies—and not for lack of trying. Of the remaining fourteen states without early voting, ten failed to realize an early voting policy, either through legislation or referendum. Moreover, of the thirty-one states with early voting in place, six states weakened their policies, including reducing the number of alternative locations and banning weekend hours. Electoral reform was not low priority in the years after 2008—twenty-two states passed restrictive voter ID laws or cut back early voting between 2008 and 2010.<sup>93</sup> In Figures 3 and 4, one can see the distribution of this failed legislation in the second era and in the third. The number of bills doubled—between 2000 and 2007, 382 pieces of legislation were introduced, while 882 were proposed in the eight years that followed 2008. Early voting's popularity, coupled with the election of Barack Obama by a diverse coalition, changed again the historical context that lawmakers and strategists view the policy.

In the third era of the policy, early voting is now more associated with Democratic victory than with convenience. The newfound skepticism of early voting amongst lawmakers made early voting's passage more challenging than in Texas or

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<sup>92</sup> "Voting Laws Roundup 2015." Brennan Center for Justice. June 3, 2015. Accessed April 2, 2016. <https://www.brennancenter.org/analysis/voting-laws-roundup-2015>.

<sup>93</sup> <sup>93</sup> "Voting Laws Roundup 2015." Brennan Center for Justice.

Florida—laws that were implemented at time when existing literature on the policy found it would not alter the electorate significantly. Thus, in the third era, we expect to see many failed proposals of early voting, many proposed and successful rollbacks, and few new implementations. Florida and Texas experienced such cuts, Missouri failed to implement the law, and Massachusetts is the only state to pass early voting legislation.

*Long Lines and Deep Cuts: Florida in the Third Era*

Of the 8.3 million votes cast in 2008 in Florida, over half did so before Election Day—1.9 million by absentee ballot and 2.6 million early in-person. Early voting proved to be very popular amongst black voters in Florida. Around thirteen percent Florida’s registered voters were black in 2008 and 2012, but made up 22 percent of the early voting pool. Moreover, in 2008, 37 percent of black voters were early voters. Governor Charlie Crist extended early voting hours by executive order in response to the long lines and waits.<sup>94</sup> Herron and Smith looked in depth at black usage of early voting and found that it peaked on Sundays, so much so that black and white shares of early voters on those days was approximately equal. Democrats were also disproportionately more likely to vote on Sunday.<sup>95</sup>

Herron and Smith attribute this uptick largely to Souls to the Polls, a term that refers to the efforts by black churches to send their congregations to the polls after church on Sundays. The NAACP coined the term “Souls to the Polls” during the 2000 election.<sup>96</sup> Even before the passage of early voting, Al Gore spoke at black churches the Sunday

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<sup>94</sup> Florida Executive Order 08-217 of October 28, 2008, Extending Early Voting Hours.

<sup>95</sup> Herron and Smith. "Souls to the polls."

<sup>96</sup> Herron and Smith, “Souls to the Polls:Early Voting in Florida in the Shadow of House Bill 1355.”

before Election Day in hopes of mobilizing black voters within the next 48 hours.<sup>97</sup> The concept evolved as early voting spread across the country, and Souls to the Polls is now a major initiative of black churches, especially in states like Florida, Georgia, Ohio, and North Carolina.<sup>98</sup> Herron and Smith found that black turnout peaked and white turnout dipped on Sundays. Like Gore, Obama targeted black churches and mobilized voters to utilize the fifteen-day period before Election Day to conveniently cast their vote in the historic election.<sup>99</sup>

In 2011, State Representative Dennis Baxley, a conservative Republican, sponsored HB 1355, an omnibus bill that would reform many aspects of the Florida Election Code, including reducing the total number of days for early voting from fourteen to eight and eliminating the final Sunday.<sup>100</sup> In contrast to the bipartisan majorities and praised the original early voting law, most Republican lawmakers were enthusiastic critics of early voting and the legislation moved quickly through the legislature. During the floor debate, Republican State Senator Michael Bennett was skeptical of early voting as it stood, stating, “This is a hard-fought privilege. This is something people die for. You want to make it convenient?” More explicitly, Former Republican Party of Florida Chairman Jim Greer told the *Palm Beach Post* that the rollbacks were conceived in a

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<sup>97</sup> Cornwell, Rupert. "With 48 Hours to Go, the Candidates Try to Close the Deal with America." *The Independent*. November 5, 2000. Accessed April 2, 2016. <http://www.independent.co.uk/news/world/americas/with-48-hours-to-go-the-candidates-try-to-close-the-deal-with-america-623223.html>.

<sup>98</sup> "Absentee and Early Voting." National Conference of State Legislators. All four of these states have considered, and in some cases passed and implemented, partial repeals of their early voting laws, specifically targeting Sunday voting for removal.

<sup>99</sup> Charle, Suzanne. "Black Ministers Unite to save Souls for the Polls; They Offer Transportation to Get Their Flocks to Voting Sites." *Florida Times-Union* (Jacksonville), October 26, 2008. Accessed April 2, 2016. [http://jacksonville.com/tu-online/stories/102608/met\\_348317079.shtml#.VwCnvxIrKb8](http://jacksonville.com/tu-online/stories/102608/met_348317079.shtml#.VwCnvxIrKb8).

<sup>100</sup> HB 1355, Florida Legislature, (2011).

series of meetings of Republican leaders, and that they were a direct response to Democrats' fruitful use of early voting in 2008. He is quoted saying, "It's done for one reason and one reason only. ... 'We've got to cut down on early voting because early voting is not good for [Republicans].'"<sup>101</sup> Regardless of the many varied analyses of early voting and its effect on turnout and use, the Republican Party in Florida and beyond came to view the policy in terms of electoral victory and loss, adding a partisan association to a previously bipartisan issue and elevating its status on the government agenda.

The bill passed and its early voting provisions went into effect in the 2012 presidential election. Seeking to replicate Obama's winning strategy in 2008, black clergy launched "Operation Lemonade" to get black voters to the polls early on days other than Sunday. Bishop Victor T. Curry called the rollbacks "suppression" but black leaders hoped to turn the "lemons" passed by the state into "lemonade" and deliver Florida to the incumbent using early voting as their primary mechanism for voting.<sup>102</sup> Although Obama did indeed win the state, cuts to early voting led to a decrease in turnout amongst those least likely to vote.<sup>103</sup> In particular, Democratic, African American, Hispanic, younger, and first-time voters were affected by the shortened period because of their propensity to take advantage of early voting.<sup>104</sup>

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<sup>101</sup> Kam, Dara, and John Lantigua. "Former Florida GOP Leaders Say Voter Suppression Was Reason They Pushed New Election Law." *Palm Beach Post*, November 25, 2012. Accessed April 2, 2016. <http://www.palmbeachpost.com/news/news/state-regional-govt-politics/early-voting-curbs-called-power-play/nTFDy/>.

<sup>102</sup> Nicholas, Peter. "Political Perceptions: Florida's 'Operation Lemonade'." *Wall Street Journal*, October 29, 2012.

<sup>103</sup> Herron and Smith, "Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election."

<sup>104</sup> Herron and Smith, "Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355."



Early voting remains a contentious issue in Florida. The measurable reduction in turnout and its racial implications was the subject of controversy in the 2014 reelection of Republican Governor Rick Scott. Under pressure from civil rights groups, as well as voters who did not appreciate the long wait times of the 2012 presidential election, Scott distanced himself from the 2011 reforms that he had signed into law. Following his reelection, he pushed through an expansion of early voting that restored the policy to its pre-HB 1335 state.<sup>105</sup> The state implemented the law initially to solve some of the most famous examples of poor election administration as a part of the second wave of early voting reforms across the United States.

Florida's experience in 2012 is representative of the many rollbacks that occurred in states with high early voting usage. By the third era, more voters of color used early voting. Subsequently, early voting became a politically charged issue, subject to a number of amendments. The backlash that Scott faced in proposing changes to the policy is indicative of the policy's high approval amongst voters, but increased polarization amongst lawmakers. Electoral policy is produced by the legislators that may benefit from it. The evolved position of the Florida legislature reflects that early voting is being used differently.

### *Three Defeats: Missouri in the Third Era*

After 2008, the conversations surrounding early voting in state legislatures changed. The policy became a subset of a larger fight over voting rights across the

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<sup>105</sup> Sanders, Katie. "Rick Scott Says His Plan Would Expand Early Voting Hours to Record High." Politifact. January 22, 2013. Accessed March 28, 2016. <http://www.politifact.com/florida/statements/2013/jan/22/rick-scott/rick-scott-says-his-plan-would-expand-early-voting/>.

country. One of the most dramatic defeats of early voting reforms took place in Missouri in 2014. Defeated both in the legislature and as an initiative, the Missouri proposals represent how varied early voting policies can be and how, at nearly any incarnation, the reforms no longer have bipartisan support.

The debate in Missouri, beginning in 2006 when the state passed the nation's second photo identification requirement, was polarized and contentious.<sup>106</sup> Missouri's experience with early voting legislation points to the inextricable linkage of early voting with the ongoing debate about voter identification, turnout, and disenfranchisement.

The contentious fight over early voting in Missouri began in 2011. The Missouri Supreme Court ruled in *Weinschenk v. State of Missouri* the 2006 Missouri voter identification law violated the state constitution.<sup>107</sup> Thus, in order to make another pass at the ID requirement, a constitutional amendment had to be passed. In May 2011, the legislature passed Senate Joint Resolution 2 that would refer a constitutional amendment to the voters in November 2012. Should the constitutional amendment pass, the legislature also prefiled and eventually passed enabling legislation along partisan lines for not just a requirement for photo identification at the polls, but for three weeks of early voting. Democrats secured the early voting provision in the early stages of the bill's development.<sup>108</sup>

However, neither the constitutional amendment nor the enabling legislation would become law. In Missouri, voters approve a constitutional amendment solely on the

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<sup>106</sup> Weiser, Wendy R., and Lawrence Norden. "Voting Law Changes in 2012." Brennan Center for Justice. 2011, p. 4.

<sup>107</sup> SB 1014, Missouri General Assembly, 2006.

<sup>108</sup> SB 3, Missouri General Assembly, 2011.

wording of its official ballot title, not the substance of the amendment. The SJR 2 title read, “[s]hall the Missouri Constitution be amended to adopt the Voter Protection Act and allow the General Assembly to provide by general law for advance [early] voting prior to election day, voter photo identification requirements, and voter requirements based on whether one appears to vote in person or by absentee ballot?” The Circuit Court of Cole County ruled the title insufficient and unfair, finding the mention of “voter protection” and its omission of “government-issued” in reference to the identification requirement to be misleading. Furthermore, the court found that the reference to early voting (which is referred to as “advance voting” in some statutes) was not truthful. The language was confusing—the legislature already had the authority to create a period of early voting and the people of Missouri did not need to “allow” it to. Furthermore, the court recognized that the actual text of the amendment—not the title—would in fact restrict any early voting period to twenty days preceding Election Day and only during business hours.<sup>109</sup>

The legislature was not able to pass a revised ballot title in time to put the amendment on the ballot by November 2012. In the meantime, Governor Jay Nixon, a Democrat elected in 2008, vetoed the enabling legislation that had passed on partisan lines, including both the strict requirement for government-issued identification and the early voting provision.

Within a year, early voting was back on the agenda in Missouri, this time to be considered on its own, but still doomed for failure. Since 2000, the legislature has considered some form of early voting legislation every year, following a push from the

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<sup>109</sup> Missouri. *Constitutional Amendment to Article VIII, Relating to Early Voting and Election Procedures, Version 4*. 2014.

Secretary of State, who highlighted widespread public support.<sup>110</sup> Seven of Missouri's eight surrounding states have early voting.<sup>111</sup> On his first day in office in 2013, Democratic Secretary of State Jason Kander appointed an eleven-person, bipartisan commission to study potentially implementing early voting in Missouri.<sup>112</sup> A citizen push to place early voting on the ballot followed up on the recommendations with an initiative that would require six weeks of early voting with a population floor for alternative locations in certain counties like urban St. Louis County.<sup>113</sup> At the same time, the Republican-controlled legislature took up early voting in the form of a legislatively referred constitutional amendment known as Amendment 6. If approved on the same ballot that the citizens-backed initiative could potentially appear on, Amendment 6 would establish (but also restrict) the early voting period to six days during regular business hours, specifically banning weekend hours and ending on the Wednesday before Election Day. Additionally, its language on funding was vague, and seemed to allow for the legislature to only fund the extended voting period in certain elections.<sup>114</sup>

Debate ensued. Progressive interest groups and Democrats accused Republicans of election tampering with their proposal of Amendment 6.<sup>115</sup> Republicans branded the Kander-backed initiative as expensive, unpopular amongst election administrators, and unwise because it allowed people to vote potentially before important changes in

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<sup>110</sup> "Absentee and Early Voting." National Conference of State Legislators.

<sup>111</sup> Ibid.

<sup>112</sup> Missouri Secretary of State. *HCS HBS 48 & 216 Impact Report: The Effect on Missouri Voters*. March 2013.

<sup>113</sup> *Constitutional Amendment to Article VIII*

<sup>114</sup> Missouri Legislature. *SS SCS HCS HJR 90*. 2014.

<sup>115</sup> French, Marie. "Missouri Lawmakers Send Early Voting Proposal to Ballot." *St. Louis Post-Dispatch*. May 14, 2014. Accessed April 2, 2016. [http://www.stltoday.com/news/missouri-lawmakers-send-early-voting-proposal-to-ballot/article\\_8e54fabe-4391-52aa-bbf4-0ce3ab23a309.html](http://www.stltoday.com/news/missouri-lawmakers-send-early-voting-proposal-to-ballot/article_8e54fabe-4391-52aa-bbf4-0ce3ab23a309.html).

campaigns. Republican consulting firm Axiom Strategies LLC of Kansas City established a political action committee called the Free and Fair Election Fund to run the campaign for Amendment 6.<sup>116</sup> The Boston-based Buzzard's Bay Strategies ran the Missouri Early Voting Fund in favor of the initiative.<sup>117</sup>

At times, the debate was blatantly political. An Axiom Strategies consultant claimed long early voting periods were helpful to only Democrats, saying "It's like counting one team's baskets during warm-ups and the other team's baskets after the game starts." As if the partisan contrast surrounding the dueling measures was not stark enough, Amendment 6's major champion was Republican Senator Will Kraus had recently declared his candidacy for Missouri Secretary of State.<sup>118</sup>

Ultimately, the six-week initiative failed to gain enough signatures by the summer and the six-day amendment advanced without a Democratic filibuster. A late-night deal was brokered between the parties, with the Democrats consenting to let Amendment 6 proceed to the ballot and to take up an abortion waiting period, and Republicans agreeing to forgo a photo identification amendment and a series of restrictions on public bargaining. However, in spite of the confusion surrounding the competing early voting proposals, voters rejected Amendment 6 at the polls.<sup>119</sup>

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<sup>116</sup> Young, Virginia. "Early Voting Proposal Draws Opposition from Missouri Elections Official." *St. Louis Post-Dispatch*, October 14, 2014. Accessed April 2, 2016. [http://www.stltoday.com/news/local/govt-and-politics/early-voting-proposal-draws-opposition-from-missouri-elections-official/article\\_42521a8d-2a1f-5711-bba0-e2ffab37ee91.html](http://www.stltoday.com/news/local/govt-and-politics/early-voting-proposal-draws-opposition-from-missouri-elections-official/article_42521a8d-2a1f-5711-bba0-e2ffab37ee91.html).

<sup>117</sup> Young, Virginia. "Nudged by Petition Effort, Missouri Might Pass Limited Early Voting Proposal." *St. Louis Post-Dispatch*, April 17, 2014. Accessed April 2, 2016. [http://www.stltoday.com/news/local/govt-and-politics/nudged-by-petition-effort-missouri-might-pass-limited-early-voting/article\\_712ad37a-b584-5241-8660-aef507de3a78.html](http://www.stltoday.com/news/local/govt-and-politics/nudged-by-petition-effort-missouri-might-pass-limited-early-voting/article_712ad37a-b584-5241-8660-aef507de3a78.html).

<sup>118</sup> Young, "Early Voting Proposal Draws Opposition from Missouri Elections Official."

<sup>119</sup> French.

Missouri is considered a swing state in the presidential election, and it has both a Republican and Democratic Senator. In Missouri, early voting was at the center of antagonistic partisan fight, drawing attention from national organizations and media. Its confusing, partisan, and lengthy battle over a policy whose effects are not well understood in the academic community is indicative of the major change in the political perceptions of early voting. Gone are the days of policy experimentation in Texas, and the motivating scandals of Florida. States without early voting are likely to see debates like the ones that took place in Missouri, if at all.

*Low-Hanging Fruit: Massachusetts in the Third Era*

The only state to successfully pass early voting since 2006<sup>120</sup> is Massachusetts, which passed an election reforms package in 2014.<sup>121</sup> The state is famously blue, with a fully Democratic congressional delegation, Democratic majorities in both the state House and Senate, and a Democratic governor (at the time). However, its elections laws were decidedly archaic, in contrast to many states across the union, even in the South. Indeed, in many assessments of state voting laws and rules by nonpartisan organizations, Massachusetts ranked near the bottom. In Rock the Vote's appraisal state voter registration rates, Massachusetts fell at 42nd, and 48th for young voters alone. Pew Charitable Trust's Election Performance Index ranked Massachusetts at 32 in its aggregation of fifteen indicators of advancements in voting rights in 2008.<sup>122</sup> Voter turnout is highly unequal. Chief Justice John Roberts highlighted the state during the oral

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<sup>120</sup> The District of Columbia passed it in 2010.

<sup>121</sup> Mass. Laws Ch. 111 (2013).

<sup>122</sup> "Elections Performance Index." Pew Charitable Trusts. April 9, 2014. Accessed March 17, 2016. <http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/elections-performance-index>.

arguments for *Shelby County v. Holder*, the successful challenge to the Voting Rights Act. Unconvinced that most restrictive voting laws existed in the jurisdictions designated in the 1965 act, the Chief Justice queried, “Do you know which state has the worst ratio of white voter turnout to African-American voter turnout? Massachusetts. Do you know what has the best, where African-American turnout actually exceeds white turnout? Mississippi.”<sup>123</sup>

With these deficiencies in mind, Massachusetts advocacy began to lobby on a series of election reforms that were proposed in the legislature in 2013 by the chairman of the Joint Committee on Election Laws.<sup>124</sup> After two competing bills passed the Massachusetts House and Senate, a compromise was written by two clerks, Massachusetts Secretary of State William Galvin, and the executive director of Common Cause Massachusetts Pam Wilmot.<sup>125</sup> The package included pre-registration for 16 and 17 year-olds, online registration, no-excuse absentee voting, an early voting period of eleven days, and an assortment of smaller electoral reforms.<sup>126</sup>

The bill itself ultimately disappointed the activist community because it lacked a provision for same-day registration. It also lacked a population floor for alternative locations. The Election Modernization Coalition, a group of 45 progressive organizations in Massachusetts, organized a lobby day in July 2013, pushing for same-day registration,

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<sup>123</sup> *Shelby County v. Holder*, 133 Supreme Court (2013), oral argument transcript, p. 32, lines 3-19.

<sup>124</sup> S. 327, 118<sup>th</sup> Massachusetts Legislature (2013).

<sup>125</sup> Murphy, Matt. "Panel Recommends Early Voting, Rejects Same-day Registration." Lowell Sun. May 12, 2014. Accessed March 17, 2016. [http://www.lowellsun.com/breakingnews/ci\\_25748849/panel-recommends-early-voting-rejects-same-day-registration](http://www.lowellsun.com/breakingnews/ci_25748849/panel-recommends-early-voting-rejects-same-day-registration).

<sup>126</sup> Mass. Laws Ch. 111 (2013).

which were believed to enhance the turnout-increasing effects of early voting.<sup>127</sup> The Coalition and Massachusetts media outlets suggested the omission of same-day registration was upon the insistence of elected officials who feared a “surge of interest and activity” could upset an incumbent. State Representative Michael Moran, who contributed to the writing of the bill, noted resistance from well-organized municipal clerks, who administer Massachusetts elections, as a reason for opposing same-day registration.<sup>128</sup> Representative Moran won his first election by a slim 64-vote margin.<sup>129</sup>

Governor Deval Patrick signed a version of the bill into law in May 2014, to be implemented in November 2016.<sup>130</sup> Indeed, other elements of the reform package appeared weak. Municipalities can determine the number of hours and alternative locations at their discretion. The state provides for no population floors or funding, and the State Secretary is meant to give recommendations to municipalities. As of February 2016, those recommendations have yet to be outlined.

The relatively late passage of an early voting law in Massachusetts is perhaps a testament to its lack of partisan competition.<sup>131</sup> But in the new era of polarization around voting rights, Massachusetts Democratic supermajorities may have paved the way for an otherwise controversial piece of legislation. Although the legislature’s vote was nearly unanimous, with some Republican members of the legislature expressing support for

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<sup>127</sup> Burden, Barry C., David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan. "The Effects and Costs of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Elections." In *annual meeting of the American Political Science Association, Toronto*. 2009.

<sup>128</sup> "On Beacon Hill, Election Reform With A Missing Piece." WBUR. July 23, 2013. Accessed March 17, 2016. <http://www.wbur.org/2013/07/23/massachusetts-election-reform>.

<sup>129</sup> "Michael J. Moran." Massachusetts Election Statistics. 2014. Accessed March 16, 2016.

<sup>130</sup> H. 3788, 188th Massachusetts Legislature (2013).

<sup>131</sup> O'Brien, Erin, and Avi Green. *Will Massachusetts Finally Pass Reforms to Make Voting Easier and More Convenient?* Scholars Strategy Network. January 2014. Accessed March 16, 2016.



early voting, amendments that would require more restrictive voter identification were proposed and defeated.

Gronke noted that the Northeast remained immune to early voting laws, with the exception of Vermont and Maine. He proposed a theory of “low hanging fruit” that explained this trend—culturally populist, predominantly Western states were the primary adopters of early voting.<sup>132</sup> This hypothesis may take on a new meaning in this new era of partisanship—exceedingly Democratic states seek to adopt more liberalized voting policies, while more Republican states look towards restrictive policies like photo identification. Moreover, the relative weakness of Massachusetts’ law were direct contributions of individual lawmakers themselves, again demonstrating that electoral policy is written by those that stand to benefit from it. The Commonwealth’s Democratic majorities do not stand to lose or benefit much from retaining less engaged voters. Thus, early voting is neither a policy to rally around or against, as in Missouri. In Massachusetts, early voting was implemented, but ultimately a relatively weak policy when variable characteristics and the other aspects of the reforms package are considered.

#### *Whispers of Rollbacks: Texas in the Third Era*

Texas easily demonstrates the divergence between voters and legislators. Since its inception in 1980s Texas, early voting has steadily gained popularity. For twelve days preceding Election Day, Texans can cast their ballots at a number of locations, allocated based on their county’s population. Today, Texas has the highest usage of early voting. In Texas’ fifteen largest counties, early voting usage exceeded 40 percent, increasing

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<sup>132</sup> Gronke in Alvarez, p. 127.

with every day of the early voting period. In those same counties, early voting was also the preferred method of voting by wide margins. This is in 2012, when Texas ranked 47<sup>th</sup> in turnout in the country.<sup>133</sup> It is also important to note, that these larger counties are subject to stricter early voting requirements, including more alternative locations based on population.<sup>134</sup>

Furthermore, a 2009 analysis of the past four elections in Texas found that the distinctions between the early electorate and Election Day voters were becoming less pronounced. Although the populations are still different, early voters are progressively younger and more racially diverse with every passing election.<sup>135</sup> Texas serves as another example of how voters, administrators, and parties affect how early voting has changed and will continue to change as all the groups adjust to the law. Ultimately, it is simply a matter of time.<sup>136</sup>

Despite its high usage and general popularity, Texas has not been immune to proposals to cut early voting. A bill proposed by Republican State Representative Patricia Harless in 2013 would roll back the early voting period to seven days, amongst other small restrictions.<sup>137</sup> Harless stated that it was hard for administrators to recruit poll workers or find potential polling sites for the full twelve days. She cited the cost to local election administrators as another concern. She further asserted, “Early voting has not

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<sup>133</sup> "Voting and Registration." United State Census Bureau. 2012. Accessed April 06, 2016. [http://thedataweb.rm.census.gov/TheDataWeb\\_HotReport2/voting/voting.html?GESTFIPS=ALL](http://thedataweb.rm.census.gov/TheDataWeb_HotReport2/voting/voting.html?GESTFIPS=ALL).

<sup>134</sup> Haag, Stefan D. “Early Voting in Texas: What Are the Effects?” *Austin Community College CPPPS Report #5*. Report. 2009. Accessed April 6, 2016. <http://www.austincc.edu/cppps/earlyvotingfull/report5.pdf>.

<sup>135</sup> Haag, p. 10.

<sup>136</sup> Alvarez, Levin, and Sinclair, p. 248.

<sup>137</sup> House Bill 2093, 83<sup>rd</sup> Texas Legislature, 2013.

increased total voter turnout.”<sup>138</sup> B.R. “Skipper” Wallace, the chairman of the Texas Republican County Chairmen’s Association said “There is no magic number” for the number of days in the early voting period.<sup>139</sup>

In April of 2013, the bill was met with fierce opposition from Democrats on the House Elections Committee and advocates. Democratic Party leader Sandra Haltom criticized Harless’ analysis of cost and cited Florida’s long lines in 2012 as reason to not go forward with the cuts.<sup>140</sup> Democratic Representative Borris Miles called the reforms “suppression” targeted at the “elephant in the room”—high turnout of Latinos and blacks in the elections of Obama. These views were echoed by a number of advocacy organizations, including the Mexican American Legal Defense and Educational Fund and Disability Rights Texas, along with administrators from Dallas and Tarrant County Elections Offices. Harless was surprised at the backlash, and publicly announced she would pull the bill for “interim study.”<sup>141</sup>

The early voting debate in the Texas legislature has remained relatively dormant since 2013. In the most recent 2016 primaries, Travis County (where Austin is located) election administrators cut the number of early voting hours and alternative locations amidst public outcry.<sup>142</sup> With its changing demographics, conservative legislature, great

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<sup>138</sup> Forsyth, Jim. "Texas House Committee Scraps Bill to Shorten Early Voting." 1200 WOAI News Radio. April 9, 2013. Accessed April 06, 2016. <http://woai.iheart.com/articles/local-news-119078/texas-house-committee-scraps-bill-to-11165424/>.

<sup>139</sup> Aguilar, Julian. "Bill That Cuts Early-Voting Period Likely to Be Pulled." The Texas Tribune. April 8, 2013. Accessed April 06, 2016. <http://www.texastribune.org/2013/04/08/bill-would-slash-early-voting-likely-be-pulled/>.

<sup>140</sup> Forsyth.

<sup>141</sup> Aguilar.

<sup>142</sup> Lim.

Electoral College influence, and newly implemented photo identification policy, Texas will remain a battleground for voting rights for years to come.

## CONCLUSION

As voter identification laws gain in both popularity and scrutiny, so do other electoral reforms. Early voting remains one of the most popular forms of convenience voting. In one of her first major policy speeches of the campaign, presidential candidate Hillary Clinton called for a national standard of twenty days of early voting.<sup>143</sup> However, these propositions remain controversial, and contrasting studies are easily cherry-picked to prove a point.<sup>144</sup> I highlight this disagreement not to add merit to one position, but to draw attention to the deep politicization of voting rights issues. Americans' right to vote, while absolute in theory, is one lawmakers can shape through policy. Reducing the complex concept of early voting to a universal policy and static in use fails to recognize the flexible nature of election law.

The cases presented in this paper demonstrate that the use of early voting has changed. In the 1990s, academics were able to build a general consensus that the policy did not increase turnout, that voters were highly motivated, and either the Republican or neither party benefitted. Today, this no longer holds true in many states. Early voters, while small, are increasingly diverse and Democratic-leaning. With this "three eras" theory, I hope to provide a distinct three-part framework through which the disjointed

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<sup>143</sup> Karni, Annie. "Clinton Names and Shames Republicans for Voting Restrictions." *POLITICO*. June 4, 2015. Accessed April 02, 2016. <http://www.politico.com/story/2015/06/hillary-clinton-early-voting-rights-gop-118636>.

<sup>144</sup> Burden and Mayer. Jacoby, Jeff. "Convenience of Early Voting Isn't worth the Trade-offs." *BostonGlobe.com*. March 20, 2015. Accessed April 2, 2016. <https://www.bostonglobe.com/opinion/2015/03/20/convenience-early-voting-isn-worth-trade-offs/731bVbr4vQM7fCGH6QSF8N/story.html>.

literature can be viewed. Moreover, the theory is presented here, not just to offer clarity to the study of early voting, but also to draw attention to the role that academic work plays in the policymaking process. At the policy's outset, it had a small effect on the elections. But as early voting has become institutionalized, its removal can be similarly disruptive.

With this improved theoretical framework in mind, areas in need of further research are clearer. Most of the studies of the policy's effect on turnout occurred in the first era of early voting and it would be worthwhile to replicate these studies in contemporary contexts, given the evolving mobilization strategies of campaigns, and changing electoral reforms of other kinds. The cause of the increase in early voting in some states but not others is worthy of study, as well. Moreover, early voting seems best understood as an interaction variable, whether with same-day registration, vote centers, or party mobilization—all of these subjects are relatively unstudied. Finally, as states continue to consider new policies like in Massachusetts and Missouri, or reform their existing practices as in Texas or Florida, academics ought to focus on the variable characteristics of early voting. The roles of alternative locations, hours, weekends, and number of early voting days remain largely unexplored academically as policymakers increasingly focus on those issues,

## APPENDIX

**Table 1: Earl Voting Laws, Their Legislative Passage, and their Variable Characteristics**

State	Year Passed	Senate Majority Party	House Majority Party	Governor Party	Pop. Floor	Equitable Distribution Mandate	Sunday Mandate	Saturday Mandate
Texas	1968-1993	D	D	D	✓		✓	✓
Iowa	1990			R				
Nevada	1991			D		✓		✓
Oklahoma	1991	D	D	D				✓
Colorado	1992	R	R	D		✓		
Arizona	1993	R	R	R				
Hawaii	1993	D	D	D				✓
New Mexico	1993	D	D	D	✓	✓		✓
Idaho	1994	R	R	D				
Tennessee	1994	D	D	D				✓
Alaska	1995	R	R	D				
Arkansas	1995	D	D	D				✓
Kansas	1995	R	R	R	✓			
Maine	1999	D	D	I				
Montana	1999	R	R	R				
Nebraska	1999	NP	NA	R				
North Carolina	1999	D	D	D				✓
Maryland	2000	D	D	D	✓	✓	✓	✓
Vermont	2001	D	R	D				
West Virginia	2001	D	D	D		✓		✓
Indiana	2002	R	D	D				✓
Georgia	2003	R	D	R	✓		✓	✓
North Dakota	2003	R	R	R				
South Dakota	2003	R	R	R				
Florida	2004	R	R	R		✓	✓	✓
Utah	2004	R	R	R		✓		
Illinois	2005	D	D	D		✓	✓	✓
Louisiana	2005	D	D	D		✓		✓
Ohio	2005	R	R	R				
Wisconsin	2005	R	R	D				

State	Year Passed	Senate Majority Party	House Majority Party	Governor Party	Population Floor	Equitable Distribution Mandate	Sunday Mandate	Saturday Mandate
Wyoming	2006	R	R	D				
D.C.	2010					✓		✓
Massachusetts	2014	D	D	D				

Green highlights denote early voting usage rates above 25 percent. This standard is used to delineate between high-usage states and low-usage states by the Brennan Center for Justice. Data from the National Conference on State Legislatures and Ballotpedia.com.

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