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Voting Rights

June 25, 2021 – Volume 31, Issue 23

Is faith in U.S. democracy being eroded?

By Alan Greenblatt



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Introduction

Voting, the bedrock act of a democratic political system, has itself become one of the nation's most divisive issues. Republican-controlled states are on track to pass the most laws restricting voting and registration of any year in recent history, arguing that election fraud is a serious problem that needs addressing. Democratic-led states, conversely, are expanding access, particularly to absentee voting. In Congress, Democrats proposed setting nationwide standards for registration, absentee and early voting and the redrawing of congressional districts, but the measure lacked sufficient support to pass the Senate. Studies show that laws designed to either restrict or expand voting have had only minimal effect on turnout. Nevertheless, both parties are using heated rhetoric, accusing the other side of changing rules to permanently entrench itself in power. Meanwhile, former President Donald Trump's repeated claims that the 2020 election was rigged against him have led many experts to worry that public faith in the U.S. election system may have been seriously undermined.



Milwaukee residents line up to vote early in the 2020 presidential election on Oct. 20. While many Republican-led states are working to enact laws aimed at restricting when and where residents can vote, some run by Democrats are seeking to expand voter access. (Getty Images/Scott Olson)

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Overview

Texas has long had some of the nation's tightest voting restrictions — and lowest voter turnout. ¹

In the wake of the 2020 elections, the Republicans who control the Texas Legislature decided they needed to impose even more restrictions.

During an unusual Saturday session there in May — the second time voting legislation was considered during an overnight session this year — the Texas House appeared ready to pass a sweeping election bill that would impose restrictions on various forms of voting.

Republicans argued the rules are needed to combat fraud. But Democrats, who said the rules were aimed at hampering their own voters, temporarily blocked passage of the bill by walking out of the session, preventing a vote on the measure before the legislative session adjourned. Republican Gov. Greg Abbott said he will call lawmakers back for a special session on July 8 to act on the bill.



Supporters of former President Donald Trump gather on May 1 outside Veterans Memorial Coliseum in Phoenix, where ballots from the 2020 election are being reviewed at the insistence of GOP legislators despite two previous audits that found no evidence of widespread fraud. (Getty Images/Courtney Pedroza)

Assuming that Republicans are likely to prevail in imposing voting restrictions — as they have in more than a dozen other states this year — Texas Democrats came to Washington to meet with Vice President Kamala Harris and members of Congress to plead for a federal voting rights law.

“States [are] putting in place laws that are designed, in many cases quite intentionally, to make it difficult for people to vote,” Harris said on June 16.²

The debate in Texas reflects a broader argument between the two major political parties about voting, which has become one of the most partisan issues of the day. The controversy has politicians on both sides arguing — for diametrically opposed reasons — that no less than the future of American democracy is at stake.

“There is something eerily haunting about the present state of American democracy,” says Wade Henderson, interim president of the Leadership Conference on Civil and Human Rights, an advocacy coalition in Washington. “It is reminding us of a previous time when we saw the withering of democratic traditions and the effort to suppress the minority vote, and we see it replicated again. That to me represents an existential threat to democracy as we know it.”

Democrats accuse Republicans of erecting hurdles that will make voting more difficult, particularly for members of minority communities. They compare the new legislation to the racially discriminatory “Jim Crow” laws enacted in the late 19th century and early 20th century that, among other things, disenfranchised Black voters across the South for decades.

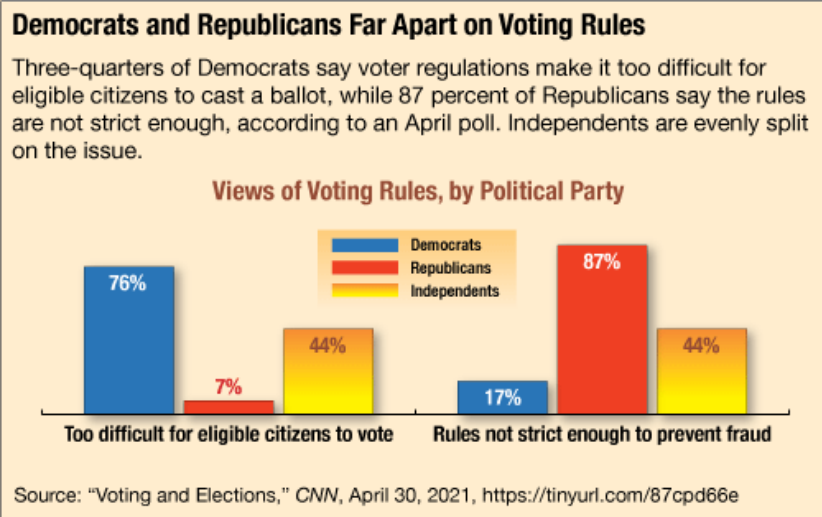
“Our democratic system faces extraordinary threats today because of sustained attacks from Republican leaders who throw up roadblocks to voting,” wrote Stacey Abrams, a former Georgia state legislator who has become a prominent voting rights advocate. “We as Democrats must act before it is too late.”³

But across the country, GOP lawmakers say they are only trying to enhance election security. Their actions reflect the unsubstantiated claim, expressed by Republican politicians from former President Donald Trump on down, that Joe Biden was elected president last November due to security lapses and fraud.

“Democrats value as many people as possible voting, and they’re willing to risk fraud,” Arizona state Rep. John Kavanagh said this year. “Republicans are more concerned about fraud, so we don’t mind putting security measures in that won’t let everybody vote — but everybody shouldn’t be voting.”⁴

Throughout American history, there has been a push and pull between the desire to make sure every eligible citizen can vote and the need to ensure security, which has sometimes been exaggerated by one party or the other looking to tighten rules to its own advantage. In recent years, it has been the GOP that has been more likely to enact restrictions. Since a 2013 U.S. Supreme Court decision that weakened the federal Voting Rights Act, Republican-sponsored bills have imposed voter ID requirements and closed polling places, largely in majority-Black areas, leading to much longer lines in cities than in predominantly white suburbs.

But Republican officials insist that the security of last year’s election was hampered by late rules changes — such as allowing drive-through voting or providing drop-off boxes — adopted due to the coronavirus pandemic. This has led a majority of rank-and-file Republicans to believe the outcome was determined by fraud, according to polls. Groups including the Republican National Committee, the Republican State Leadership Committee and the American Conservative Union have created election integrity task forces, arguing that more safeguards are needed against fraud.



Long Description

"It casts doubts on the entire system," says Rick Manning, president of Americans for Limited Government, a conservative advocacy group based in Virginia. "Voter integrity is the number one issue with Republican activists by far. Nothing else even tilts the scale."

However, Republicans have provided scant evidence of widespread fraud, and the courts rejected dozens of lawsuits filed by Trump and Republican attorneys general challenging the 2020 election outcomes in various states. "Donald Trump has led millions of Republicans to believe, falsely, that there was massive fraud in the election, which is the reason why he lost," says Whit Ayres, a Republican political consultant. "That's why these initiatives for election integrity have gotten such traction."

Democrats charge the GOP with using fraud claims as an excuse to rig the rules and make it harder for minority voters and urban dwellers — both core Democratic constituencies — to vote. For example, the proposed Texas law would:

- Ban absentee ballots unless requested by voters, require proof of identification for absentee ballots and prevent county officials from working with get-out-the-vote groups seeking to facilitate absentee ballot requests,
- Allow partisan poll watchers greater access to voting places,
- Ban ballot drop boxes and drive-through voting sites like those used for last year's election during the pandemic, and
- Limit early voting hours, including banning voting before 1 p.m. on Sunday, in what critics said was an effort to limit "souls to the polls" voting drives orchestrated by Black and Latino churches. ⁵

In March, the U.S. House passed a sweeping election law, the For the People Act (H.R. 1), which would set national standards in areas such as registration requirements, early voting and absentee balloting. It would also shift responsibilities for redrawing congressional district boundaries from state legislatures to independent bodies, promote public campaign financing and require presidential candidates to release their tax returns.

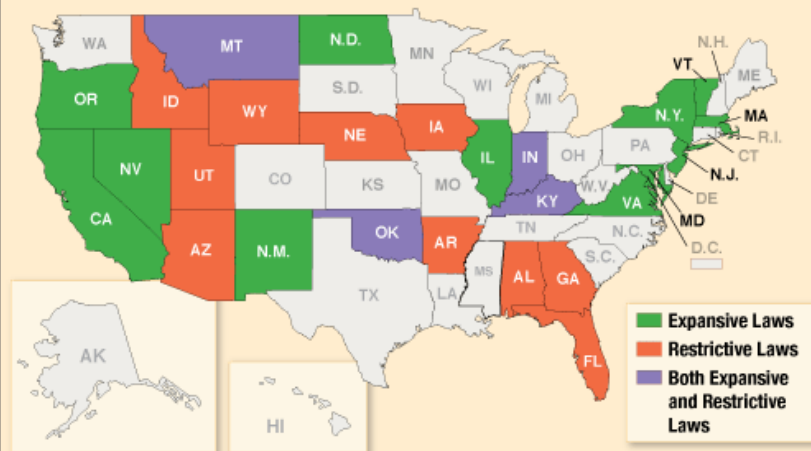
"When you look at what Republicans are doing across the country in statehouses to roll back access to the ballot box, we need to do what we can to establish baseline standards and best practices that allow people to register and vote in America without it being an obstacle course for them," says U.S. Rep. John Sarbanes, D-Md.

No House Republican voted for H.R. 1, which also passed the House in the previous Congress but was blocked in the Senate by Mitch McConnell of Kentucky, then the majority leader. GOP senators unanimously opposed this year's bill as well, effectively killing it on June 22. They argued it is an effort by Democrats to entrench their own power by ending states' voter identification rules and allowing so-called ballot harvesting, which involves groups collecting absentee ballots from multiple voters.

States Diverge on Voting Access

Sixteen states have enacted laws this year that make it easier to vote, including expanding early voting, making mail-in voting easier or improving access for voters with disabilities. So far, 14 states have enacted laws that restrict access, including making it harder to vote by mail, limiting the number of polling places or creating tougher voter identification requirements. Four have passed both expansive and restrictive measures.

Voting Laws Enacted in 2021



Sources: "Voting Laws Roundup: May 2021," Brennan Center for Justice, May 28, 2021, <https://tinyurl.com/mw66sesn>; Alison Durkee, "Nevada Expands Mail-In Voting As Other Battleground States Pass Restrictions," *Forbes*, June 3, 2021, <https://tinyurl.com/yvvfauc2>; and Maria Cramer, "Vermont's Governor Expands Voting Rights, Bucking Republican Push," *The New York Times*, June 7, 2021, <https://tinyurl.com/ec5ymje4>

Long Description

"Everything about this bill is rotten to the core," Sen. Mike Lee, R-Utah, said. "This is a bill as if written in hell by the devil himself." The measure was an attempt, he said, "to ensure an institutional, revolutionary Democratic Party of sorts, one that can remain in power for many decades to come."⁶

Not every issue surrounding voting has become partisan. In April, Kentucky enacted a new law that drew bipartisan support by expanding early and absentee voting while also making it easier to purge inactive voters from the rolls.⁷

"It's not purely ideology. It's an approach to the electorate," says Justin Levitt, an election expert at Loyola Law School in Los Angeles who is now serving as senior policy adviser for democracy and voting rights for the Biden White House.

He notes that GOP-led states such as Utah have enacted laws that in some ways resemble H.R. 1. "There are plenty of Republican strongholds that don't perceive the rest of the electorate as a threat and realize the way to stay in power is to keep your constituents happy, and one way is to allow them to vote," Levitt says.

Although there are exceptions — Democratic states such as Delaware and New York have long had some of the most restrictive voting laws, for instance — the current trend clearly is toward Republican-run states making voting and registration more difficult, while Democratic-controlled states try to make voting easier.

"It helps to appreciate the fundamental bias of both sides," says Ayres. "Republicans have a tendency to view every effort to expand the franchise as an opportunity for voter fraud, and the Democrats have a tendency to view every attempt to change voter eligibility as a potential for voter suppression."

In Arizona, despite three statewide counts attesting to Biden's win, Republicans continue to claim that there was something fishy about the result. The state Senate has sponsored an audit of the votes in the state's largest county, Maricopa, which includes Phoenix. The idea of finding ways to question and perhaps overturn official election results is spreading to other jurisdictions, with lawmakers from at least 10 other states visiting the Arizona audit site. Legislators in numerous states have made it easier to replace local election officials with partisan actors or limited the power of governors or secretaries of state to oversee aspects of election administration. Election experts worry about the implications of allowing partisan actors to interfere in election management.

"This is one of those things driven because members of the legislature didn't like the outcome," says David Becker, executive director of the Center for Election Innovation & Research, a Washington nonprofit organization that consults on election administration issues. "We should look carefully when partisans try to raise concerns months after the election."

With the outcome of the 2020 election still a matter of hot dispute in Republican circles, and with voting rules being changed ahead of the next election, here are some of the issues partisans are debating:

Should Congress expand voting rights?

Congress last reauthorized the Voting Rights Act in 2006. Since then, the Supreme Court has thrown out a key provision of the original 1965 law. The court found in 2013 that the law's preclearance requirement — which meant a group of mostly Southern states had to get federal approval before changing state election laws — was based on outdated criteria regarding historical racial discrimination.

"The decision was a huge setback for voting rights and dismantled fundamental voter protections that had been in place for nearly 50 years," Democratic Rep. Bobby Scott of Virginia said in 2019.

8



A long line of voters forms at a polling place in Atlanta on the first day of in-person early voting for Georgia Senate runoff elections on Dec. 14. Many political strategists think President Donald Trump's claims of widespread voter fraud fatally damaged Republican chances of winning the state's two Senate seats. (Getty Images/Los Angeles Times/Jason Armond)

Since then, Democrats have argued the law should be updated. The For the People Act would address a wide range of voting issues, such as mandating that states set up systems to register voters automatically when they interact with state agencies, allowing online registration and permitting citizens to register as late as Election Day.⁹ All states would have to offer at least 15 days of early voting and no-excuse absentee voting, meaning voters would not have to give a reason such as illness to vote by mail. The bill would also allow individuals convicted of felonies to vote, unless they were serving time in prison or jail when elections are held. (See [Short Feature](#).)

"All the components are really critical," says Sarbanes, the Maryland Democrat. "They're all the product of what the public has been telling us for years. People have been saying to us, why is it every two years in America we can't get to the ballot box without having to run an obstacle course?"

Democrats and voting rights advocates say that the need to set national standards is especially urgent now, given the proliferation of new laws in Republican-led states that curtail absentee and early voting, along with other restrictions. "What's most important about H.R. 1 is that it puts all Americans at the same level and says that your voting rights are not determined by your zip code," says Sylvia Albert, director of voting and elections for Common Cause, an ethics and democracy group based in Washington.

The bill passed the House on a party-line vote but a motion to allow it to proceed in the Senate died on June 22, also on a party-line vote (50-50). (In the Senate, 60 votes are needed to end a filibuster.) Republicans complained that the bill not only enshrines voting methods they say favor the Democratic Party but also represented federal overreach into areas traditionally managed by the states, including redistricting. (See [Short Feature](#).) The bill would have allowed Washington to micromanage election administration, down to specifying the types of envelopes states must use for absentee ballot applications.¹⁰

"This will institutionalize techniques used by the left to expand the vote in a fashion where there will be no integrity in the vote," said GOP Sen. Lindsey Graham of South Carolina. "This is the biggest power grab in modern American history being pushed by the most radical people in modern American history to change the way we vote to destroy the integrity of the ballot box."¹¹

The Constitution authorizes the states to determine “the times, places and manner of holding elections,” but gives Congress the power to override them if it sees fit. Each state does things a little differently, but typically secretaries of state are in charge of the process, with the work of running polling places and counting votes delegated to counties.

“One of the major strengths of our American political systems — one of the reasons it’s so hard for foreign actors to interfere — is its decentralized structure,” says Ayres, the GOP consultant. “Elections have always been run at the local level and should continue to be run at the local level.”

Some Republicans question whether Congress needs to act to address voting rights at all at this juncture. “We need to recognize that we have made tremendous progress over the last half-century,” says Jason Shead, executive director of the Honest Elections Project, a conservative group concerned with election integrity. “I would contend that voting rights have [already] been expanded. If you are a citizen and an adult of legal age and not convicted of a felony, the polling places are open to you.”

Democrats and Republicans each hold 50 seats in the chamber and a key Democrat, Joe Manchin of West Virginia, says he will not support changes in voting law that lack bipartisan support. “Voting and election reform that is done in a partisan manner will all but ensure partisan divisions continue to deepen,” Manchin wrote on June 6.¹²

Later that month, Manchin circulated a memo outlining a possible compromise, calling for at least two weeks of early voting and nonpartisan redistricting methods, while backing voter ID requirements and purging of voter rolls using other government records.

Manchin had earlier expressed support for the John Lewis Voting Rights Advancement Act, which would revive the preclearance requirement for states that have discriminated in the past, using new formulas, and it does have some GOP support. The measure is named for the late Georgia congressman who, as a young civil rights activist in 1965, helped lead a march that was instrumental in galvanizing support for the original Voting Rights Act.¹³

Already sensing the difficulties H.R. 1 would have in becoming law, some members of the Congressional Black Caucus have also spoken in favor of taking this narrower approach. The John Lewis Act “is of foundational importance,” said New York Democratic Rep. Mondaire Jones. “It is democracy-saving legislation.”¹⁴

But re-establishing preclearance requirements would do nothing to erase the changes in voting law already enacted in numerous states this year.

Do voting restrictions affect turnout?

Kathleen Campbell was determined to vote. Last fall, she had to wait in line for three hours before being able to cast a ballot at her Atlanta polling place. Many other people around the state had to wait much longer, but Campbell was not discouraged.

“I have voted before, always in person, and I’ve never waited this long, which I’m hoping is actually a good sign for this year’s election turnout,” Campbell said as she waited. “I’m feeling really optimistic at how seriously people are going to take this election.”¹⁵

People have experiences like Campbell’s in every election. Some jurisdictions — usually serving primarily minority voters — end up having long lines, but citizens stay in them, insisting on exercising the franchise. Citizens who want to vote may endure frustrations. Those likely to give up might not have intended to vote anyway.



Former Georgia House Minority Leader Stacey Abrams, now a voting rights activist, has warned that “our democratic system faces extraordinary threats today because of sustained attacks from Republican leaders who throw up roadblocks to voting.” (Getty Images/The Washington Post/Melina Mara)

Bernard Tamas, a political scientist at Valdosta State University in Georgia concludes that “creating long lines and increasing voter identification requirements will not reduce voting by enough to make a real difference.”¹⁶

Georgia Secretary of State Brad Raffensperger, a Republican, said the 2020 election was the most secure in the state’s history. Nevertheless, legislators tightened the state’s voting rules this year. The new law drew national attention after it imposed voter ID requirements for absentee ballots, barred election officials from sending out absentee ballot forms without voters’ requests and reduced the period during which voters can request mail-in ballots, while also expanding the number of days for in-person early voting. The law also gave the Legislature greater authority over elections and allowed the state to take control of local election administration.

But perhaps its most notorious provision was a ban on outside groups providing food or water to people waiting in line to vote. Critics said that was needlessly cruel in a state where voters in urban precincts sometimes wait for hours to vote. Supporters of the provision pointed out that federal law bars groups from providing anything of value to voters at polling places.

Tamas argued that the measure was intended to suppress the vote — but doubts it will change outcomes. “Limiting absentee voting and increasing wait times at the polls may not be enough to shave off even a few percentage points of Democratic voters across all of Georgia,” he wrote.¹⁷

Other political scientists also have found that changes in voting laws — regardless of whether they impose more restrictions or seek to make registration and voting easier — tend to have limited effects on turnout. “Most of the hype and concern about them is overblown in terms of driving turnout,” says Barry Burden, director of the Elections Research Center at the University of Wisconsin. “Turnout is mostly driven by things outside policymakers’ hands, such as demographics, competitiveness, culture and what’s on the ballot. There are laws that are burdensome — or that burden some more than others — but people still manage to vote.”

Benjamin Highton, a political scientist at the University of California, Davis, surveyed political science literature on the impact of voter ID laws and concluded that they show “modest, if any, turnout effects.”¹⁸

Conversely, states with automatic voter registration systems have not seen spikes in turnout compared with other states, suggesting that people who would not make an extra effort to register to vote might not be particularly interested in actually voting.¹⁹ Automatic registration is a relatively new method, however, first introduced in Oregon in 2015 and since adopted by 17 other states and Washington, D.C.²⁰

“The idea that simply making voting more convenient is going to lead to more turnout, that does not hold water,” says Snead, of the Honest Elections Project.

Snead and other conservatives who support imposing more safeguards on the voting process contend that it will boost confidence in elections and therefore encourage participation. Even some Republicans worry, however, that loudly insisting elections are not secure has already dampened turnout. Many political strategists say Trump’s fixation on fraud hurt his party’s cause during Georgia’s runoff elections for two Senate seats in January. Democrats won both seats, giving them control of the Senate.

Conservative radio host Erick Erickson tweeted that “427,205 Republicans in Georgia believed the lie about the stolen election and chose to sit out the runoffs, giving the Democrats a chance to pass their agenda. The lies mattered.”²¹

Michael McDonald, a voting expert at the University of Florida, says that while most studies find a modest impact on turnout after changes in voting laws, most measure the effects of a particular change, such as limits on early voting. States typically adopt a raft of changes — whether in a single bill or over time — and those can have a cumulative effect that is harder to measure.

For example, he says, it can be difficult to determine how many people “self-censor,” never trying to vote for fear of running afoul of new rules. “It may be a small effect in terms of the numbers of people voting, but it’s meaningful for the people who are disenfranchised,” McDonald says.

That is why many Democrats argue that turnout is the wrong yardstick. Any attempt to make voting more difficult is wrong, they argue, even if individuals can overcome those barriers. “In states that have had histories of voter suppression, it creates gaps in civic engagement among people who have historically been excluded,” says Gaby Goldstein, senior vice president at the Sister District Project, an organization in Washington, D.C., that helps elect Democratic state legislators.

“Civic engagement is a muscle,” she says. “When that muscle has been held in a cast for decades, if not longer, it makes the need to strengthen it all the more urgent.”

Is voter fraud a widespread problem?

Trump has repeatedly said that last year’s election, and the presidency, were stolen from him. In May, he claimed that “a dump of 143,379 votes” in favor of Biden was made late on election night in Wisconsin, a state Biden carried by just over 20,000 votes out of more than 3 million cast.²²

An examination by Wisconsin election officials, however, found just 27 possible cases of voter fraud, 16 of which involved voters in La Crosse who listed their UPS postal boxes as their mailing

addresses, instead of using their residences as required by law.

"Whatever excuse the Republicans have for massive fraud in Wisconsin, it's just simply not true," said Democratic state Sen. Jon Erpenbach. ²³

Similar claims of massive voting fraud have been disproven in other states. The Nevada Republican Party claimed there were thousands of cases of fraud in that state, which Biden won by a margin of almost 33,600 votes, but Secretary of State Barbara Cegavske, a Republican, said there is "no evidentiary support" for such claims. "Unfortunately, members of my own party continue to believe the 2020 general election was wrought with fraud — and that somehow I had a part in it — despite a complete lack of evidence to support that belief," she said. ²⁴

Nevertheless, polls show that large numbers of Republicans believe the presidential election was stolen. A Reuters/Ipsos poll released in April found that 55 percent of Republicans believe Trump's loss was due to illegal voting or election rigging. ²⁵

Michigan state Sen. Ruth Johnson, a Republican who chairs her chamber's Elections Committee, said at a May hearing that most people in that state believe its elections lack integrity. But on June 23, another Michigan Senate committee announced it had "found no evidence of widespread or systemic fraud" in the 2020 election. ²⁶

Last fall, Trump's legal team presented hundreds of affidavits attesting to fraud, but judges were dubious, dismissing some as hearsay and others as being "rife with speculation and guesswork." ²⁷

However, the lack of legal success has not silenced doubt among his supporters. "Let's be clear: The president presented thousands of affidavits in their states about specific fraud," says Manning, of Americans for Legal Government. The group offered \$10,000 rewards for evidence of fraud in Pennsylvania, on the condition that it led to prosecution. No such evidence was provided, although the group paid a woman \$2,000 for a video showing someone voting past the deadline.

"Because the courts were cowardly in their approach and chose not to take cases does not mean there wasn't proof of voter fraud," Manning says.

Glossary of Election Terms

Term	Definition
Absentee/Mail-In Voting	Voting before Election Day, generally by mail and at the voter's request; some states require a reason to vote absentee
All-Mail Voting	Voting conducted primarily, though not exclusively, by mail
Election Certification	Post-election reviews by state governments to confirm results; details and timelines vary by state
Gerrymandering	Drawing local, state or congressional district lines to favor one party, individual or constituency
Provisional Ballot	A ballot cast by a voter whose eligibility cannot be verified at the polls; the vote is counted if it is later determined the voter is eligible
Same-Day Registration	Permitting voters to register and vote on Election Day
Voter Rolls	A list of eligible, registered voters maintained by each state

Sources: "Glossary of election policy terms," Ballotpedia, <https://tinyurl.com/vze6nyxv>; "State Election Result Canvassing," Ballotpedia, <https://tinyurl.com/a474jjyk>; "State by State Provisional Ballot Laws," Ballotpedia, <https://tinyurl.com/3fur7n8b>; and "Voter List Accuracy," National Conference of State Legislatures, March 20, 2020, <https://tinyurl.com/27cvuett>

Long Description

Manning and other conservatives have suggested that votes had been "harvested," with Democratic groups collecting ballots for Biden and dumping them in drop boxes, but not collecting ballots likely cast for Trump. Even though there is no concrete proof of anything untoward in this practice, the group claimed there is a reasonable suspicion of doubt.

Such distrust is fueling efforts to challenge election outcomes and push legislation that attempts to plug potential holes in security. Supporters of such bills say that they are necessary to restore confidence. "I do think that we have to look at the fact that voters are expressing grave concerns about the legitimacy of the election process," says Shead, of the Honest Elections Project. "Steps have to be taken to address fraud and dispel false rumors of fraud."

In Wisconsin, despite the lack of evidence of widespread fraud, GOP legislators are pursuing their own investigation of the 2020 election and pushing numerous bills to make absentee voting more

difficult. "Wisconsin learned over the last year that we must restore confidence in the electoral process," says Robin Vos, the Republican speaker of the state Assembly.

That logic is leading to "a kind of perverse feedback loop," says Burden, the Wisconsin political scientist. Trump and other Republicans complain about election fraud, leading their supporters to believe there was fraud, which in turn provides a rationale for legislation intended to address fraud. "Some politicians allege there were irregularities, and that provides fuel for their election bills to restore confidence in elections that their rhetoric has undermined," Burden says.

Vermont Secretary of State Jim Condos, a Democrat, says town clerks reported just seven cases of potential fraud to his office in 2020, six of which were quickly dismissed as simple administrative errors. For example, individuals with the same name had voted, but separately, rather than one person having voted twice. The one case referred to the state attorney general involved someone who voted by mail and then showed up on Election Day to vote, having bragged to his friends that he would prove the system did not work.

He proved the opposite. Among the few fraud cases being prosecuted nationwide, several involve Trump supporters seeking either to demonstrate the election was rigged or just wanting to vote for him more than once. ²⁸

"Probably in 99.99 percent of the cases of voter fraud, a person is trying to attempt to do something that can affect only one vote, and they're taking a real risk," Condos says. "I don't think there's been any widespread or systemic voter fraud in the country, anywhere."

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Background

A More Democratic Union

Voting rights have been contested throughout American history. The overall trend has been toward expansion of the franchise, but during certain periods the voting rights of various racial and religious groups have been suppressed.

"Across our country's history, all political parties — from the Whigs to the Democrats to the Republicans — have abused voting laws, procedures and reforms to suit their own narrow political ends," wrote Tova Wang, a visiting fellow in democracy at Harvard University. "Until the second half of the twentieth century, the Democrats were the main culprits. Over the past fifty years, however, Republicans have most frequently and deftly employed election law and procedures to help their party win elections." ²⁹

Before independence, the American colonies followed English law, limiting the franchise to white male property owners, based on the argument that the poor had less stake in the community and could be easily swayed. By the time the Constitutional Convention met in 1787, however, several states had eliminated the property requirement.



Members of the National American Woman Suffrage Association march in New York City on May 3, 1913. The most dramatic expansion of voting rights occurred in 1920, when the 19th Amendment allowing women to vote was ratified, despite opposition from most Southern states. (Getty Images/Topical Press Agency/Paul Thompson)

After the Civil War, Congress slowly extended the franchise to African Americans. The 13th Amendment to the Constitution, enacted and ratified by the states in 1865, abolished slavery but did not guarantee voting rights for Black citizens. In July 1866 a state convention in Louisiana to discuss voting rights was broken up by a white militia group, who killed 47 Black men and injured more than 100 others. ³⁰

The event helped spur the ratification in 1868 of the 14th Amendment, which extended citizenship rights to all native-born Americans and guaranteed them equal protection under the law but did not specifically give Blacks the right to vote. Several Northern jurisdictions rejected ballot initiatives to

extend voting rights to African Americans. Finally, the 15th Amendment, ratified in 1870, said, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

This led to sizable Black turnout and the election of hundreds of Black legislators and congressmen, particularly in the South, during the period known as Reconstruction.³¹ Resistance was fierce, however. The Ku Klux Klan and other white supremacist groups conducted "Negro hunts," killing hundreds of African Americans.

In the presidential election of 1876, Democrat Samuel Tilden won the popular vote, but Florida, Louisiana, Oregon and South Carolina had disputed results, in part due to intimidation of Black voters. To settle the dispute, the so-called Compromise of 1877 led to the recognition of Republican Rutherford B. Hayes as the winner, but at the cost of ending Reconstruction, removing federal troops from the South and leaving Southern states to deal with African Americans as they saw fit.

Violence and Suppression

Elections were frequently contested, with the House of Representatives rejecting Democratic winners 20 times during the 1880s and 1890s based on allegations of fraud, abuse or intimidation lodged by African Americans. Black voters in that era largely supported Republicans, the party of Abraham Lincoln, who had emancipated enslaved people.³²

Election disputes often turned violent during that era. In 1898, for example, elected Black and white officials in Wilmington, N.C., were driven from town by a white supremacist mob that killed at least 60 people.³³ Despite such violent attacks, including lynchings, Black voters continued to show up at the polls. During the post-Reconstruction period, Southern states also enacted Jim Crow laws, named after an old minstrel show character. Along with other discriminatory effects in housing, employment and other areas, the laws disenfranchised African Americans by imposing poll taxes, literacy tests and property requirements.

The laws also banned Black voters from party primaries, arguing that the political parties were private "clubs," but exempted from these restrictions men whose fathers and grandfathers voted prior to 1867, all of them white. (This was the origin of the phrase "grandfather clause").

"Discrimination! Why, that is exactly what we propose," Virginia state Sen. Carter Glass told the state's 1901-02 constitutional convention, as they debated imposing poll taxes and other measures to restrict voting. "That is exactly what this convention was elected for, to discriminate ... with a view to the elimination of every Negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the white electorate."³⁴

The laws served their purpose. The number of Black voters registered in Louisiana, for example, fell from 130,000 in 1896 to 1,342 in 1904.³⁵ In 1890, 140,000 Black men were registered to vote in Alabama; by 1906, their number had fallen to 46.³⁶

"Violence reduced Black turnout a lot, but Jim Crow laws basically took it to zero," says Christopher Witko, a political scientist at Pennsylvania State University.

Expanding the Franchise

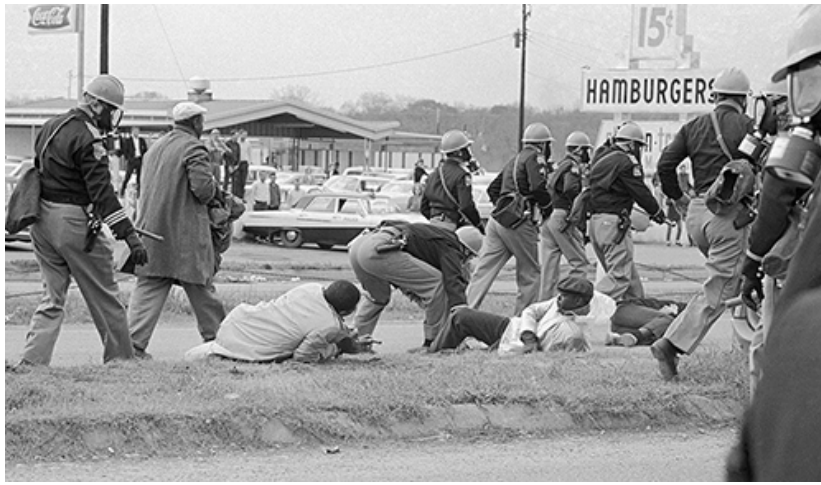
The Supreme Court upheld Mississippi's literacy tests and poll taxes in 1898 and Alabama's "character clause," under which Black men had to be recommended by a white voter to register, in 1903.³⁷ Unchallenged by Black voters, the "Solid South" remained firmly under Democratic control for decades. This allowed Southern members of Congress to accrue power and seniority, helping them squelch civil rights laws and exclude most Black Americans from federal programs such as Social Security.³⁸

During the Progressive Era of the early 20th century, several Northern and Western states began to expand democratic participation, including the creation of citizen ballot initiatives.³⁹ Oregon in 1910 created the first presidential primary.⁴⁰

The most dramatic expansion of voting rights occurred in 1920, when the 19th Amendment allowed women to vote, despite opposition from most Southern states. But Jim Crow laws still prevented Black women in the South from voting.

In 1964, the 24th Amendment abolished poll taxes and Congress passed the landmark Civil Rights Act, barring discrimination in public accommodations. But as with earlier civil rights measures in 1957 and 1960, the new law failed to address voting rights for African Americans.⁴¹

That changed on March 7, 1965, after a group of African Americans, including John Lewis, attempting to march from Selma, Ala., to the capitol in Montgomery, were brutally beaten by local law enforcement officers and vigilantes. Televised footage of that "Bloody Sunday" march shocked the nation. A week later, President Lyndon B. Johnson addressed Congress, demanding a voting rights bill and declaring, "we shall overcome," the civil rights movement's motto. Five months later Congress approved the Voting Rights Act, outlawing literacy tests and other means of disqualifying voters. It also required jurisdictions, primarily in the South, that had had discriminatory practices to clear any proposed changes in voting laws with the Justice Department or a federal court.⁴²



Alabama State Troopers and others, acting on orders from Gov. George Wallace, use clubs and tear gas to beat back voting rights activists trying to march from Selma to the state capitol in Montgomery on March 7, 1965, a day that became known as Bloody Sunday. (Getty Images/Bettmann/Contributor)

Its effects were immediate. Registration among the voting-age population of African Americans in Mississippi rose from 6.7 percent in 1964 to 59.3 percent in 1968. The number of Black elected officials nationwide eventually rose from less than 500 to 10,000.⁴³

South Carolina and Mississippi challenged the law, but the Supreme Court rejected their cases in 1966 and 1969, with Chief Justice Earl Warren arguing that the law “was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race.”⁴⁴

Black voters by then had begun to shift their loyalty to the Democratic Party, as white voters shifted to the Republican Party. Opposing the Voting Rights Act became “a central part of keeping the South” in the Republican column, according to Lee Atwater, a future GOP national chairman.⁴⁵

The shift from a Democratic- to a Republican-dominated South was swift. Johnson in 1964 would be the last Democratic presidential candidate to carry a majority of white voters nationwide.

But voter suppression was not just a Southern phenomenon. During a contentious 1981 campaign for New Jersey governor, Republicans hired about 200 poll watchers — many armed and some in law enforcement uniforms — who challenged and confronted Black and Hispanic voters. “It was specifically targeted at Black and brown neighborhoods in cities,” says Mark Krasovic, a historian at Rutgers University-Newark. “It was very coordinated. It was funded by the [Republican National Committee]. It was a very organized, planned thing.”

Republican Thomas Kean won by less than 1,800 votes. But the incident led to a nationwide federal consent decree in 1982, in which the Republican Party was blocked from deploying armed poll watchers or using race as a factor in its ballot security efforts. (In 2018, a judge would refuse a Democratic request to extend the order.)⁴⁶

In 1993, Congress passed the National Voting Registration Act, the so-called motor voter law, which allowed citizens to register to vote at state motor vehicles departments and other offices.⁴⁷

Supreme Court Involvement

In the disputed 2000 presidential election, the Supreme Court halted the vote recount in Florida, and Republican George W. Bush carried the state by 537 votes, giving him the requisite number of Electoral College votes. However, up to 6 million voters nationwide were disenfranchised due to sloppy registration rolls and other problems.⁴⁸

After the election, Congress passed the Help America Vote Act, which sent \$4 billion to states to update voting equipment.⁴⁹ The law also directed states to keep their voter rolls current and required identification from those registering by mail, opening the door for states to enact controversial laws requiring citizens to produce government-issued ID cards in order to vote. Democrats say such requirements disenfranchise minority voters, who cannot always produce birth certificates required in some states to apply for identification cards.

Combating voter fraud became a priority of the Bush administration, which fired several U.S. attorneys in 2006 for failing to pursue such cases. “They were sure there was fraud, but they could never find it,” said Joe Rich, then chief of the Justice Department’s voting division. Nevertheless, the idea



An election worker inspects a ballot on Nov. 19, 2000, during a hand recount of presidential ballots in Fort Lauderdale, Fla. Republican George W. Bush beat Democrat Al Gore by 537 votes in the decisive state after the U.S. Supreme Court halted a broader recount. (Getty Images/Newsweek/Robert King)

that voter fraud was costing Republicans elections became “an article of faith,” according to Royal Masset, a former Texas GOP chair. ⁵⁰

In 2008, the Supreme Court upheld Indiana's voter ID law, dismissing concerns that it would disproportionately harm Black and younger voters. Richard L. Hasen, a law professor at the University of California, Irvine, called the court's decision a “terrible precedent,” because it set up a double standard for voting laws. “A state need not offer actual evidence of fraud to sustain a law restricting voting,” he wrote, “but voting rights activists must demonstrate concrete and serious burdens to convince courts to strike the laws down.”

⁵¹

State voter ID laws, which poll well with the public, proliferated after Republicans made sweeping gains in the 2010 elections. Currently 36 states have such laws. ⁵²

In 2013, the Supreme Court overturned the section of the Voting Rights Act that required states with histories of restrictive voting practices to get Justice Department preclearance for changes in their voting laws. Those states immediately began imposing voter ID requirements and cutting early voting days. By 2016, those states had closed 868 polling places, mostly in largely minority areas. Alabama closed motor vehicle offices, which issue state IDs, in all six counties where Black residents made up more than 70 percent of the population. All told, between 2010 and 2018 half of the states passed laws making voting more difficult. ⁵³

In 2018, the Supreme Court upheld an Ohio law that removed voters from the rolls if they failed to vote in two federal elections and then did not respond to postcards sent by the state, on the assumption that the voter had moved or died. The court ruled that the state law did not violate the National Voter Registration Act, which prohibited purging citizens for failing to vote. ⁵⁴

Between 2012 and 2016, more than 1.3 million Georgia voters were removed from the rolls due to failure to vote, meaning the state ended up with fewer registered voters, despite significant population gains during that time. ⁵⁵

Refusing to Concede

Despite Republicans' frequently stated concerns, voter fraud is rare. In 2014, Levitt, the Loyola Law professor, found 31 credible cases of in-person voting fraud out of more than 1 billion ballots cast between 2000 and 2014. ⁵⁶ In 2018, the outcome of a congressional election in North Carolina was nullified and it was rerun the following year, after a scandal erupted over absentee ballot tampering. A Republican operative, Leslie McCrae Dowless, is awaiting trial after having been indicted in 2019 in connection with the alleged ballot forgery scheme. ⁵⁷

Fraud remains a top concern for the GOP and was a central theme of Donald Trump's 2016 campaign, when he frequently warned that the election would be “rigged,” particularly in urban areas such as Philadelphia. After his election, he claimed — without providing evidence — that he had lost the popular vote only because 3 million to 5 million undocumented individuals voted illegally. ⁵⁸

Just before Trump's inauguration, the CIA, FBI and National Security Agency concluded that Russia had attempted to interfere with the U.S. election by, among other things, attempting to hack into registration databases, in order “to undermine faith in the U.S. democratic process, denigrate ... [Democratic nominee Hillary] Clinton, and harm her electability and potential presidency.” ⁵⁹

Trump dismissed those findings, and instead established a commission to investigate voter fraud. But when the panel turned up no evidence of fraud, Trump disbanded it after only two meetings.

Trump was not the only modern politician who questioned an election outcome. In 2018, after narrowly losing the Georgia governor's race, Democrat Abrams refused to acknowledge defeat, claiming her GOP opponent, Secretary of State Brian Kemp, had improperly purged hundreds of thousands of voters from the rolls and put aside 53,000 registrations for additional screening, nearly all of them from Black citizens. In fact-checking Abrams' claims, *USA Today* concluded, “There's no empirical evidence that now-Gov. Kemp stole that election from her.” ⁶⁰

Nevertheless, Abrams refused to concede the election or call it legitimate, a stance echoed by many national Democrats. Two recent GOP governors, Pat McCrory of North Carolina and Matt Bevin of Kentucky, also initially refused to concede their races, claiming they were victims of unspecified fraud.

“It's really dangerous for the future of the republic,” says Charles Bullock, a political scientist at the University of Georgia. “To question the legitimacy or accuracy of the election goes against our whole norm of peaceful transfer of power.”

Trump's "Fight Like Hell"

Throughout the 2020 presidential election, Trump said he might not accept the results if he lost. He loudly warned that mail-in voting — which Democrats encouraged due to the COVID-19 pandemic — was prone to abuse. Mail or absentee voting has long been widely used by Republican voters, including seniors and rural residents, and studies show it offers no partisan advantage. As of last year, five states — Colorado, Hawaii, Oregon, Utah and Washington — held elections almost entirely by mail.

Nevertheless, Trump and other Republicans complained that Democratic officials and courts were changing the rules at the last minute due to the pandemic in order to give their side an advantage. Last October, after two of the most populous Texas counties, Austin and Travis, opened a dozen drop-off boxes for depositing absentee ballots, Texas Gov. Abbott limited counties to one such box each.⁶¹

Despite the massive influx of mail-in ballots during the pandemic, many states such as Pennsylvania did not change their rules to allow early processing or counting of absentee ballots. Because most Trump supporters voted in person on Election Day, the president appeared to hold a lead on election night in several states that Biden ultimately carried. Processing and counting of mail ballots, particularly from Democratic-leaning major cities, took longer, with the race not being called by television networks for four days.



Tweets like this from President Donald Trump from May 26, 2020, promoting the unproven claim that mail-in voting enables rampant fraud have helped undermine public confidence in U.S. elections and prompted a rash of restrictive voting bills. (Screenshot)

"This was a stolen election," Trump tweeted after Biden was declared the winner.⁶² On June 15, the House Oversight and Reform Committee released hundreds of documents showing that Trump and other White House officials pressured the Justice Department to pursue allegations of fraud and vote tampering in key states. Trump's private legal team filed dozens of lawsuits claiming fraud, but those went nowhere. Texas Attorney General Ken Paxton sued to overturn the results in Georgia, Michigan, Pennsylvania and Wisconsin, claiming their pandemic-related procedures threw their results into question, in a case joined by 17 other Republican attorneys general and 106 members of Congress. The Supreme Court refused to hear the case.⁶³

Trump invited his supporters to come to Washington on Jan. 6 to protest the official certification of the results by Congress, promising it would be "wild."⁶⁴ That day, Trump held a rally outside the White House, urging the crowd to march on Capitol Hill and "fight like hell." Thousands did, with hundreds breaching the Capitol, resulting in the deaths of five people and injuries to more than 100 police officers.

Vice President Mike Pence and members of Congress were taken into hiding, surrendering the chamber floors, in what Democratic members described as the worst insurrection since the Civil War. Some Republicans and conservative media outlets have suggested it was perpetrated by left-wing groups or that it was a "normal tourist visit."⁶⁵

On Jan. 13, the House voted to impeach Trump for "incitement of insurrection," with 10 Republicans joining the Democratic majority.⁶⁶ Following a Senate trial, seven Republicans joined with Democrats on Feb. 13 to convict Trump, but the vote fell short of the necessary two-thirds majority. Republicans who voted to acquit Trump argued that because he had already left office, the question was moot.⁶⁷

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Current Situation

Still Debating 2020

Democrats insist on finding out more information about who helped instigate and plan the Jan. 6 attack on the U.S. Capitol in an unsuccessful effort to halt certification of the 2020 election. On May 19, the House voted to create a bipartisan commission to investigate.

"We need to get to the bottom of this to not just understand what happened leading up to the 6th, but how to prevent that from happening again — how to protect the oldest democracy in the world in the future," said Rep. Zoe Lofgren, D-Calif.⁶⁸

More than four out of five House Republicans opposed the commission, however, and on May 28 Senate Republicans blocked its creation. GOP leaders made clear that they do not want debate about the event dragging on into the 2022 midterm election season, which they intend to turn into a referendum on the Biden presidency.

Democrats “would like to continue to debate things that occurred in the past,” said McConnell, the Senate GOP leader. “They’d like to continue to litigate the former president into the future.”⁶⁹

While congressional Republicans may be eager to turn the page on the Jan. 6 attack, Trump continues to issue statements calling into doubt last year’s outcome. Over the course of three days in May, he compared the election to a jewelry heist, saying it was “rigged and stolen from us” and calling it “our fake Presidential Election” and “the greatest Election Fraud in the history of our country.”⁷⁰

Several Republicans who insisted that Biden’s election was legitimate or accused Trump of trying to toy with the results have faced primary challenges or been formally censured by their state or local parties, including Arizona Gov. Doug Ducey, Michigan Rep. Fred Upton and Raffensperger, the Georgia secretary of state who refused to change the election results in his state at Trump’s bidding.

“We as a country escaped a crisis when principled Republicans stood up to Trump and refused to reverse the election outcome because he threw a temper tantrum at his loss,” says McDonald, the Florida political scientist. “Now those Republicans are being removed from their positions and being replaced by compliant people.”

The highest political price, so far, has been paid by Rep. Liz Cheney, a Republican from Wyoming and chair of the House GOP conference. Along with Upton, she was one of 10 House Republicans to vote for Trump’s impeachment after the Jan. 6 attack.⁷¹ As the chamber’s third-ranking Republican, Cheney was the most prominent to do so.



Republican Rep. Liz Cheney of Wyoming lost her leadership position in the House GOP caucus after she repeatedly disputed the notion that Joe Biden was fraudulently elected president. (AFP/Getty Images/Mandel Ngan)

In February she survived a vote seeking to remove her from the position. But she continued to refute Trump’s claims of a stolen election, and in May she was replaced by Elise Stefanik of New York, who had supported efforts to block certification of votes in states that had switched from Trump in 2016 to Biden in 2020.

“Tens of millions of Americans are concerned that the 2020 election featured unconstitutional overreach by unelected state officials and judges ignoring state election laws,” Stefanik said in January.⁷²

Auditing Results

In the face of billion-dollar defamation lawsuits, several prominent Trump supporters, including Sidney Powell, one of his election-challenging lawyers, have apologized for suggesting that Dominion Voting Systems, which manufactures voting machines, had participated in a conspiracy to switch votes from Trump to Biden. Referring to Powell’s claims, her own lawyers wrote in March that “no reasonable person would conclude that the statements were truly statements of fact.”⁷³

Biden was the first Democrat to carry Arizona since 1996, winning by just 10,457 votes out of more than 3 million cast. As in other close races, Trump has repeatedly made unsubstantiated claims that votes were illegally cast for Biden in major urban areas. Despite two statewide recounts confirming the result, the Arizona Senate recently ordered the vote audit in Maricopa County.

The hand recount has run into delays, logistical problems and questions about the security of the votes as they are being counted and about the apparent biases of the counters. The process is being run by a Sarasota, Fla., cybersecurity firm, Cyber Ninjas, which has promoted conspiracy theories about the 2020 election. Despite promises that the count would be nonpartisan, the audit's spokesman is Randy Pullen, a former state GOP chairman. Former state Rep. Anthony Kern, who was present at the Jan. 6 storming of the U.S. Capitol, is helping count ballots.

GOP state Sen. Paul Boyer, who initially supported the audit, has since called it "ridiculous" and "embarrassing." In May he said: "It makes us look like idiots." ⁷⁴

Arizona Senate President Karen Fann has said she does not know who is paying for the audit. After expressing "grave concerns" about the insecure way in which some of the votes are being handled, Democratic Secretary of State Katie Hobbs — who had earlier received a 24-hour security detail due to threats — was stripped of some of her duties by a state House committee, including the ability to participate in election lawsuits. ⁷⁵ (The legislation has been wrapped into the state budget, which has yet to pass.)

"The audit can't affect the election outcome," because it already has been certified, says McDonald, the Florida political scientist. "The fact that a group that was promoting conspiracy theories was selected by the Senate to do the audit raises the concern that this is all just political theater."

However, the idea of auditing already-certified results is spreading, raising concerns that the process will erode public confidence in the election results. On May 21, a judge in Georgia ordered Fulton County, which includes Atlanta, to allow a group of voters to inspect nearly 150,000 mail-in ballots cast there, a request made as part of a lawsuit alleging officials accepted counterfeit ballots. ⁷⁶ Additional efforts to examine ballots or challenge results are being promoted in California, Michigan, New Hampshire and Pennsylvania.

"This will continue on for years," says Gerrid Uzarski, director of elections in Kent County, Mich., which includes the city of Grand Rapids. ⁷⁷

Raffensperger said in May that he hopes the additional scrutiny from such challenges will help put to rest claims of widespread fraud, even though multiple recounts conducted by his own office failed to do so.

"Unfortunately, the No. 1 issue that we're facing right now in elections nationwide is voter confidence," he said. "So, whenever we can restore, or have a process that will help restore, voter confidence, I think that's a good thing — if you have an open and transparent process in which everyone can objectively agree that this is due process that they're doing, that they're making sure they're following the law." ⁷⁸

But critics of the audits say continually trying to disprove already-debunked conspiracy theories only serves to encourage doubts and undermine confidence. "It's exceedingly dangerous for the future of our democratic republic if millions of people will not accept the outcome of fairly run elections," says Ayres, the GOP consultant. "Our whole democracy is based on the assumption that the loser will concede and leave the field quietly."

State Action

Like the bill passed by the House in March, the Senate bill that died in June would have barred voter ID requirements, encouraged absentee voting and put independent commissions in charge of redistricting. Supporters say they hope Congress will pass the more modest John Lewis Voting Rights Advancement Act before the 2022 elections.

In the meantime, state legislatures, especially in GOP-controlled states, have been busy revising state voting laws. At least 14 states have passed 22 new laws restricting voting, with measures still pending in 18 additional states. More than a dozen states have approved laws expanding voting access, including universal mail-in voting in Nevada and Vermont. ⁷⁹

After passage of Georgia's new law restricting voter access, Atlanta-based corporations such as Coca-Cola and Delta Airlines criticized the measure, and Major League Baseball (MLB) decided to move this year's All-Star Game out of Atlanta. Defenders of the law say that many of its restrictions echo procedures that have long existed in other states and that it also expands the number of days available for in-person early voting. Corporations also have criticized similar proposals in Texas and other states.

"Folks opposed to the bill used incredibly misleading rhetoric," says Snead, of the Honest Elections Project. "It seemed clear MLB had no idea what was actually in the law."

While Republican states have concentrated on election security, Democratic-controlled legislatures are acting to make voting and registration easier. In June, Nevada and Vermont became the sixth and seventh states to move to nearly universal mail-in voting systems, with ballots automatically mailed to all registered voters.

New York traditionally has had some of the nation's most restrictive voting laws, especially among Democratic-led states. But in December it enacted a law allowing automatic voter registration, meaning citizens are registered to vote when they interact with certain government agencies such as motor vehicles offices unless they opt out. In April, the legislature restored voting rights to formerly incarcerated individuals who are on probation or parole. Neighboring New Jersey has enacted new laws this year to allow early in-person voting and mandate wider use of ballot drop-boxes.

The fact that Republican and Democratic states are moving in diametrically opposed directions on something as fundamental as voting is troubling to observers from both parties. "At least for the last decade, what you've seen is an increasingly partisan approach on voting and drift to the political extremes about voting," Snead says. "You see politicians increasingly ready to say if they lose an election, it's stolen, and if they don't win it's an illegitimate election."

Many voters also seem unhappy with the voting process and are willing to experiment with novel voting methods. Two states — Maine and Alaska — have adopted ranked-choice voting after voters endorsed ballot initiatives to change how elections are run. Under this method, previously called instant-runoff voting, voters rank candidates from most to least preferable. If no one receives a majority on the first count, the candidate with the fewest votes is eliminated and voters' second choices are calculated. The process continues until a candidate earns a majority of the remaining ballots.

Massachusetts voters last fall rejected a referendum on adopting ranked-choice voting.

Numerous cities, including Minneapolis and San Francisco, have used ranked-choice voting in local elections. And on June 22, New York City held its first mayoral primary using the method. In March, St. Louis voters narrowed their mayoral field to two using so-called approval voting, which is similar to ranked-choice voting.

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Outlook

Election Violence

The Jan. 6 Capitol Hill riot has prompted Cheney and others to warn that worse violence could surround future elections. Although polls show that a majority of Americans oppose political violence, sizable numbers support the use of force under certain circumstances.

A poll released in February by the conservative American Enterprise Institute found that 39 percent of Republicans favor "taking violent actions" to "protect America" when elected leaders fail to do so, compared with 31 percent of independents and 17 percent of Democrats. ⁸⁰

Numerous election administrators across the country have received death threats — even in a state such as Vermont, where the presidential outcome was never in doubt. "When these individuals are attacking and threatening civil servants, people who are just doing their jobs, it's just so wrong," says Condos, the secretary of state.

Given the heat around voting and disputes about outcomes, "it's incumbent on political leaders to tone it down," says Bradley Smith, a former chair of the Federal Election Commission. There is not much sign of that happening. Politicians from both parties have used heated rhetoric to accuse opponents of acting in bad faith when it comes to voting rules. Legislators in states such as Arizona and Texas have introduced bills to make it easier to overturn election results, although those proposals have not yet made it into law.

An extreme example of such rhetoric came on May 30 from Michael Flynn, a former Army general who briefly served as Trump's national security adviser at the start of his presidency. He told a group of Trump supporters that military intervention to reverse the outcome of the election, similar to the recent coup in Myanmar, should happen in the United States. (Trump himself reportedly believes he will be reinstated to office in August, based on the Arizona audit and other challenges to the 2020 election.) ⁸¹

It was not the first time Flynn had raised the prospect of a military coup. Shortly after the election, in December, he and other advisers urged Trump in a private White House meeting to impose martial law to prevent Biden's inauguration. ⁸²

"This is extremely dangerous for a former general to be calling for a military coup," said Richard Painter, who served as White House ethics lawyer during Republican George W. Bush's presidency. "This cannot be accepted in the United States of America." ⁸³

Organizations such as Freedom House that advocate for democracy and monitor countries' performance have warned that U.S. political institutions and civic norms have weakened, leading to dysfunction and making "American democracy appear fundamentally unstable." ⁸⁴

"As a democracy organization, Freedom House believes that there should be more [opportunities] to vote, not fewer, as long as they are safe and secure, which our system is," says Sarah Repucci, the group's vice president of research and analysis. "The reversals and the pushback that we've been seeing are, to me, unfortunate but not that surprising, given that there are these deep systemic weaknesses in U.S. democracy."

Others say the world's oldest democracy remains healthy and free but worry that the highly partisan debate over voting rules threatens to weaken faith in the process. "It's easier to vote than it's ever been in our elections, and there's very little fraud," says Yuval Levin, director of constitutional studies at the American Enterprise Institute. "We have to begin by saying our system does work. If we treat it as another subject for our divisions, then we lose one of our great strengths."

In June, Attorney General Merrick Garland called protection of voting rights a "central pillar" of democracy and announced his office would double the staff devoted to voting rights enforcement and challenge any state election laws that violate voters' civil rights.

But many political observers are concerned that what is already an era of political polarization will keep getting worse, with party leaders unwilling to accept election outcomes that do not go their way. The partisan argument about voting rules, already heated over the past decade, has only grown more intense since last year's election.

Goldstein, of the Sister District Project, notes that it took decades before the Jim Crow system of disenfranchisement was fully in force.

"We need to remember that," she says. "We are in a moment of potential accretion where these paper cuts to our democracy are collecting. Democracy is not a solid state. We should be wary of politicians who would undermine any part of it for partisan advantage."

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Pro/Con

Should Congress expand voting rights?

Pro



Kadeem Cooper

Policy Counsel, Lawyers' Committee for Civil Rights Under Law. Written for *CQ Researcher*, June 2021

Americans' voting rights are under assault. Across the nation, state legislatures are introducing and passing laws that restrict voting rights with alarming speed. According to the Brennan Center for Justice, 47 states have introduced more than 360 restrictive voting bills. Twenty-nine have passed at least one chamber of a state legislature.

These bills contain a potent mix of unnecessary voter ID requirements, authorizations to purge voter rolls, relocations of polling places and restrictions on absentee voting. Although designed to disenfranchise voters from underrepresented communities, these policies also negatively affect people from all walks of life.

Congress must protect the vote for all Americans. The For the People Act (HR 1), a bill to improve voter access, has passed the U.S. House of Representatives. The Senate version has been blocked, but its most important provisions will still receive consideration. The John Lewis Voting Rights Advancement Act, a bill to restore the Voting Rights Act, will be brought up soon. These bills would ensure that every voter has equal access to the ballot box.

HR1 includes reforms that will counter even the most subtle voter suppression methods. By requiring early voting locations to be near public transportation and mandating that state election officials register all unregistered eligible voters who access public services, the legislation will address systemic, discriminatory parts of our elections. The John Lewis act will revive the preclearance provision of the Voting Rights Act, restoring the Justice Department's ability to oversee any changes to voting rights in states with a history of discriminatory voting laws. Right now, we are seeing exactly why we need preclearance.

Election rules set by state legislators have sweeping influence over voters' experiences. There is an untenable divide in our nation right now: Where a person lives determines their ability to access the ballot box. However, the central right of our democracy, to be heard and participate in our elections, should not depend on what state you live in.

Passage of the Voting Rights Act of 1965 came in response to sweeping voter suppression efforts throughout the South: poll taxes, literacy tests and intimidation tactics designed to deny Black participation in our democracy. Today,

Con



Jason Snead

Executive Director, Honest Elections Project. Written for *CQ Researcher*, June 2021

It has never been easier to vote in America. Voters have more options to cast a ballot than ever before, and data plainly show that recent elections have set records for diversity and participation.

Yet progressive politicians and special interests are demanding that Congress rewrite the voting laws of all 50 states. Behind that push is the claim that states are passing laws that, in the words of President Biden, "make Jim Crow look like Jim Eagle." The ostensible fix is a bill known as HR 1, which would roll back voting safeguards nationwide.

We would be wise to take a pause. Most people, on the left and the right, want common-sense laws that make it easy to vote but hard to cheat. Recent polling shows that a supermajority of Americans want everyone to show a photo ID when they vote — including nearly two-thirds of Black voters and more than three-quarters of Hispanics. Measures like these make sense and are essential to fair and secure elections.

But today's voting debate is dominated by rhetoric and hyperbole. Activists branded Georgia's new voting law "Jim Crow 2.0," even though it expanded early voting to between 17 and 19 days — more than Delaware or New York. They accused Iowa of making it hard to vote, even though the state lets anyone vote by mail and offers three weeks of early voting. Is any of this a barrier to voting? Hardly.

The false narrative of voter suppression is driving support of HR 1, which would enact unprecedented voting changes overnight, risking chaos. Its policies range from unpopular measures like legal vote trafficking — only 11 percent of Americans support that — to unconstitutional provisions that give Washington near-total control of elections.

Progressives frame the current debate as a struggle for civil rights. Yet, in a [letter to Congress](#), pre-eminent civil rights leaders argued that to "compare today's policy differences with the literal life and death struggle of previous generations is to diminish those heroes' struggle, sacrifice and enormous accomplishments." Progressives also claim HR 1 will increase voter turnout. In testimony before the Senate, however, New Hampshire Democratic Secretary of State Bill Gardner strenuously argued that HR 1's policies risk dampening participation instead.

state legislators have resurrected efforts to suppress the vote. Congress can continue to form a strong, inclusive democracy by passing the For the People Act and the John Lewis Voting Rights Advancement Act.

The surest way to encourage voter confidence and participation is by letting states adopt the rules and safeguards that keep it easy to vote and hard to cheat.

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Discussion Questions

Here are some issues to think about regarding access to voting:

- Many Republicans believe the last presidential election was rigged, despite the lack of concrete evidence of widespread fraud or vote tampering. Why is this view so widespread? Is there anything you could say that would convince them otherwise?
- A measure blocked by the Senate would have expand voting access in several ways. Which of these proposals is a good idea and which is not?
 - Require states to register voters automatically when they interact with state agencies such as motor vehicle departments.
 - Allow online voter registration.
 - Allow voters to register as late as Election Day.
 - Offer at least 15 days of early voting and no-excuse absentee voting.
 - Allow convicted felons to vote as soon as they finish serving their prison time.
- Five states — Colorado, Hawaii, Oregon, Utah and Washington — hold elections almost entirely by mail. Should more states adopt such a system? Why or why not?
- Should congressional districts be drawn by independent, nonpartisan commissions, as opposed to state legislatures?
- Since last November's election, local election officials and volunteers have continued to receive death threats. Would you take a job as an election official or feel safe volunteering to help run an election in your local precinct?

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Chronology

1900s–1960s	Women get the vote, and Black voting rights restricted under Southern Jim Crow laws are restored.
1906	After a new state constitution imposes literacy tests, poll taxes and other discriminatory measures, the number of Black men registered to vote in Alabama falls to 46, from 140,000 in 1890.
1913	The 17th Amendment to the U.S. Constitution allows citizens to vote directly for senators.
1920	The 19th Amendment grants voting rights to women nationwide.
1964	The 24th Amendment is ratified, banning poll taxes, which had been used by many Southern states to restrict voting.
1964	The U.S. Supreme Court rules that all legislative districts within a state must represent equal populations.
1965	The federal Voting Rights Act ends a century of disenfranchisement of African Americans in the South.
1970s–1990s	Voting rights are expanded through political and judicial means.
1971	The 26th Amendment allows 18-year-olds to vote.
1986	The Supreme Court makes it easier to challenge violations of the Voting Rights Act, leading to a spike in successful lawsuits.
1993	A new federal law requires states to maintain voter registration databases and allow voters to register at motor vehicle departments or by mail.
2000–2009	A controversial election prompts new voting laws.
2000	The Supreme Court blocks a partial recount of the Florida presidential vote, effectively declaring Republican George W. Bush the winner over Democrat Al Gore.

2002	In reaction to the disputed 2000 presidential election in Florida, Congress passes the Help America Vote Act, providing \$4 billion to states to modernize equipment.
2006	Congress reauthorizes the Voting Rights Act for 25 years.... The Bush administration fires several U.S. attorneys for not pursuing cases of alleged voter fraud.
2008	The Supreme Court rules that an Indiana law requiring voters to show a photo identification is constitutional.
2010–Present	Controversies proliferate over voting rules and fraud.
2013	The Supreme Court invalidates a key section of the Voting Rights Act, finding that the formula for determining state voter discrimination is outdated.
2014	A study finds just 31 potential cases of in-person voter fraud out of more than 1 billion votes cast since 2000.
2015	Oregon creates the nation's first automatic voter registration system, registering citizens who interact with their motor vehicles department unless they opt out.
2017	U.S. intelligence agencies find that Russia interfered in the 2016 election, attempting to tilt the outcome in favor of Republican Donald Trump.... A commission established by President Trump to examine voter fraud is quickly disbanded after it fails to find examples of fraud.
2018	The Supreme Court upholds an Ohio law that allows removal of voters from the rolls if they do not respond to postcards mailed by the state.... A federal judge refuses to extend the 1982 consent decree that blocked the Republican Party from deploying armed poll watchers.... Florida voters approve a constitutional amendment to allow former felons to vote, but the Legislature votes to block restoration of voting rights for formerly incarcerated persons until they pay any outstanding fines and fees.... Voters in Colorado, Michigan, Missouri, Ohio and Utah approve redistricting changes, including establishing independent commissions to redraw congressional districts instead of legislators.... A federal court invalidates a House election in North Carolina after it determined a Republican operative had forged and stolen absentee ballots.
2019	The Supreme Court rules that partisan gerrymandering is an inherently political question outside the realm of federal courts.
2020	Democrat Joe Biden defeats Trump, who refuses to concede and claims the election was stolen due to fraud.... The Supreme Court refuses to hear a challenge from Texas seeking to overturn the presidential vote in four states won by Biden.
2021	After attending a rally near the White House at which Trump spoke, thousands of his supporters march to the Capitol, with hundreds breaking into the building in a violent attempt to block certification of Biden's election (Jan. 6).... The House votes to impeach Trump for inciting the Jan. 6 insurrection (Jan. 13).... The House passes an expansive bill to establish national voting standards, change campaign finance laws and take control of redistricting away from state legislators (March 3).... Several Republican-led states begin efforts to restrict voting, especially through absentee ballots, while some Democratic-led states expand voting access.... The Senate blocks consideration of its primary voting rights measure, with all GOP senators opposed (June 22).

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Short Features

States Reinstating Ex-Felons' Voting Rights

Someone who serves their sentence "should have their right to vote restored automatically."

A decade ago, Tarra Simmons was serving a 16-month prison sentence on drug and theft charges. This year, she sponsored a bill in the Washington state Legislature that automatically restores voting rights to convicted felons upon their release from prison.



Washington state Rep. Tarra Simmons, a Democrat and a formerly incarcerated person, recently sponsored a bill that would automatically restore voting rights in her state to convicted felons after their release from prison. (AP Photo/Ted S. Warren)

"This is Rep. Simmons' first bill, and as a person who has rebuilt her life following her incarceration, she has so successfully and effectively used her lived experience to the benefit of others and to our community," Democratic Gov. Jay Inslee said as he signed the bill in April.¹

A dozen states have passed laws since the 2016 election allowing former felons to vote while still on probation or parole. California voters approved a ballot measure in November restoring voting rights to citizens still on parole.²

Last year, Washington, D.C., joined Maine and Vermont in allowing felons to vote while still incarcerated.³ Some officials elsewhere argue that felons should never lose their voting rights in the first place. "When I hear this state or that state is going to make it easier to get their rights back, my comment is, if you don't take away the rights in the first place, then you don't have a problem getting them back," says Vermont Secretary of State Jim Condos.

Although nearly all Americans can vote once they turn 18, felons are an exception. And more than half of the states do not allow individuals on probation or parole to vote, disenfranchising more than 5 million people in 2020.⁴

In 20 states, felons cannot vote while incarcerated, but their rights are restored upon release. In 17 other states, felons are not allowed to vote for a certain period of time after leaving prison, usually while on parole or probation. Another 11 states do not automatically restore voting rights after incarceration but require either a waiting period or a pardon from the governor.⁵

African Americans are three times more likely than the rest of the population to be disenfranchised by such restrictions. Greater public awareness of racial inequities in recent years has contributed to the push for felon voting rights, says University of Wisconsin political scientist Barry Burden.

The For the People Act (H.R. 1), passed by the House in March, would, among other things, restore voting rights for ex-felons nationwide, but the Senate killed the bill in June.

Restoration of voting rights is also in keeping with a broader national push for criminal justice reform. As part of this effort, conservatives and liberals have found common cause in recent years in promoting drug treatment and job training programs to reduce recidivism among ex-felons. Making sure former prisoners can vote is important to their reintegration into society, says Atiba Madyun, a public affairs consultant who has worked with corporations and state legislators.

"There's more awareness of how felons who have served their time have continued to be disenfranchised," he says. "It's part of the rehabilitation that's necessary to make them feel and be whole within the society and [feel] that they're part of the society."

But release from prison does not necessarily mean someone has completed his or her entire punishment. In 2018, Florida voters approved a constitutional amendment to restore voting rights for ex-felons, but the Republican-controlled Legislature quickly moved to block restoration of voting rights until any fines, fees and restitution have been paid, arguing that voting rights should not be restored unless all terms of a sentence — not just prison time — have been completed. Civil rights advocates complained that these requirements were onerous because ex-felons often cannot obtain the information on how much they owe, if anything, but the law survived legal challenges.⁶

"I'm not a fan of automatic restoration the second someone comes out of prison," says Jason Snead, executive director of the Honest Elections Project, a conservative group concerned with election security.

"You can see how aspiring to have your voting rights restored can be a counter-pull to recidivism," he says. "I'd be OK with a policy where you have to avoid recidivism for a period of time, two years or whatever it might happen to be."

The momentum on the issue, however, is toward restoration of voting rights for individuals on probation or parole, and — perhaps in some places — even those still in prison. Last year, Iowa's Republican Gov. Kim Reynolds signed an executive order ending the state's ban on former felons ever voting. Iowa was the last state with such a blanket lifetime ban.

Reynolds had hoped the Legislature would approve a state constitutional amendment lifting the ban but felt compelled to act on her own after the murder of George Floyd by a Minneapolis police officer and the racial justice protests that followed.

"Quite simply, when someone serves their sentence and pays the price our justice system has set for their crimes, they should have their right to vote restored automatically, plain and simple," Reynolds said.⁷

— **Alan Greenblatt**

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GOP Control Over Redistricting Could Reshape Congress

"Republicans may have enough advantage to retake the House."

Every decade, the new census population figures are used to reapportion U.S. House seats among the states and then to draw new district lines within many of those states. This latest cycle should favor the Republican Party, based on reapportionment data released by the Census Bureau in April.

According to the data, six states will gain at least one House seat. Four of them were carried by Republican Donald Trump in last year's presidential election. Democrat Joe Biden won in six of the seven states that will lose one seat each.⁸

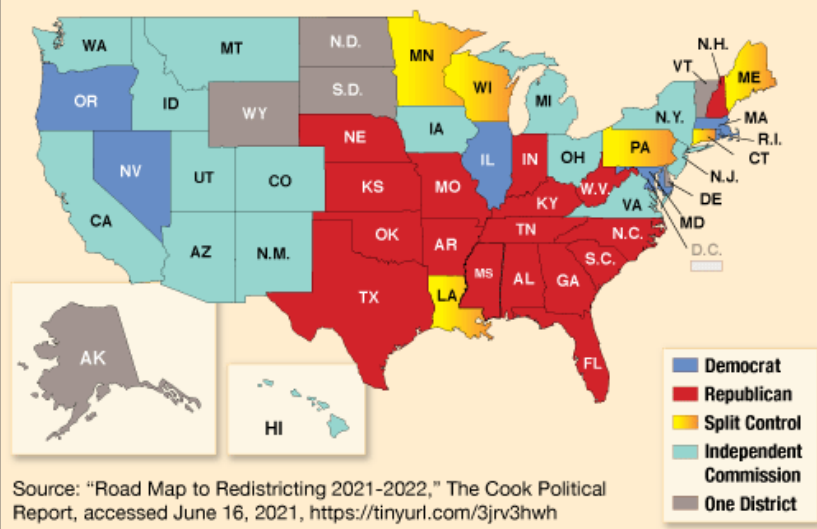
Republicans will need a net gain of only a handful of seats in 2022 to win the House majority. "If people voted exactly as they did in 2020 ..., redistricting might give Republicans enough advantage to retake the House," said Sam Wang, founder of a gerrymandering project at Princeton University, which generates data about the reapportionment process to inform policymakers.⁹

State legislators redraw most congressional and legislative districts every 10 years, based on new census data. In states where one party controls both the legislature and the governorship, that party often manipulates to its own advantage the boundaries of the new districts, without input from opposition lawmakers — a process called gerrymandering. Critics complain that gerrymandering allows politicians to pick their voters, rather than the other way around. Congressional Democrats argue that independent commissions or judges should handle redistricting rather than state legislatures.

Republicans Control Redistricting in More States Than Democrats

The Republican Party will control the redrawing of congressional districts in 17 states this year, while Democrats will control the process in just six. In 15 states, an independent commission will reconfigure the districts, and in six states control is divided between the parties. Six other states have only one congressional district. The new maps will remain in effect for the next decade.

Control of Redistricting, by Party, in 2021



Long Description

Democrats failed to gain control of any new state legislative chambers in last year's elections. As a result, Republicans on their own will be able to redraw House districts in 17 states. Democrats, by contrast, have full control of the redistricting process in just six states. In the other states, power is divided between the parties or there is only a single House seat and no need for redistricting. ¹⁰

The GOP's potential gains are limited by the fact that they already have a large majority of House seats in the states where they control the legislature. In addition, Democrats hold the governorship — and thus veto power over congressional maps — in sizable states with GOP-led legislatures such as Pennsylvania and Wisconsin.

Lawmakers in Colorado, Michigan, New York, Virginia and Utah will be sidelined by commissions and other redistricting systems established over the past decade due to successful ballot initiatives. In Ohio, a commission will take over if the Legislature fails to come up with maps that win support from 60 percent of its own members, including half the minority party.

Such restrictions should help curb the urge in those states to draw maps favoring one major party's interest. That urge is always an important dynamic, but especially so now, after the U.S. Supreme Court ruled in 2019, in *Rucho v. Common Cause*, that partisan gerrymandering is purely a political question and federal courts cannot intervene in such cases. ¹¹

The ruling "does open the door for really blatant and outward partisan favoritism," says Yuri Rudensky, redistricting counsel at the Brennan Center for Justice at New York University.

Gerrymanders can still be challenged in state courts, however. Over the past decade, state supreme courts in Florida, North Carolina, Pennsylvania and Virginia have tossed out legislative or congressional maps that the judges determined to be the result of unlawful partisan gerrymandering.

Another Supreme Court decision will have a major effect on redistricting. In *Shelby County v. Holder*, the court in 2013 invalidated a key section of the federal Voting Rights Act that required states with a history of discriminatory voting laws — mostly in the South — to receive advance approval, known as preclearance, from the Justice Department before changing election laws or approving redistricting maps. ¹²

Since the *Shelby* decision, many of those formerly monitored jurisdictions have imposed new voting and registration restrictions and closed hundreds of polling places. This will be the first redistricting cycle where federal approval of new rules and district maps will not be required in those states. Along with congressional and state legislative changes, preclearance "covered things like school boards and city councils and county commissions," Rudensky says. "The civil rights community just simply doesn't have the resources to police what is happening at every level of government when it comes to redistricting."

In addition to the political and legal complications, legislators are hampered in terms of timing. The coronavirus pandemic has delayed census data, so the figures they rely on to draw maps will not

be released until Aug. 16. That means many states will be hard-pressed to meet their own statutory and constitutional deadlines for redistricting.

"We are in for a redistricting cycle unlike any other," says Michael Li, a senior counsel at the Brennan Center. "In many ways, it will be more challenging than any in recent history."

— **Alan Greenblatt**

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Conservative advocacy group that promotes election integrity efforts and opposes nationalizing election administration.

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brennancenter.org

Academic center that publishes reports on voting rights, redistricting and census issues.

Common Cause

805 15th St., N.W., Suite 800, Washington, DC 20005
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commoncause.org

Organization that promotes democratic rights through lobbying and public education at the national level and in 30 states.

Elections Research Center, University of Wisconsin

101 North Hall, 1050 Bascom Mall, Madison, WI 53706
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elections.wisc.edu

Academic center that researches state and federal elections, with a focus on understanding voter behavior.

Heritage Foundation

214 Massachusetts Ave., N.E., Washington, DC 20002
800-546-2843

heritage.org

Conservative think tank with a task force studying ways to combat voter fraud; maintains a database of such cases.

Lawyers Committee for Civil Rights Under Law

1500 K St., N.W. Suite 900, Washington, DC 20005
202-662-8600

lawyerscommittee.org

A civil rights group that promotes equal justice, including supporting voting rights, particularly targeting those that affect African Americans and other racial and ethnic minorities.

League of Women Voters

1233 20th St., N.W., Suite 500, Washington, DC 20036
202-429-1965

lww.org

A nonprofit that registers voters, compiles election guides and encourages citizen participation in government.

United States Elections Project

University of Florida, 222 Anderson Hall, PO Box 117325, Gainesville, FL 32611
352-273-2371

electproject.org

Political scientists who generate election statistics, including on voter turnout, and research the electoral system.

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