

Voter Protection, Engagement and Lessons from the Election

As the first half of the 21st century unfolds, America's demographic trends favor progressives. This has not been lost on conservatives, and they are responding with escalating voter suppression efforts, as well as the aggressive use of super-PACs. Since late 2010, partisans have expended substantial energy trying to shrink the electorate and deter voters from the polls. They have tried to impose hundreds of restrictive and racialized voting laws, from onerous photo voter ID requirements, to eliminating or shortening early voting periods, requiring proof of citizenship to register to vote, purging voter rolls, attacking same day registration, and intimidating voters before and on Election Day.

Open Society Foundations' grantee partners, including the Brennan Center and State Voices rose to meet these challenges, and tackled potential problems early. Developing innovative collaborations within—and beyond—the voting rights community, national and state advocates worked to shift the narrative on voting in the media, in an effort designed by OSF. OSF funding also allowed grantees and the field to shift the narrative in the courts: they persuaded judges to block stringent voter ID laws and to lift registration restrictions, and to reject limits on early voting. We specifically encouraged and supported them in repelling a dangerous effort to enshrine voter ID in the Minnesota state constitution, and worked with them to quickly deal with last-minute crises, working to ensure that individuals affected by Hurricane Sandy could vote.

U.S. Programs also invested in civic engagement tools, affording c3 advocates access to the highest quality voter and consumer data and technical assistance. This meant that advocates were able to target their efforts with precision, with greater impact and success in reaching low propensity voters of color, and a sharpened focus on the issues that inspire large-scale voter participation. For the first time ever, nonpartisan groups in all 50 states could access these civic engagement “shared tools,” thanks to a new effort that OSF launched with Wellspring Advisors. Additionally, OSF helped provide funding to incentivize African-American, Latino, and youth civic engagement organizations joining together to share resources and coordinate outreach efforts through tools like the Voter Action Network. This not only maximized impact in voter turnout, it also led to greater return on investment for OSF and other funders, with groups sharing data and technical support.

In the end, the long assumed “enthusiasm gap” among people of color and young voters did not materialize and turnout was relatively high, notably so among communities that had been the target of suppression efforts, as well as among Latinos, unmarried women, young people, Asian Pacific Islanders, and Arab Americans. Despite the string of victories that pushed back against the most restrictive new legislation, the efforts to limit voting still hurt voters. There were long lines in Florida and Ohio, not enough ballots, machines prone to breakdown, poorly trained poll workers, and few contingency plans for breakdowns. Although the results were perilously close in some places, we dodged a bullet and managed to avert the recounts of other recent state and national elections, which could have crippled public faith in our democracy. As the President said in his victory speech, “We need to fix this.”

But the courtroom and on-the-ground wars over the franchise are far from over. While advocates successfully pushed back on many restrictive laws, some of those laws have only been rejected for this election cycle. In Ohio for example, the state legislature repealed a package of voter suppression measures after advocacy groups

successfully put a repeal measure on the ballot. State policymakers have vowed to revisit the issue in 2013. Perhaps most significantly, the next few months will see a battle royale at the Supreme Court on whether or not to retain Section 5 of the Voting Rights Act – a law that even in this elections season has proven to be an invaluable bulwark against voter suppression efforts in states across the country – and whether state requirements are preempted by the National Voter Registration Act.

During this session, panelists Wendy Weiser of the Brennan Center for Justice and Tracy Sturdivant of State Voices will join us to critically analyze what worked to cohere the field and repel the attacks on the vote, and what drove turnout. Was it a newly forceful voting coalition of historically marginalized populations, Latinos, and the young? Did efforts to suppress the vote help rather than hinder turnout? Did the ballot measures – including on drug policy, fiscal policy, money in politics, criminal justice, and the DREAM Act – attract a public hungry for policy reform? What role did money play? The panelists will also look ahead to the challenges at the Supreme Court and in state legislatures; the 2014 elections in which many House members, and the majority of Governorships and Secretaries of State (responsible for administering elections) will be on the ballot; and whether 2012's high voter turnout can be sustained so that typical off-year election drop-off will be less dramatic than usual.

To supplement this presentation, we have developed a memo regarding the preliminary lessons we have drawn from U.S. Programs' work on voter protection and engagement. It follows.

Voter Protection, Engagement and Lessons Learned Session

Guest Panelists



Tracy Sturdivant

Tracy is the Executive Director of State Voices. She brings to this role more than a decade's worth of experience in the civic engagement field. Before joining State Voices in 2010, Tracy served as the Vice President for External Affairs at the Center for Progressive Leadership, working to provide comprehensive, long-term development for diverse leaders across the country. She has worked in philanthropy, and with a host of other organizations, overseeing critical programs such as the White House Project's signature "Vote, Run, Lead" program and the National Coalition on Black Civic Participation's Black Youth Vote! and Black Women's Roundtable.

Tracy is very active in the national civic engagement community, serving on the boards of the Proteus Fund, the Ballot Initiative Strategy Center, ProgressNow Education Fund, and the Center for Progressive Leadership. A self-proclaimed foodie, she also loves to travel, and especially enjoys anything that combines both interests.



Wendy Weiser

Wendy directs the Democracy Program at the Brennan Center for Justice at NYU School of Law, a non-partisan think tank and public interest law center. She founded and directed the center's Voting Rights and Elections Project, coordinating litigation, research, and advocacy efforts to enhance political participation and prevent voter disenfranchisement across the country. Her work and the work she directed protected the voting rights of hundreds of thousands of citizens in 2006, 2008, and 2010.

She has authored a number of nationally-recognized publications and articles on voting rights and election reform; litigated ground-breaking voting rights lawsuits; testified before both houses of Congress and in a variety of state legislatures; and provided policy and legislative drafting assistance to federal and state legislators and administrators across the country. She is a frequent public speaker and media contributor on democracy issues.

She has appeared on CNN, Fox News, Democracy Now!, and NPR's Morning Edition, All Things Considered, and Diane Rehm Show, among other outlets; her political commentary has been published in the New York Times, Roll Call, the Hill, Foreign Affairs, Huffington Post, and elsewhere; and she is frequently quoted by the New York Times, the Washington Post, the National Journal, Politico, and other news outlets across the country. Previously, she directed the center's Fair Courts Project, which seeks to preserve a fair and impartial judiciary. She also served as an Adjunct Professor at NYU School of Law, where she taught the Brennan Center Public Policy Advocacy Clinic. Prior to joining the Brennan Center, Ms. Weiser was a senior attorney at NOW Legal Defense and Education Fund, where she worked on issues of access to the courts and domestic violence, a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison, and a law clerk to Judge Eugene H. Nickerson in the United States District Court for the Eastern District of New York. She received her J.D. from Yale Law School and her B.A. from Yale College.

Voter Protection, Engagement and Lessons Learned Session

To: U.S. Programs Board
From: Laleh Ispahani and Bill Vandenberg
RE: Preliminary Lessons – Voter Protection, Engagement, and other Investments in the 2012 Elections
Date: December 10, 2012

This document provides a brief overview and initial analysis of the impact U.S. Programs and its grantees had in the 2012 elections through our investments and work related to voter protection, nonpartisan voter engagement, and ballot related advocacy. U.S. Programs invested close to \$20 million¹ in the 2012 election cycle (2011-12), making the Open Society Foundations the second largest c3 funder in the voting field after the Ford Foundation.

Highlights from this election cycle include a number of judicial victories that prevented onerous state voter suppression laws from taking effect, a series of ballot initiative victories ranging from marriage equality to reform of the three strikes law in California, and expanded engagement of Latinos, youth, and other groups whose influence helps create the conditions for important policy change. While it is not possible to claim that any single factor is responsible for particular results in an election cycle, our preliminary assessment is that U.S. Programs played a significant role in all these areas.

Voter Protection: Investments in Education, Communications, and Litigation

Key Takeaways

What Worked

- OSF was one of the first funders to get resources to voter protection groups, beginning in the fall of 2011. This early money was invaluable in helping groups scale up and plan their efforts accordingly. We have begun resourcing groups for state battles anticipated in 2013.
- U.S. Programs funded communications research on voter suppression efforts was key in informing the field about values that appeal to voters.
- The media attention grantees generated exposed the electoral motivation that underlay voter suppression efforts.
- The changed media narrative influenced courts examining voting restrictions.
- More broadly, we learned the value of strategic communications to advance our policy goals. The communications and messaging work sets the stage for the public advocacy U.S. Programs is beginning to fund on the VRA and NVRA cases before the U.S. Supreme Court.

¹ This \$20 million figure reflects OSF's 2011-12 investments in voter protection and nonpartisan voter education and engagement as compiled in a private survey of 501c3 funder investments in voting work compiled by Wellspring Advisors, LLC. Total 501c3 investments from national funders in voter protection, education, and engagement in this cycle totaled \$90 million.

What Didn't Work

- Other funders fund in election years and fund late in the year. We have made it our responsibility to encourage those who fund only in election years to fund early or prior to the election year.
- Because many advocates of voter protection received low levels of funding in non-election years, they were financially unprepared to contend with the many attacks of voters' rights in 2011. Despite our early funding, the "on/off" funding cycle is a constant challenge for protection groups.
- National and state groups collaborated in an unprecedented way but duplication and other issues still need to be resolved.
- Board leadership alerted us to the importance of the need to shift the discourse on voting. We should have ascertained this need sooner. There was a real hunger in the field for the research and narrative work, and it greatly enhanced the advocates' efficacy. However, advocates wished they had received the tools earlier.
- A challenge ahead is the U.S. Supreme Court's determination of the constitutionality of Section 5 of the Voting Rights Act, a provision that helped keep some of the worst restrictive policies at bay this election cycle. Advocates are coordinating now on how to protect this invaluable provision. We are engaging in scenario planning with both the OSI-DC office and key field leaders.

On the voter protection front, we increased and coordinated investments, through strategic engagement and convenings with grantees and funding partners. Of particular note, we convened board members, key voting and civil rights leaders, and communications experts in January of 2012 to create proactive plans for the year.

U.S. Programs investments in the Brennan Center (\$1.4 million) and Advancement Project (\$1.6 million) catalyzed a messaging research and communications project seeking to fight efforts to suppress voting rights. Board members worked closely with staff in planning this work. The two grantees worked with Lake Research Partners and the public relations firms SKD Knickerbocker and Dewey Square to conduct research and determine messaging strategies to discredit restrictive voting laws and measures, promote positive voting behavior – including instructions on how to register and vote – and advance affirmative reforms to improve our election system.

The research found that the message that resonates most with voters is one rooted in the Declaration of Independence and patriotic "civic religion," and that voters value political equality and responsibility. The polling and research also found overwhelming public support for voter ID. The emerging strategy was to avoid discussing the validity of voter ID and instead illustrate that the policy is too restrictive (limited number and types of ID accepted) and impacts certain groups (elderly, students, and the minority community) adversely.

Brennan and Advancement disseminated the messaging materials widely through convenings and webinars to voting rights organizations, labor unions, and issue advocacy groups. The project's messaging worked its way into national and local media. A complementary \$200,000 grant to New America Media, a multi-media content producer and aggregator for ethnic media, extended this work to thousands of local ethnic media outlets. The public opinion and communications efforts influenced registration and get out the vote efforts, ballot initiative outcomes, and this fall's string of court victories for voting rights.

Examples of the Voting Education/Communication Project's Impact

Voting Narrative in the Media:

From September until the election, grantees found over 300 examples of the new voting messaging used verbatim in media outlets, including *The New York Times*, *Philadelphia Inquirer*, the Huffington Post, and Politico. Grantees are currently tallying the full coverage of voting issues in the media this fall. Media attention on voting access reached levels unseen in prior election years.

Voting Narrative in the Courts:

OSF funding also ensured legal groups could achieve tremendous success in the courts this year, blocking or blunting every voting law that was challenged before the election. The intense media coverage and the resonance of the new messaging had a real and direct impact. For example, the ruling on the South Carolina photo ID case echoed the new messaging. The judge stated that the Voting Rights Act “brought America closer to fulfilling the promise of equality espoused in the Declaration of Independence and the 14th and 15th Amendments to the U.S. Constitution.”

Voting Narrative in the Minnesota Voter ID Fight

Passage of a Minnesota ballot initiative, which would have required voters to present photo ID to vote, seemed a foregone conclusion with early polling showing public support over 70 percent. Minnesota advocates combined a media campaign with large scale direct advocacy. In both, they relied on the OSF grantees' messaging research findings, that: (1) elections should be free, fair, and accessible; (2) politicians should not manipulate the system; and (3) voter ID would hurt seniors and veterans. Advocates strategically did not question the validity of voter ID; they found that voters overwhelmingly support ID laws but that support fades when they hear the flaws of such laws. The campaign kept focus on how the legislature overreached and suggested that voters should send the amendment back to the legislature.

Thanks to robust media and voter engagement campaigns, public support for voter ID dropped precipitously. In June, polling showed that 58 percent of voters supported the initiative. On Election Day, it was defeated 52 percent to 46 percent. (See Ballot Initiatives section for further information.)

Dissemination of Materials:

A wide range of leading organizations, including the ACLU, Leadership Conference on Civil and Human Rights, and League of Women Voters, amplified the new messages in pre-election communications, utilized a toolkit that was developed, participated in field convenings, and found the messages to be instrumental to their education, advocacy, and engagement work.

Voter and Education and Engagement

Key Takeaways

What Worked

- For the first time in a significant way, voter protection and voter engagement siloes began to diminish, with both fields integrating strategies and messaging in response to the “war on voting.” There was a successful partnership between national advocates and those working at the state and local levels, as well as between legal and grassroots advocates.

- OSF's early and sizable investments in voter engagement, beginning in 2011, enabled several key African American, Latino, and youth organizations to ramp up efforts earlier than in prior cycles.
- OSF's strategy to invest in "on" and "off" years – during and between election years – helped groups achieve the capacity necessary to crush the projected voter "enthusiasm gap" within communities of color and among young voters.
- Early funder collaboration among large national funders, including Carnegie, Ford, Wellspring, and OSF, led to more thoughtful investments, greater return on investment, and division of labor among funders.
- OSF investments to incentivize collaboration within African American, Latino, and youth engagement fields through using shared civic engagement tools helped to reduce siloes and enhance impact.

What Didn't Work/Ongoing Challenges

- While voter protection and engagement groups worked together, the collaboration still occurred late in the election cycle and long after attacks on voting access were successful.
- Ongoing challenges remain to develop a healthy model for voter participation. Voter registration modernization should be a field priority since community-based organizations conducting registration efforts is a costly and inefficient model.
- OSF and its peers must now pay attention to strategies to engage ongoing participation beyond the election from communities of color and young people. The pivot from the election to advocacy – on the fiscal cliff, immigration reform, and other priorities – didn't happen post-2008 election. It should happen now.
- In the voter engagement field, a large challenge exists with how strategic integration occurs among national and state and local organizations. Our funding, with funder peers, of large national groups occasionally led to turf challenges at the local level where capacity and funding are more limited.
- As the voter engagement funding landscape shifts and OSF curtails large investments in voter engagement, a key challenge remains to help identify new individual and institutional donors to enable sustained support for civic engagement in communities of color and among young voters.

Voter Engagement: Investing at the Intersection of Elections and Shifting Demography

Voter Turnout: Projected "Enthusiasm Gap" Fails to Materialize

U.S. Programs' nonpartisan voter engagement investments helped grantees catalyze at least 2.5 million new, re-registered (due to moves or lapsed voter status), or infrequent voters who are people of color and/or women or youth. Early analysis shows that this includes more than one million new single women voters via the Voter Participation Center; 600,000 new African American voters via the NAACP and the Black Civic Engagement Initiative; 500,000 new Latino voters via the Latino Civic Engagement Fund and other Latino community rooted efforts; and sizable numbers of young, Asian American, and Arab American voters. Youth turnout – 50 percent of eligible voters – held steady from 2008. In the Youth Engagement Fund's priority states, turnout was 58 percent.

Exit polling revealed that young people made up 19 percent of voters (compared to 18 percent in 2008), Black voters sustained participation levels at 13 percent of voters, and Latinos for the first time made up more than 10 percent of the turnout – a 26 percent increase from 2008. The challenge now is how to sustain elevated levels of civic participation and pivot it toward ongoing issue advocacy. With much handwringing from conservatives

about shifting demography leaving them behind, the rising number of Latino voters has reopened a bipartisan conversation about the need to address immigration reform. Consensus on policy specifics for immigration reform is, of course, far from guaranteed.

U.S. Programs supported nonpartisan civic and voter engagement of what some call the Rising American Electorate (RAE) – the new voting aggregate of historically underrepresented African American, Asian American, Latino, and Native American voters, plus single women and young people of all races. The efforts included voter education, mobilization, and protection.

- With more than \$3 million in direct investments in Latino led groups in 2011-12, OSF is likely the second largest c3 funder of Latino voter engagement, after Ford.
- With \$2.5 million investments in African American led voter groups in 2011-12, OSF is likely the second largest c3 funder in African American voter engagement, after Ford.
- OSF is likely the largest c3 funder of youth voter engagement with at least \$2.4 million in investments in youth led efforts.
- U.S. Programs represented OSF on the steering committees of a newly formed Black Civic Engagement Initiative as well as two Democracy Alliance housed projects – the Latino Civic Engagement Fund and Youth Engagement Fund.

Investment Case Study: Using Data for Voter Education and Engagement

U.S. Programs investments in civic engagement tools – \$1.5 million in Board initiated funds this cycle – provided access to high quality voter and consumer data and technical assistance to community- and constituency-based groups nationwide. This data enables hundreds of nonpartisan organizations to more effectively identify voters in need of education and a push for turnout. It also facilitates greater collaboration among organizations by providing a clearer sense of where different groups are working and which constituencies, as well as which neighborhoods may be overlooked for voter education and engagement.

U.S. Programs investments in such tools led to 1.075 million new voters registered by state-based groups (in addition to the numbers from national grantees cited above) and 21 million total c3 voter contacts. State Voices, an U.S. Programs grantee, now provides voter and consumer data and technical assistance for 710 groups in 22 states. Additionally, for the first time ever, due to OSF and Wellspring Advisors investments, groups in all 50 states can now access high quality voter lists, fostering greater field building and impact in states, particularly in the South, that had previously been overlooked by nonpartisan voter engagement groups. Data analysis, enabled by centralized voter list provision, will enable rigorous evaluation. A comprehensive assessment of voter engagement efforts will be completed in early 2013.

2012 Ballot Measures

This list below the outcome of the various ballot initiatives US Programs and OSPC focused on in this election cycle.

Voter Protection/Suppression

Minnesota Voter Identification Amendment- DEFEATED

Detailed earlier in this memo, this defeat dealt a serious blow to the national voter restriction advocates' strategy to embed voter suppression in state constitutions. The fight also showed that public support of photo ID initiatives can be reversed with strategic information and advocacy. OSPC provided a \$500,000 c4 grant to the Our Vote Our Future campaign committee and U.S. Programs supported efforts regranted \$110,000 in c3 support. This proved to be an excellent example of time-sensitive collaboration between U.S. Programs, OSI-DC, and OSPC.

State Judicial Elections

Iowa and Florida Supreme Court retention elections

All Justices in both states - RETAINED

Efforts to overturn merit selection systems in Missouri, Arizona, and Florida - DEFEATED

Iowans retained Justice Wiggins and all three Florida Supreme Court Justices won new terms. Efforts to overturn merit selection systems in Missouri, Arizona, and Florida were defeated, suggesting that voters in states without big money in judicial elections prefer to keep it that way. OSF has funded education and engagement work on fair and impartial courts across the nation, primarily through grants to Justice at Stake, the Piper Fund, and Lambda Legal.

Criminal Justice: California Ballot Initiatives

California Death Penalty Repeal Initiative (Proposition 34) - DEFEATED

Prop. 34 would have repealed the death penalty in California. It also would have established the SAFE California Fund, which would have redirected \$100 million of the savings to local law enforcement for the purpose of solving more rapes and murders. OSPC invested \$500,000 in the SAFE California/YES on 34 Campaign to purchase radio ads in support of the initiative. Campaign staff is now engaged in a thorough assessment of the effort and will hold a full briefing on December 11 to inform ongoing work in California and the national abolition effort.

California Three Strikes Campaign (Proposition 36) - PASSED

Proposition 36 will eliminate life sentences currently imposed for nonviolent, non-serious crimes and save \$100 million per year to fund schools, prevent crime, and decrease the need for tax increases. U.S. Programs invested \$250,000 in the NAACP Legal Defense Fund's Prop. 36 research and organizing work. After the election, the California Campaign to Reduce Incarceration conducted a poll to understand the reasons why voters supported Prop. 36. It found that voters: opposed life sentences for minor crimes (44 percent), thought that Three Strikes penalties were too harsh (28 percent) and supported the reforms because they saved money (20 percent). This feedback will be instructive as reform agendas are developed.

Immigrant Education

Ballot Attack on Maryland “Dream Act”- DEFEATED

The “Maryland DREAM Act” allows undocumented students who have attended three years of public high school in state and whose parents have paid taxes during this period, to pay in-state tuition at public colleges/universities after completing two years of community college. U.S. Programs grantee, CASA de Maryland, played an instrumental role in the ballot campaign to fend off a conservative attack on the Dream Act that was originally passed by the state legislature. U.S. Programs provided \$400,000 to CASA to educate a range of constituencies and OSPC provided \$250,000 to Maryland State Education Association for the Educating Maryland’s Kids campaign.

LGBT Rights: Marriage Equality

Voters supported marriage equality in four states.

Proposed Minnesota law that would have outlawed gay marriage - **DEFEATED**

Maryland and Washington ballot attacks on legislature passed gay marriage laws - **DEFEATED**

Maine law that will permit gay marriages (without prior legislation action) - **PASSED**

The Civil Marriage Collaborative, a U.S. Programs grantee, invested in advocacy in Maine and Washington where voters approved marriage equality ballot measures and in Minnesota where voters struck down a proposed constitutional amendment to limit marriage equality.

Drug Policy Measures

Marijuana Legalization Measures

Colorado, Washington - **PASSED** Oregon - **DEFEATED**

Voters in Colorado and Washington passed laws allowing adults to possess small amounts of marijuana under a regimen of state regulation and taxation. A similar measure was defeated in Oregon. U.S. Programs grantees, including the Drug Policy Alliance, Law Enforcement Against Prohibition, and past grantee the ACLU of Washington, conducted both c3 and c4 work on the measures. OSF support will likely become increasingly important during the implementation of the state programs. In prior state marijuana legalization initiatives, there has been jockeying for control by the national actors and often acrimonious infighting among state-level advocates. Strong funder support, clearly directed, helped keep infighting to a minimum in 2012.