

Election Law Training Manual

GEORGIA EDITION



THE
CARTER CENTER



About The Carter Center

The Carter Center is a not-for-profit, nongovernmental organization working to advance peace and health worldwide. Founded by former U.S. President Jimmy Carter and his wife, Rosalynn, in 1982, the Center has helped to alleviate suffering and advance human rights for millions of people in over 85 countries. Visit www.cartercenter.org to learn more.

Acknowledgments

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About This Publication

This curriculum was designed to help lawyers to understand elections, electoral law and processes, and key electoral issues. A collection of [supplementary materials](#) and a [guide for facilitators](#) can be accessed at www.cartercenter.org.

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Foreword

At The Carter Center, we affirm that the rule of law is the cornerstone of our elections and that lawyers who understand election law are essential to guaranteeing both the integrity of our elections and the long-term health of our democracy.

As the chief executive officer of The Carter Center, I am pleased to share with you the Center's Election Law Training Manual. This manual and its accompanying facilitator's guide are our contribution to ensuring that more lawyers have a foundational understanding of elections, electoral law and processes, and key electoral issues. These publicly accessible training tools also demonstrate the Center's commitment to preparing legal professionals, from seasoned lawyers to law students, with the knowledge and skills they need not only to support elections but to strengthen democracy in their local communities as well.

Lawyers play important roles in every level of government and society, contributing to the creation of the laws, rules, and norms by which we govern ourselves. Perhaps more importantly, an informal network of family, friends, and co-workers often turn to lawyers to understand what the law is and how it works, with special weight given to how our laws provide structure to our political processes.

This is where the concept of a "citizen lawyer" comes from. We believe that a law degree should be a democracy-sustaining degree, which confers not just technical knowledge of specific areas of the law, but an obligation to support the democratic structure that created it. While there are, of course, some lawyers who

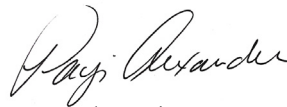
specialize in electoral law, *all* lawyers, as citizens, should understand how elections operate in our democracy and the issues that affect it. Then, when lawyers are inevitably called upon by family, friends, and others to be the trusted interpreter of electoral issues, they will do so from a place of understanding.

Being able to explain the basics about how district lines are drawn or the protections that prevent people with absentee ballots from voting twice—even if you might not be aware of all the specific nuances—is a positive contribution to the public dialogue that is democracy. As lawyers, you have a higher civic responsibility to ensure that this dialogue happens intelligently and with integrity.

Moreover, if you understand how electoral processes influence outcomes, how issues like redistricting and re-enfranchisement impact representation, and how to advocate for a policy and build a coalition, then you will be prepared to lead your community. And you will be prepared to lead and support your fellow citizens in ways that strengthen the democratic fabric of your community.

I hope that this manual helps prepare you to meet your responsibilities as an informed citizen lawyer.

Good luck!



Paige Alexander
Chief Executive Officer, The Carter Center

Module 1

Introduction to the Election Law Training Manual

1.1. Why Elections Matter for Lawyers and Law Students

Through elections, voters select the people who create, adjudicate, enforce, and administer laws. These people also create the policies underpinning the law and often the regulations implementing the law. Elections also provide feedback for elected officials, influencing their future decisions.

Lawyers and law students have a greater impact on elections than any other profession. Legal professionals are disproportionately represented in government as elected officials. Most governors and U.S. presidents, who implement election laws, have been lawyers. A plurality of legislators, who write election laws, are lawyers, and elected judges and prosecutors, who interpret and enforce laws, are almost entirely lawyers. Lawyers also support and influence the selection of lawmakers, judges, and officials by providing invaluable research, drafting, and strategy, empowering decision-makers to uphold the rule of law and contribute to the overall functioning of a just and equitable society.

Key concepts and principles

- Lawyers influence elections by advising organizations on legal compliance, representing entities and individuals in election disputes, researching election law for judges and government, and advocating for election reforms in courtrooms and legislative forums.
- Lawyers play a significant role in resolving disputes related to elections, contributing to the establishment of legal trends that guide future electoral cases and, sometimes, the outcome of an election.
- Legal victories with historical significance have impacted the ideological orientation of the Supreme



In Bush v. Gore, lawyers had an outsized role in determining the outcome of a presidential election.

Court and other courts, affecting the course of local and national policy.

How have lawyers influenced the outcome of elections?

While election lawyers typically work out of the spotlight, the 2000 election is a high-profile example of how lawyers can directly impact the electoral process,

both inside and outside the court system. After legal disputes were elevated to the Supreme Court in *Bush v. Gore*, 531 U.S. 98 (2000), the court controversially overturned a decision by Florida’s Supreme Court and stopped Florida’s manual recount of votes in the presidential election. This froze George W. Bush’s lead of 327 votes over Al Gore and resulted in Bush’s winning Florida’s electoral votes and thus overall victory in the election.

Bush’s ballot lead has been attributed to Miami-Dade County’s halting a recount early due to the “Brooks Brothers Riot.” This demonstration protesting the recount and its processes included participation from lawyers and ultimately turned violent. Soon after law enforcement restored order, election officials decided to stop the recount before it was complete, generating distrust on the political left in the fairness of the election.

Not precedent, but still influential

While the court’s majority stated, unusually, that *Bush v. Gore* should not be cited as precedent, the case has been cited over 500 times by state and federal courts, such as the 2003 decision on the California recall vote of Gov. Gray Davis and the 2020 Florida felon re-enfranchisement dispute.

The “Brooks Brothers Riot” also continues to resonate. None of the lawyers involved were held responsible for their actions, suggesting that lawyers could ignore their ethical obligations in electoral matters without consequence.

This may have led to an accommodating environment for the 2020 elections, where numerous lawyers were found to have ignored their professional responsibilities entirely. Unlike 2000, however, many lawyers have been sanctioned in 2020. In *O’Rourke, et al. v. Dominion Voting Systems, et al.*, No. 21-1442 (10th Cir. 2022), the court upheld sanctions against lawyers who filed an “utterly baseless” lawsuit, with the court stating, “An attorney is expected to exercise judgment and must ‘regularly re-evaluate the merits’ of claims and ‘avoid prolonging meritless claims.’”

How do lawyers shape the government and the courts?

Lawyers make up less than 1% of the U.S. population and yet, they constitute 46% of the members of Congress. They are similarly overrepresented in every area of government, impacting policy and law at every level. Many of these lawyers maintain relationships with large law firms.

Many “Big Law” firms strategically engage with changing administrations to secure clients, consciously exerting substantial influence on the government. Firms do this by employing former Supreme Court clerks, placing partners in key government positions, such as White House counsel and solicitors general, not to mention providing legal services for senior government officials, including former President Donald Trump, while still in office.

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The Carter Center. September 2024. Original photo illustration.

1.2. The Citizen Lawyer and Professional Responsibility

Citizen lawyers are advocates who treat their profession not merely as a tool to advance the interests of their clients, but as a calling to protect and defend the democratic society in which they live. A law degree should be a democracy-sustaining degree; however, too often, lawyers forget this and treat their law degree as merely a trade qualification.

Citizen lawyers protect individual rights, promote equality and equity in justice, and advance laws and policies for the common good, in addition to their day-to-day work in bankruptcy, contracts, or real estate. Citizen lawyers are stewards of democratic participation, embodying civic responsibility and involvement, and are a bulwark against anti-democratic actors.



Key concepts and principles

- Citizen lawyers understand that the law reflects the community's values, that diverse perspectives improve legal outcomes, and that lawyers have a responsibility to ensure the integrity of the legal system.
- In elections, this means uplifting the core concepts of democracy and strengthening an open, free, and fair electoral system.
- Civic responsibility and civic involvement demand that citizen lawyers work to advance democratic principles and norms, including protecting the right of all eligible citizens to vote, preserving the integrity of the electoral process, and ensuring the peaceful transition of power.

Legal framework

The public servant aspect of the citizen lawyer is reflected in state bar professional standards and pro bono requirements, though these represent a floor, not a ceiling. Legal ethics require that lawyers uphold the rule of law over a single client's interests, and bar service requirements highlight the profession's commitment to public service.



The Albert V. Bryan Federal District Courthouse is located in Alexandria, Virginia.



When lawyers are sworn in, they promise to protect rights, promote equity in justice, and advance laws for the common good.

The role of citizen lawyers in promoting democracy

In the election of 2020, in the face of overwhelming pressure, countless election officials, many of them lawyers, upheld the democratic process. Since 2020, demands on election officials have only increased

as public pressure and criticism mount. The need for lawyers to support democratic principles going forward has never been greater. Citizen lawyers, with their unique training and understanding of how the legal process works, have a responsibility to respect, empower, and share in this work.

Reflection question

Identify pillars you believe underpin the concept of the citizen lawyer as it relates to upholding and strengthening democracy. What specific steps should lawyers take to support democratic principles?

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Module 2

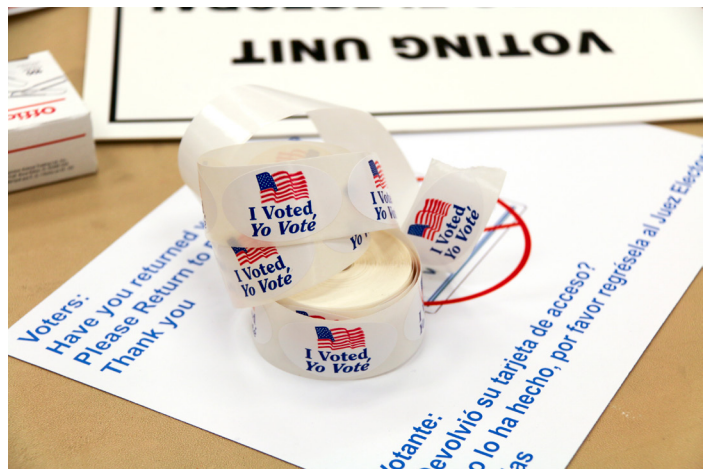
Introduction to Electoral Legal Issues

2.1. What's an Election?

An election is a formal process through which people choose individuals or make decisions by casting ballots, typically to select leaders or determine important matters within a group, organization, or government.

Elections are vital in a democracy because they empower citizens to shape government and policies, ensure their interests are represented, hold government accountable, and protect human and civil rights.

Voting is considered a fundamental right in the U.S. because it is through voting that our human and civil rights are realized. It is fundamental to realizing the rights and protections under our Constitution and is afforded constitutional protection.



“One person, one vote” means that everyone’s voting power should be relatively equal within a state.

Key concepts and principles

- The equal protection clause (U.S. Const. Amend. 14, Section 1, 1868) guarantees equal protection under the law.
- The 15th Amendment (U.S. Const. Amend. 15, Section 1, 1870) prohibits discrimination in voting based on race.
- The fundamental right to participate in regular elections is closely tied to various other human rights essential for a fair electoral system. These other human rights encompass freedom from discrimination, freedom of opinion and speech, freedom to associate and assemble peacefully, and freedom of movement.

How does the equal protection clause safeguard voting rights?

Denying voting rights based on race or color violates the 15th Amendment. Similarly, election rules that treat voters differently based on race can violate the equal protection guaranteed by the 14th Amendment. This means that under certain circumstances, redistricting maps that weaken the voting power of Black and minority communities might be considered unconstitutional. A considerable number of the Supreme Court’s redistricting decisions stem from disputes over how the Voting Rights Act (P.L. 89-110; 52 U.S.C. §§ 10101-10702) and constitutional equal protection standards interact.

How have redistricting cases shaped our elections?

The Supreme Court's interpretation of equal protection in voting laws has primarily evolved through redistricting cases. The court understands the Constitution to mandate that electoral districts have a roughly equal population count, termed the equality standard or the "one-person, one-vote principle." See *Gray v. Sanders*, 372 U.S. 368, 381 (1963) (holding that political equality means one person, one vote).

What is equal representation?

Equal representation, also known as apportionment, refers to the fair distribution of political power and resources among different geographical areas or constituencies within a governing body. This aims to ensure that each area's population is adequately represented in proportion to its size and that everyone's vote is equal, regardless of their voting district. Court cases like *Reynolds v. Sims*, 377 U.S. 533 (1964), have affirmed the principle of "one person, one vote," highlighting the constitutional imperative for equal representation.

What is the 'one person, one vote' principle?

"One person, one vote" means that everyone's voting power should be relatively equal within a state to ensure equity and equal protection of the law. This principle becomes relevant in shaping voting laws and addressing gerrymandering, which can favor specific groups while disadvantaging others. The equal protection clause requires fairness in voting power, but its interpretation relies on Supreme Court cases. *Reynolds* is significant because it establishes the need for roughly equal state legislative districts based on population. In *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016), the court affirmed that states could consider total population in district drawing, not solely voting-eligible populations, which would have diluted the voting power of the voters in that district.

Trends to watch

Significant election changes occur in court, but more notably in state legislatures. To understand local trends, monitor a state's legislature to learn how its laws impact elections and voting rights.

As for redistricting, a significantly higher number of U.S. House districts strongly lean toward one party, with fewer closely contested than 50 years ago. This shift is not primarily due to gerrymandering; it is more a result of heightened partisan polarization within states and counties, whose boundaries are unaffected by decennial redistricting.

For example, the level of competitiveness in House elections has barely changed over the past five decades despite increasingly close presidential elections. This is due to a substantial decline in the incumbency advantage at the presidential level during this time.

Georgia legal framework and statutory provisions

Unlike the U.S. Constitution, the Georgia Constitution explicitly provides a right to vote and a right to vote by secret ballot. (Ga. Const. Art. II, Section I, Paragraphs I and II)

Georgia's election laws are codified under Title 21 and Section 2 of the Official Code of Georgia Annotated (O.C.G.A.) and are updated annually to reflect new laws on July 1, post-legislative session.

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2.2. Judicial Independence

Judicial independence is a cornerstone of the legal system. It is the principle that judges must decide cases impartially, relying only on facts and the law at issue in each case.

Key concepts

- Judges must decide cases based on facts and law, not politics.
- Judicial independence is a cornerstone of the democratic system and undergirds public faith in the legitimacy of election outcomes.

Legal framework and statutory provisions

- Courts are often a final stop in resolving election-related disputes, such as how electoral districts are drawn, what burdens a state may constitutionally impose on voters, or which candidate won a close election.
- The legal framework supporting judicial independence in elections for judgeships is wide-ranging. Many states with elected judges impose rules on the partisan activities of judicial candidates to uphold judicial independence, and the Supreme Court has upheld rules for elected judges that it previously found unconstitutional if applied to other political candidates (e.g., *Williams Yulee v. Florida Bar*, 575 U.S. 433 [2015] [barring judicial candidates from personally soliciting funds for their campaigns]).
- The Supreme Court’s “political question” doctrine is also a way to preserve the judicial system’s independence by keeping courts out of the political fray. This doctrine requires courts to consider cases best left to political branches as non-justiciable. In *Rucho v. Common Cause*, 588 U.S. 684 (2019), the court held that partisan gerrymandering is nonjusticiable. However, where courts draw the line between justiciable and “political” is hotly contested.

Reflection questions

1. If a state legislature passed a law stating that no Republicans may vote, should a court find that statute unconstitutional? Why? Is it the court’s role to prevent duly elected representatives from thwarting political opposition?



Maryland Lt. Gov. Anthony Brown gives remarks at the investiture for Judge Joseph Wright.



A political cartoon by Clifford K. Berryman mocks the Supreme Court’s divisiveness (Oct. 6, 1946).

2. What if a state legislature passed a law prohibiting all absentee voting? Would it matter if the political party that held a majority of a legislature had asked for data on partisan voter patterns and determined that its political opponent voted overwhelmingly absentee?

Is it the role of courts to address such partisan battles? Why? What are the risks and benefits of engaging (or disengaging from) these activities?

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2.3. Federal Issues and Protections

The U.S. Constitution primarily commits the administration of elections to the states, with a role for Congress to set nationwide minimum standards. While the Constitution does not contain an explicit guarantee of a right to vote, it does mandate nondiscrimination in voting, which courts have recognized as an implicit right to vote, along with protections for voters.

Federal law governs voting rights for minority voters and prevents voter intimidation. Otherwise, federal statutes are limited, applying primarily to voter registration, voting machines, and protections for overseas and military voters. Federal statutes also regulate the use of money spent on federal political campaigns and by political parties.

States can choose to provide additional options for voters beyond the federal baseline. For example, while federal law requires that individuals be given an opportunity to opt-in to voter registration at a motor vehicle office, Georgia instituted an opt-out system in 2016. Georgia now registers every eligible individual upon obtaining a driver's license unless that individual affirmatively opts out.



Key concepts and principles

- Federal law sets baseline standards for voter registration, including making registration available when interacting with government agencies and voter-list maintenance processes.
- Federal law sets required standards for time and access to the ballot for overseas and military voters.
- Federal law contains extensive protections for minority voters from having votes diluted by election practices in states, language access, and provisions related to preventing voter intimidation.

- Federal law creates the Election Assistance Commission, which sets standards for voting machines and provides a central data repository for state-level data.
- Federal law creates the Federal Election Commission, which regulates the use of money spent on federal political campaigns and by political parties.

What are federal laws on voter registration?

The National Voter Registration Act (NVRA; P.L. 103-31; 52 U.S.C. §§ 20501-20511[b]) was passed in 1993 to require voter registration opportunities at motor vehicle agencies and during other interactions with government agencies. It also sets forth standards for conducting voter list maintenance for voters who have died or moved away by establishing a federal voter registration form that can be used in any state (but does not necessarily replace state applications).

What are federal laws regarding overseas and military voters?

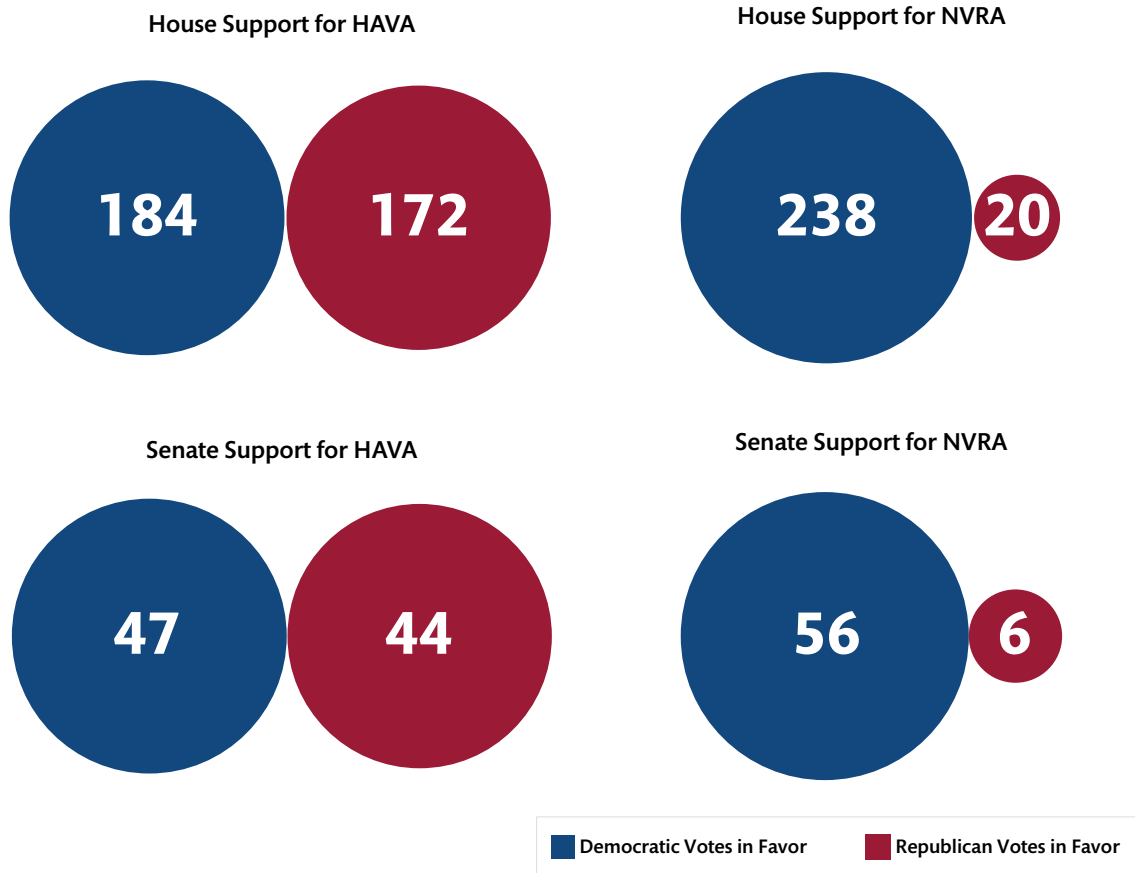
The Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA; 52 U.S.C. §§ 20301-20311, 39 U.S.C. § 3406, 18 U.S.C. §§ 608-609) and its 2009 amendment through the Military and Overseas Voter Empowerment (MOVE) Act (MOVE Act, 42 U.S.C. §§ 582-587) protect the rights of military and overseas voters to vote using absentee ballots in their state's elections. This includes minimum timelines for ballots to be delivered to overseas voters before state elections.

What are federal laws related to voting rights?

The Voting Rights Act of 1965 guarantees the right of voters to be protected from vote dilution, to have access to election materials in their language, and to be secure from intimidation. Section 2 prohibits dilution of the

Past Federal Voting Legislation Received Significant Bipartisan Support

The Help American Vote Act of 2002 (HAVA) and the National Voter Registration Act of 1993 (NVRA) are the last two pieces of landmark election legislation to be enacted at the federal level. While hard to imagine today, both bills received significant bipartisan support, even after the 2000 election.



Source: Bipartisan Policy Center

voting strength of minority voters, Section 203 protects language access, and a variety of other provisions protect the rights of voters generally.

What are federal laws related to voting equipment?

The Help America Vote Act of 2002 (P.L. 107-252; 52 U.S.C. §§ 20901-21145) was passed in response to the 2000 presidential election. It created mandatory minimum standards related to voting equipment, provided funds to upgrade voting machines, and required the use of provisional ballots and statewide voter registration databases. It also created nationwide nonphoto identification requirements for certain categories of voters, and it created the Election Assistance Commission.

How do federal courts protect voting rights?

Federal courts can hear cases involving any of the federal statutes previously cited as well as cases that involve protecting the fundamental right to vote. In a typical right-to-vote case, a particular election practice is challenged as an undue burden on the right to vote. A court must then determine the extent of the burden on the right to vote (because every election regulation creates *some* burden), ranging from minimal to severe. The court then determines whether the state's interests justify the burden based on the severity of the burden. For minimal burdens, the state's regulatory interests are sufficient to uphold the election practice. For severe burdens, the state must have a compelling interest for the court to uphold the practice.



A voter registration drive takes place outside a brewery in New Orleans in 2016.

Trends to watch

Georgia has faced significant litigation in federal court involving its voting processes from 2017 forward. Litigation has challenged types of voting machines, providing things of value to people waiting in line to vote, the process for verifying absentee ballots, the use of drop boxes, and election timelines.

Over the past 10 years, Georgia has instituted opt-out voter registration, which registers individuals to vote when they obtain a driver’s license unless they opt out, expanded the number of mandatory days of early voting, and instituted risk-limiting audits following all elections.

Georgia legal framework and statutory provisions

Unlike the U.S. Constitution, the Georgia Constitution provides a right to vote and a right to vote by secret ballot in its text. (Ga. Const. Art. II, Section I, Paragraphs I and II)

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2.4. State Issues and Protections

State-level issues, laws, and safeguards significantly shape elections and represent the majority of electoral legislation in the U.S. These protections, defined by state laws, impact fairness, accessibility, and transparency. From voter registration to ballot design, states establish guidelines to ensure local election integrity while balancing ballot access for voters.

Key concepts and principles

- State legislatures must balance election access with federal mandates and election-security concerns to ensure free, fair, and safe elections.
- Many state legislatures enact laws with the purpose of upholding election security, which can have the effect of reducing ballot access for communities of color.
- After the *Shelby County v. Holder*, 570 U.S. 529 (2013), decision removed safeguards for state election laws, nearly 100 restrictive voting laws were

proposed in states with a history of racial voting discrimination.

- After a period of expanding ballot access, over the past 20 years, state election laws have become increasingly politicized, seemingly passed to ensure political power instead of ballot access.

What are state issues and protections?

State issues and protections encompass a wide spectrum of critical considerations that collectively shape the integrity, accessibility, and fairness of the electoral process. Rooted in the decentralized nature of the American democratic system, these matters are governed by individual state laws that address fundamental principles. They include the imperative to ensure equal protection and prevent discrimination, exemplified in voter registration procedures that enable eligible citizens to participate while averting potential fraud. As part of these safeguards, states institute voter identification requirements to validate voter identities and uphold the authenticity of ballots cast.

Key issue: Voter ID

Advocates for stricter voter ID laws contend they will discourage voter fraud and enhance faith in electoral integrity. Opponents maintain voter fraud is highly uncommon and that stricter laws will hinder voting, especially among low-income citizens, with little benefit. The increase in strict voter ID laws has prompted lawsuits alleging racial bias.

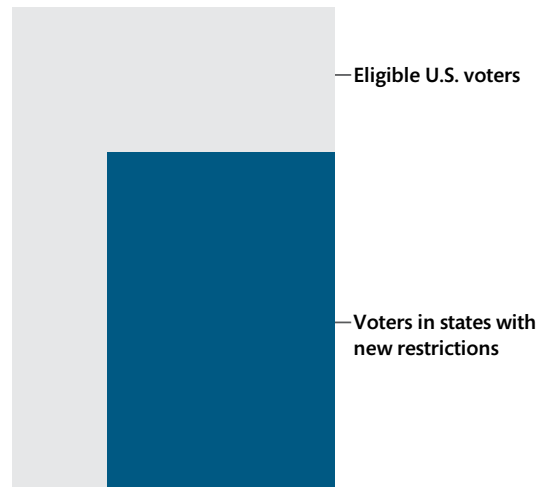
Before the 2000 election, there was minimal controversy surrounding voter ID laws. Post-election, however, Congress passed HAVA (see Chapter 2, Section 3) which required states and localities to enhance various election elements like voting machines, registration methods, and poll worker training. Each state had the flexibility to interpret and execute the federal law, leading to diverse implementations and generating controversy around whether voter ID laws were enacted for partisan gain.

How can voter ID laws impact voters and our elections?

Research reveals that strict voter ID laws that require specific types of photo identification have a clear, discriminatory effect on racial and ethnic minority turnout. These laws significantly reduce voter participation in racially diverse regions compared with predominantly white areas. Counties with a 75%

Voters Impacted

Of the estimated eligible voters, 51% reside in a state that has new voting restrictions for the midterms.



Source: Reuters

nonwhite population witnessed a 1.5% greater decrease in voter turnout in states with newly implemented ID laws. States without such laws did not see such a decrease. While the decrease is small, in a tight race it can be decisive. For example, Donald Trump's margin of victory in Wisconsin in 2016 was 0.77%.

How can election laws support our elections?

A recent Georgia law known as the Election Integrity Act of 2021 (GA Code § 21-2-414 [2022]) both expanded and restricted voting. On the one hand, the law banned mobile voting and made it illegal to provide free food or water to people waiting in line to vote. On the other, it required areas with consistently long lines to open more polling stations and expanded early voting for most counties by adding a second Saturday for early voting and the option of adding two Sundays. This change is crucial, as Georgia voters turned out in record numbers—over 2.4 million—to vote early in the 2022 election, 4% higher than same-day early voting in 2020.

Trends to watch

While the increase in amending state election laws has largely plateaued, the focus is shifting to amending election administration laws. Support for amendments is likely to continue splitting along partisan lines, undermining the legitimacy of any changes.

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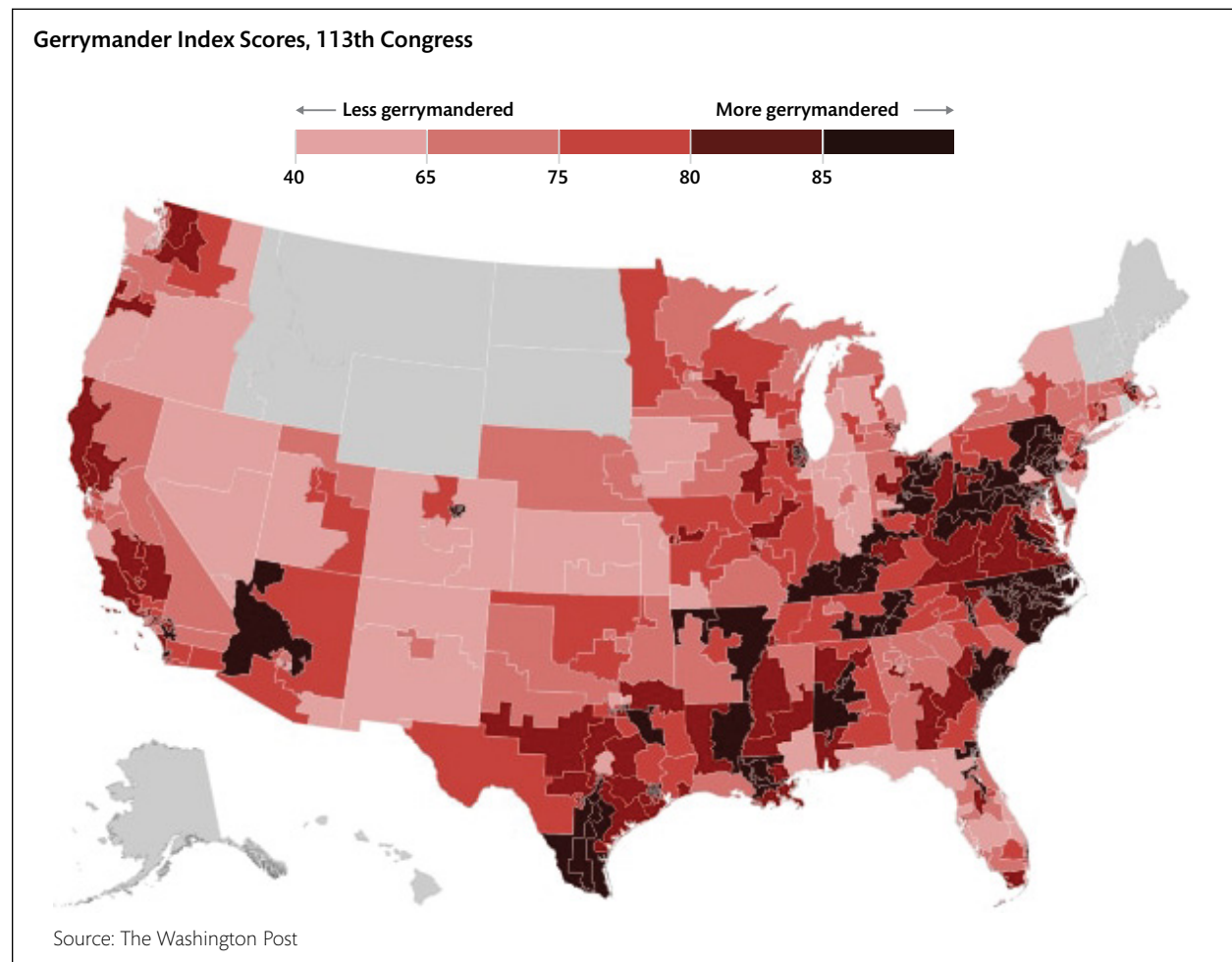
Module 3

Who Gets to Vote?

3.1. Redistricting and Gerrymandering

Political districts and their boundaries determine who is elected at every level of government, including city councils, school boards, state legislatures, and the U.S. House of Representatives. Redrawing these boundaries, called redistricting, occurs at least once a decade, based on the decennial census results. Redistricting can

significantly change who can get elected in that district. The term “gerrymandering” describes the manipulation of district boundaries to an extreme degree, specifically to benefit certain political actors for a variety of reasons, sometimes including racial discrimination.



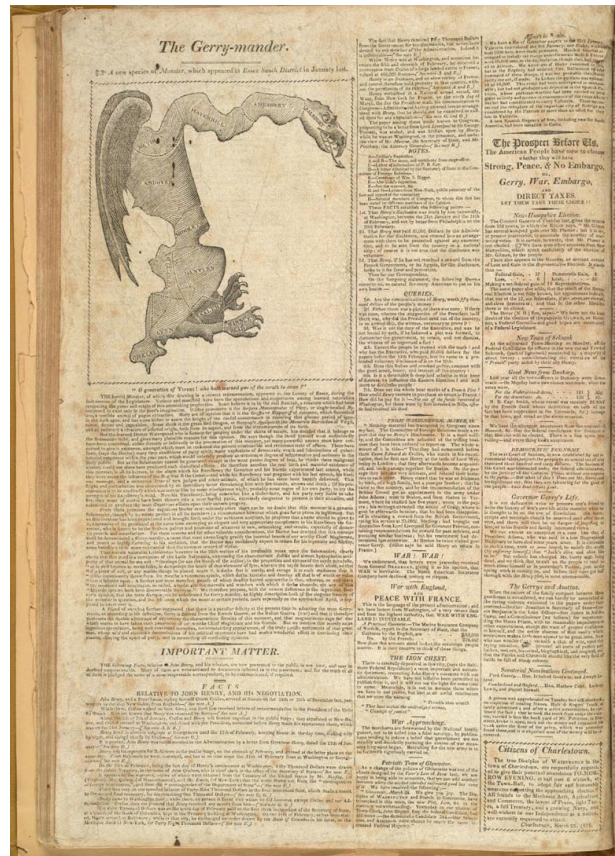


Key concepts and principles

- Redistricting is conducted state by state, with each state deciding how to draw state and local political maps.
- Redistricting usually involves public hearings, enabling the public to tell decision-makers what matters to them in terms of drawing the districts, including providing information on why communities should be kept in a single district. Often, members of the public can present their own draft maps.
- Redistricting must comply with state and federal laws, including the state and federal constitutions, the VRA, and case law.
- Districts must have near-equal populations (“one person, one vote”). Additionally, the map adopted must allow the political process to be equally open to people of color. Districts cannot be based on race (“racial gerrymandering”) without good reasons, and maps cannot discriminate against racial minorities by concentrating people of color into (“packing”) or dividing people of color between (“cracking”) particular districts.
- Additional redistricting principles may be required by state law or regulation or could be used as best practices by map-drawing entities. Many of these principles are developed through case law, including the principle that districts should be compact and contiguous, avoid dividing geographic features, and should keep together communities of interest. Redistricting is often conducted with the assistance of technical experts like demographers and statisticians, as it is complicated and requires significant expertise.

An example of how redistricting might work

The year is 2020. The City of Pluto’s city council is composed of 10 members, each of whom represents one district. Pluto is located in the state of Milky Way, which permits each city to draw districts for the bodies governing their cities. Based on the 2020 decennial census, Pluto’s population increased by 50%, but the population growth was concentrated in only two of Pluto’s 10 council districts. Because Pluto’s council districts are now malapportioned, Pluto knows it must redistrict.



An article in an 1812 edition of the Boston Gazette coined the term “gerrymander.”

Source: Library of Congress

What should Pluto do to redistrict?

- Pluto should engage in an open and transparent redistricting process that complies with local, state, and federal laws.
- To do so, Pluto should thoroughly research the state and federal laws with which any new district map must comply. This includes state deadlines for finalizing a new map, understanding and following traditional redistricting principles, and any other relevant state and federal laws restricting Pluto’s redistricting discretion.
- Pluto should schedule multiple public hearings that solicit input and ensure inclusiveness by accommodating potentially marginalized people, including people with disabilities and limited English proficiency. Pluto should schedule its hearings far in advance and publicize them widely to maximize community attendance and participation.
- After soliciting public input, Pluto should strive to incorporate as much of this input as possible, while still complying with applicable laws.

Citations and further learning

To learn more about redistricting, attend a Community Redistricting Organizations Working for Democracy (CROWD) Academy training. CROWD Academy is a program run by the Southern Coalition for Social Justice (SCSJ), a leading legal expert on redistricting, which works in partnership with community organizations across several states. CROWD Academy focuses on educating the public about redistricting and how to advocate for fair districts, and it provides free tools that the public can use to create proposed maps.

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3.2. The Federal Voting Rights Act

The 1965 federal Voting Rights Act, P.L. 89-110; 52 U.S.C. §§ 10101-10702, is considered by many to be the most significant civil rights law in U.S. history and is by far the best known. The VRA was adopted to combat racial discrimination in voting across the country, especially in the South.

Key concepts and recent developments

- Voting Rights Act, Section 2 ensures that members of race, color, or language minority groups cannot be denied an equal opportunity to participate in the political process and elect candidates of their choice. Courts have applied this prohibition to provide a private cause of action for vote dilution and vote denial.
 - Section 2's prohibition on vote dilution is often used to challenge at-large and district-based election structures that deny voters of color an equal opportunity to participate and elect candidates of their choice.
 - The landmark Supreme Court opinion governing claims under Section 2 is *Thornburg v. Gingles*, 478 U.S. 30 (1986). The court established three preconditions that plaintiffs must satisfy when bringing claims:
 - First, the minority group must be sufficiently large and geographically compact to constitute a majority in a single-member district.
 - Second, the minority group must be politically cohesive (meaning members tend to support the same candidates).



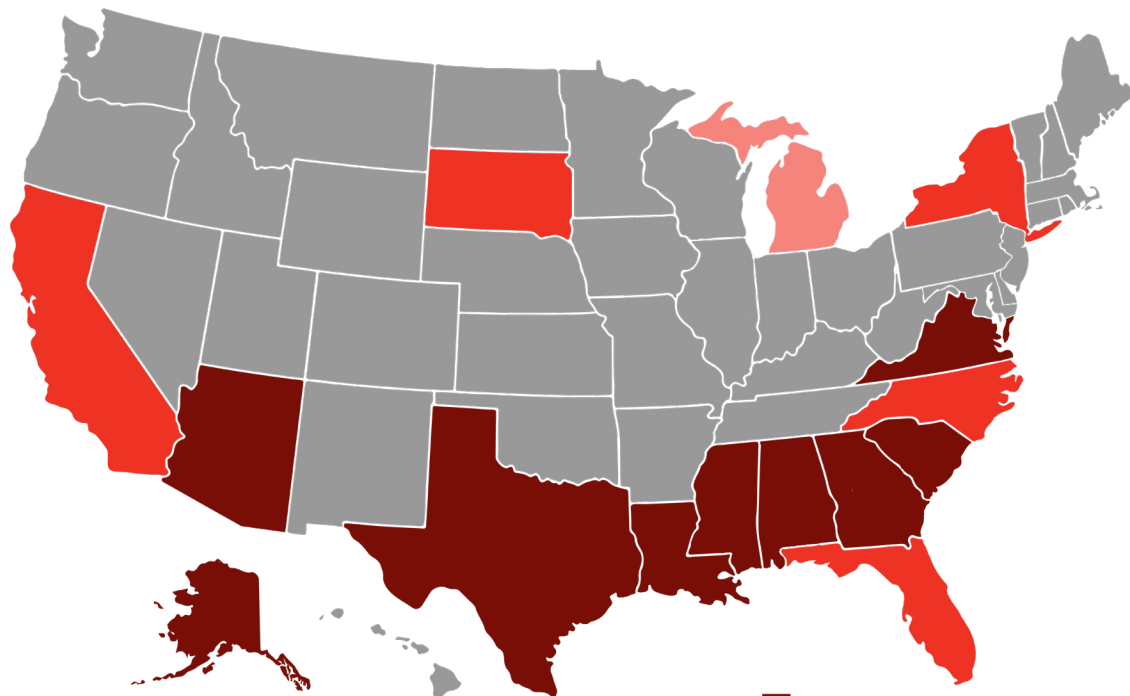
President Lyndon Johnson greets prominent civil rights leaders after signing the Voting Rights Act of 1965 into law.

- Third, the majority group must usually vote as a bloc to defeat the minority group's preferred candidate.

The second and third preconditions together are referred to as "racially polarized voting," which is considered the crux of Section 2 analysis. If the three preconditions are established, the court will then evaluate, under the totality of the circumstances, whether the challenged structure impairs the ability of the minority group to elect candidates of its choice, based on a non-exhaustive list of factors known as the "Senate factors" (see Senate Report No. 97-417 (1982), reprinted in 1982 U.S.C.C.A.N. 177).

- The constitutionality of Section 2 and the framework established in the *Gingles* opinion was recently affirmed by the Supreme Court in *Allen v. Milligan*, 599 U. S. 1 (2023).

States Covered by Section 5 at the Time of the Shelby County Decision



BRENNAN
CENTER
FOR JUSTICE

Source: Brennan Center for Justice

■ States Covered as Whole by Section 5
■ Some Counties Covered by Section 5
■ Some Townships Covered by Section 5

- Section 2's prohibition of vote denial is used to challenge discriminatory voting rules, like voter identification laws, reductions in early voting opportunities, and other barriers that block or hinder voting. In *Brnovich v. Democratic National Committee*, 594 U.S. ___, 141 S.Ct. 2321 (2021), the Supreme Court established a test that imposes new burdens on voters seeking redress under Section 2.
- Voting Rights Act, Section 5 established “preclearance,” which required certain designated states and/or local governments to obtain preapproval from the Department of Justice or a federal court before making any changes that relate to the right to vote that could diminish the ability of protected voters to participate in the political process and elect candidates of their choice. In *Shelby County v. Holder*, 570 U.S. 529 (2013), the Supreme Court struck down the Voting Rights Act, Section 4(b), which dictated which jurisdictions would be covered by the protections of Section 5, rendering it ineffective.

Trends to watch

The court's reaffirmation of Section 2 in the *Milligan* case provides communities of color with confidence in Section 2 litigation when redistricting plans impair their ability to participate in the political process and elect candidates of their choice.

There is continued interest in federal legislation to bolster the VRA, such as the 2021 John R. Lewis Voting Rights Advancement Act, which would have broadened the scope of the VRA's protections and restored federal preclearance. While the House passed the legislation, the Senate did not.

Numerous states have adopted state-level voting rights acts to bolster and expand the protections of the federal VRA.

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3.3. State-Level Voting Rights Acts

In recent years, many states have begun adopting state-level voting rights acts to supplement and bolster the protections provided by the federal VRA. Although state voting rights acts vary widely in scope and effect, they are all unified by the goal of enhancing protections for the right to vote for members of race, color, or language minority groups.



Key concepts

- In light of the weakening of the federal VRA through Supreme Court opinions like *Shelby County v. Holder*, 570 U.S. 529 (2013) and *Brnovich v. Democratic National Committee*, 594 U.S. ___, 141 S.Ct. 2321 (2021), states have begun adopting voting rights acts to provide state-level protection against racial discrimination in voting.
- These states include California (2002), Connecticut (2023), Minnesota (2024), New York (2022), Oregon (2019), Virginia (2021), and Washington (2018). Other states are currently considering them, including Florida, Maryland, Michigan, and New Jersey.
- State voting rights acts vary, but the most comprehensive models include the following:
 - State-level preclearance, requiring local governments with records of racial discrimination to demonstrate that voting changes will not harm voters of color before they can be adopted.
 - Private causes of action against vote denial and racial vote dilution, to bolster the provisions of Section 2 and ensure that voters can efficiently and effectively address barriers that deny voting opportunities.

- Protections against voter intimidation, deception, or obstruction, bolstered by the availability of punitive damages to deter bad actors.
- Expanded language access, to ensure that more voters with limited English proficiency can vote.
- Creation of a central state repository for election information and demographic data to enable policymakers, voters, and academics to identify and prevent violations and develop best practices in election administration more easily.
- Establishing a democracy canon, an instruction to courts to interpret statutes in a “pro-voter” manner.

Trends to watch

State voting rights acts will likely be introduced and adopted in more states. In the coming years, we may see voting rights acts considered in states with a history of racial discrimination in voting.

Many of the most comprehensive state voting rights act models were recently adopted (especially in New York and Connecticut). Over the coming years, we can expect to see an increase in enforcement of these new provisions, which will provide a model for other states considering adopting similar legislation.

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3.4. Voter Eligibility, Registration, and Identification

Identification is how polling station workers determine who is registered to vote. Registration, in turn, is how a voter demonstrates eligibility. While each of these components works differently in different jurisdictions, they are essential to how the electorate is formed. In most jurisdictions, any of these components can be challenged for individuals or even certain groups.



Key concepts and principles

- **Eligibility** typically includes five components: citizenship, residency, age, felony status, and competence. The citizenship requirement restricts the vote to citizens, though in some jurisdictions, citizenship is waived in certain local elections. Residency requirements typically mandate a specific period of residency within a jurisdiction, though these can differ and can result in a person being eligible to vote in more than one jurisdiction or none at all. All jurisdictions have a minimum age to vote. In some states, those convicted of a felony cannot vote, though some states are moving to eliminate these prohibitions. Normally, those deemed mentally incompetent by a judge also cannot vote.
- **Registration** involves enrollment, deadlines, and list maintenance. Voluntary enrollment allows eligible citizens to choose whether to register, where, and how to do so, with a deadline before each election. Voter list maintenance ensures that voter lists remain accurate and up to date. Some states have automatic enrollment or even same-day registration.
- **Identification** requirements often include presenting physical ID, typically government-issued. Some states identify voters only through a signature match. Accommodations should be provided for voters who cannot meet a state's ID requirements but often are not.

Acceptable state eligibility, registration, and identification requirements

The U.S. Constitution states that a person is eligible to vote if that person is a U.S. citizen, at least 18 years of age, and resides in the state where the person casts a ballot. States also set eligibility standards. For example, in Georgia, people age 17.5 are allowed to register, so long as they are 18 when they cast their ballot, with a physical address that indicates a housing structure (e.g., house, apartment, building). In contrast, Maine allows



Rob Crandall / Shutterstock.com

States are allowed to set their own rules around voting, as long as the rules comply with the U.S. Constitution and federal law.

people to register at age 16 and unhoused people can register using a nontraditional address, such as a park bench, or other physical location.

Issues

In 2022, 36 states introduced new voter ID laws. Some enforce strict photo ID rules, which some argue have led to reduced participation. Here is why:

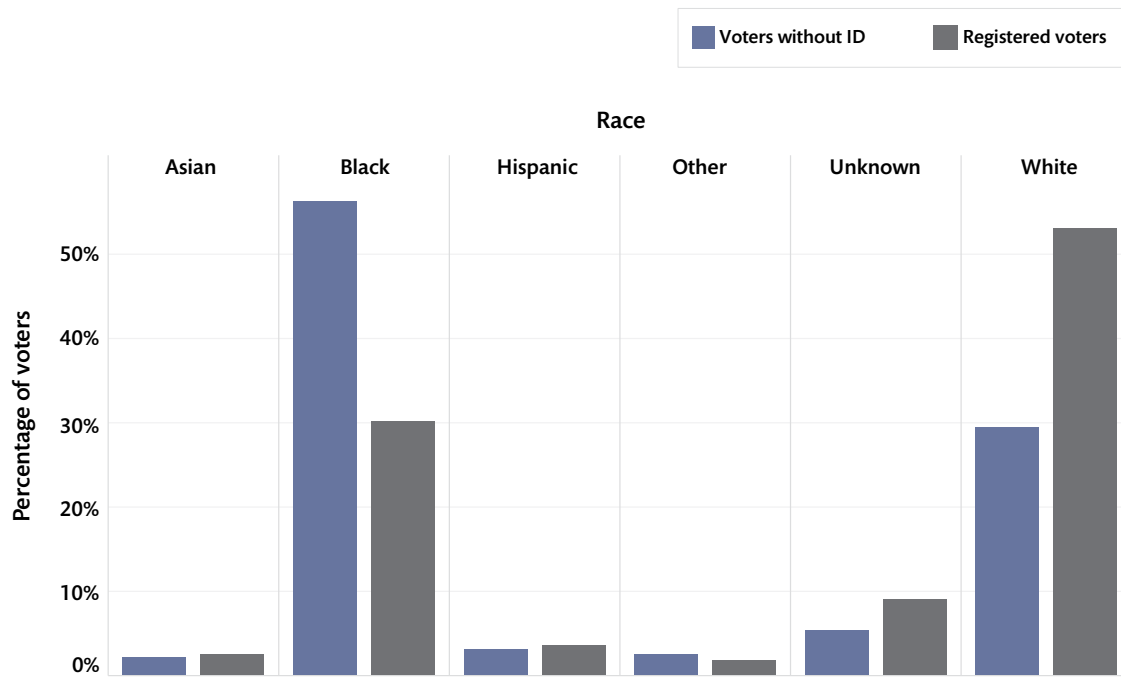
- Photo ID is often required to request a voter ID. Over 16 million Americans, roughly 7% of U.S. citizens, lack a government-issued photo ID.
- Notably, 13% of Black citizens eligible to vote lack a government-issued photo ID, compared with only 5% of white citizens.

Studies indicate that strict voter ID laws do not increase voter confidence or impact fraud. Instead, studies suggest these laws may depress turnout. However, voter education, along with other initiatives to encourage voting, can help boost turnout and offset the potential negative impact of voter ID requirements.

Protections

State laws can influence voter turnout, but safeguarding the right to vote relies on demand letters, legal action, and community involvement. To contest discriminatory laws, it is crucial to demonstrate the harm that obstructs protected groups, like those with language differences or ethnic minorities, from registering. Educating voters about the impact of new laws, with guidance on navigating restrictions, is vital for broader ballot access.

Georgia Voters Without a Government-Issued Photo ID (by Race)



Source: Atlanta Journal-Constitution



Georgia Legal Framework and Statutory Provisions

For voting eligibility and registration, see O.C.G.A. § 21-2-216.

For voter identification requirements, see O.C.G.A. § 21-2-417.

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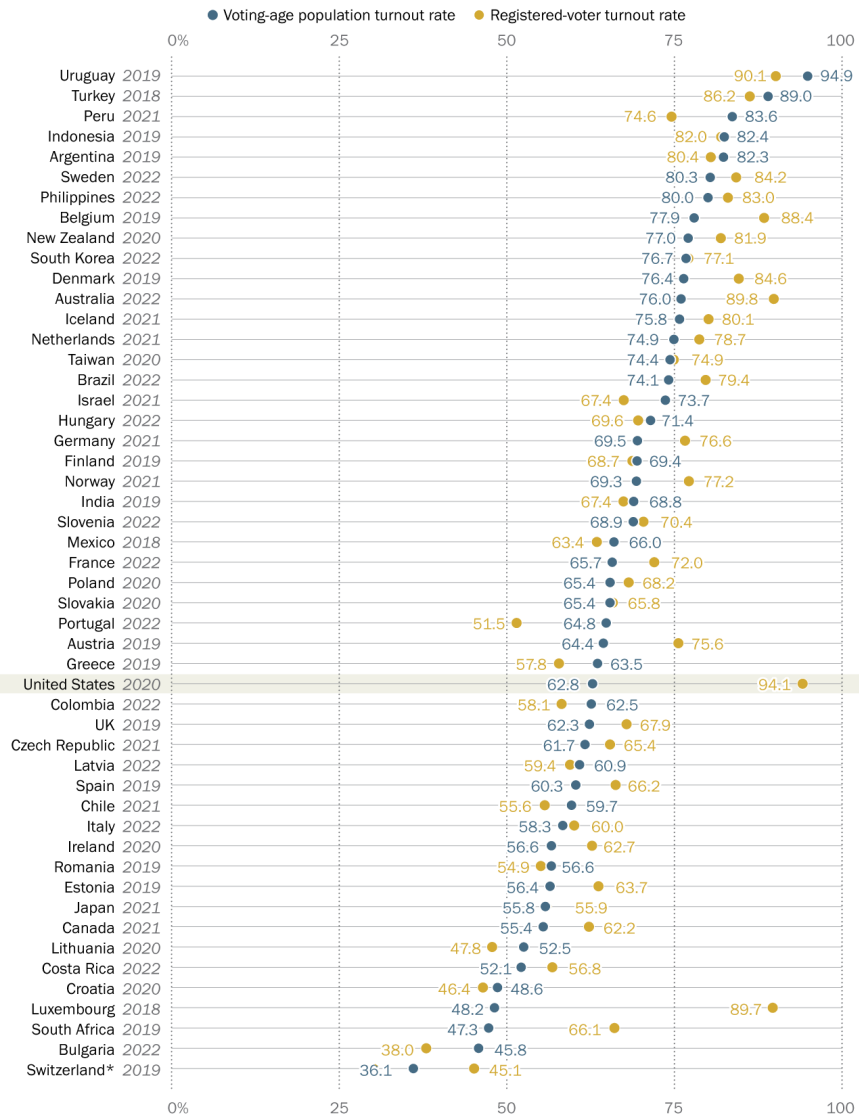
The right to vote. What about the opportunity?

Universal suffrage is a key standard by which modern democracies are measured, raising the question: What makes suffrage universal? Article 25 of the International Covenant on Civil and Political Rights, United Nations Treaty Series at 999 U.N.T.S. 171, the foundation of political rights internationally, tells us: “Every citizen shall have the right and the opportunity... and without unreasonable restrictions... to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage....” This is expanded upon in several other international treaties to which the U.S. is also a state party.

The U.S. has tended to ignore these international commitments, relying instead on domestic laws that guarantee rights without obliging the government to maximize opportunity. This failure to consistently guarantee opportunity was noted by the U.N. Human Rights Committee.

Other countries, especially new democracies, emphasize

U.S. voting-age population turnout is still behind many other countries despite its recent rise, though registered-voter turnout is remarkably higher
Among the Organization for Economic Cooperation and Development (OECD) member countries and candidates, and selected other countries



* Compulsory voting in one canton, or member state of the Swiss Confederation, only.

Note: Data as of Oct. 31, 2022. Voting-age population (VAP) turnout is derived from estimates of each country's VAP by the International Institute for Democracy and Electoral Assistance. Registered-voter (RV) turnout is derived from each country's reported registration data. Because of methodological differences, in some countries estimated VAP is lower than reported RV. Turnout rates are listed for the most recent national election in each country.

Source: Pew Research Center calculations based on data from International Institute for Democracy and Electoral Assistance, European Election Database, United States Election Project, Office of the Clerk of the U.S. House of Representatives, and various national election authorities.

Pew Research Center

maximizing citizens' opportunities to participate in the political process.

That means that, outside the U.S., while voter ID is often required for voting, this requirement is often paired with government mobile voter registration teams that travel throughout the country to ensure that everyone with the *right* to register has the *opportunity* to register. During elections, government mobile voting teams often visit hospitals, prisons, military bases, and people who cannot leave their homes to ensure voters' opportunity to vote. Ironically, the U.S.-backed government in Afghanistan had mobile teams to register voters and to facilitate voting in remote areas and even used donkeys to deliver ballot boxes to isolated communities, as ensuring the opportunity to vote was viewed as essential to credible elections. Even less wealthy countries with fragile democracies and severely limited infrastructure have worked hard to make voting easy. In East Timor, helicopters were used to pick up ballot boxes from remote locations. Middle-income India, the world's largest democracy, instituted mobile voting teams across the country to enable the elderly and people with disabilities to vote from home.

The U.S. rights-based approach allows increasing barriers to voting, without the need to balance against the potential negative impact on voting opportunities. In Georgia, perennially long waits to vote prompted people to provide water to voters in line. In response, in 2021, Georgia banned giving "any money or gifts, including, but not limited to, food and drink..." rather than recognizing that long lines diminished the opportunity for citizens to vote. Florida, North Carolina, Ohio, and Wisconsin all reduced early voting opportunities in 2020, without provisions to maintain voting opportunities in other ways. Texas prosecuted several citizens who apparently mistakenly voted. In 2019, after Floridians voted in 2018 to

eliminate their state's lifetime voting ban on those convicted of felonies, the state government introduced the requirement that all fines and fees must be paid before those previously banned could vote, without giving those people the opportunity to see if they owed any fees or fines.

International law and best practices require governments to consider both rights and opportunities to vote. When looking at U.S. election law, you should consider both as well.

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3.5. Felony Disenfranchisement

Felony disenfranchisement is the denial of voting rights for people with felony convictions. Rooted in the aftermath of the Civil War, felony disenfranchisement laws were intended to disenfranchise a significant portion of the population, perpetuating systemic inequities.

The vast majority of states do not allow incarcerated felons to vote. In 38 states, those who have completed their sentence automatically regain the right to vote at some point. However, about 5 million otherwise eligible Americans cannot vote, in perpetuity, because state laws bar felony convicts from voting, even after they have completed their sentence.



Key concepts and principles

- Felony convicts can vote in Maine, Vermont, and Washington, D.C., even while incarcerated.
- Twenty states allow those convicted of felonies to vote upon release from prison, and most offer a path back to the restoration of voting rights, though probation can have a large effect on when and how this happens.
- Only Mississippi has permanent felony disenfranchisement.

- Franchise restoration is poorly understood by many of those eligible.
- Felony disenfranchisement is extremely biased by race and gender:
 - In total, 5.3% of African Americans are disenfranchised compared to 1.5% of non-African Americans.
 - Four million men are disenfranchised, compared with 1.2 million women.

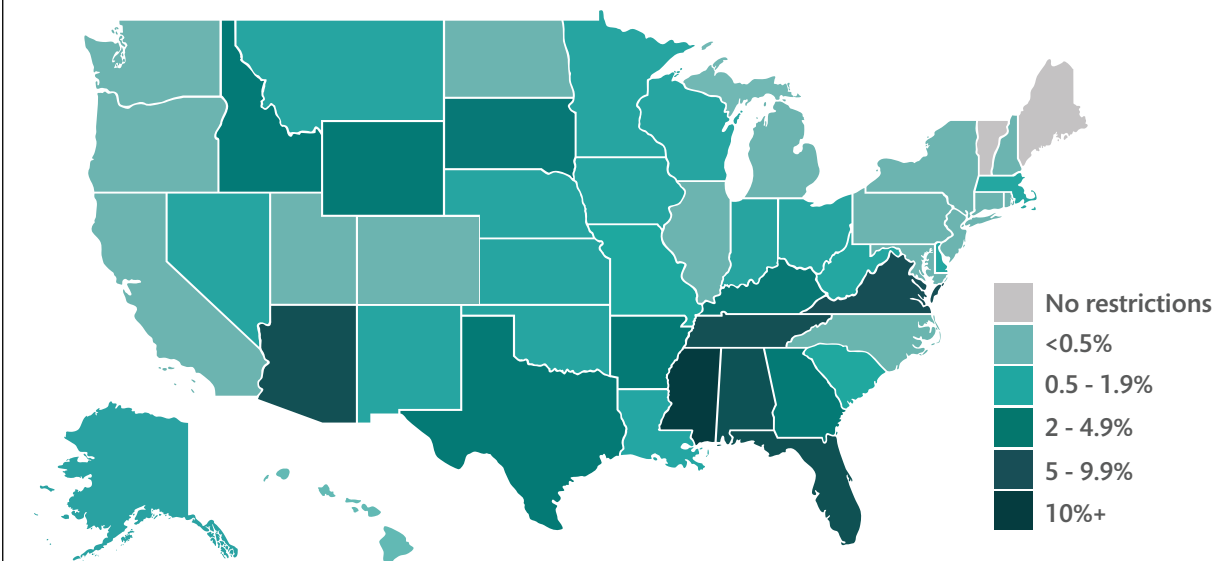
Why did it happen?

States began passing disenfranchisement laws shortly after the Civil War. The Supreme Court exempted criminal disenfranchisement laws from strict scrutiny in *Richardson v. Ramirez*, 418 U.S. 24 (1974).

When did it start to change?

Hunter v. Underwood, 471 U.S. 222 (1985) held that provisions reflecting purposeful racial discrimination violated the equal protection clause of the 14th Amendment. The Voting Rights Act of 1965 applies, but the Supreme Court decided that the provisions are unconstitutional only if they are based on purposeful discrimination toward a protected class.

Total Felony Disenfranchisement Rates Per State, 2022



Source: The Sentencing Project

Trends to watch

Over half of U.S. states have made significant changes since 2008 to restore voting rights. However, parole, probation, conviction-related fines, and public perception remain barriers to re-enfranchisement efforts.

Georgia legal framework and statutory provisions

In Georgia, voting rights are automatically restored upon completion of a sentence. “Completion” means finishing all requirements of prison, parole, and probation (Georgia Constitution, Article II, Section I, Paragraph III and Georgia Code § 17-10-2).

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3.6. Electoral Access

Electoral access refers to the ability of citizens to participate freely and equally in the electoral process. At its core, electoral access is about ensuring inclusivity, representation, and fairness for all citizens in a democracy.

Key concepts and principles

- **Voting rights:** The right to vote is protected and governed by federal and state constitutions, federal and state laws, and legal precedents. The goal of these protections is to ensure that all eligible citizens can cast their ballots without discrimination based on race, ethnicity, previous condition of servitude, gender, religion, or socioeconomic status.
- **Voter registration:** To participate in most U.S. elections, citizens must be registered to vote in their state of residency. The registration process should be accessible, transparent, and efficient, allowing eligible individuals to sign up easily. Registration barriers, such as cumbersome paperwork or restrictive identification requirements, should be minimized.
- **Voter education:** An informed electorate is crucial for the democratic process. Voter education programs should educate citizens on their rights, election dates and deadlines, election changes and requirements, and polling site locations, and should encourage voter participation.



Annie Kenney (left) and Christabel Pankhurst were members of the Women’s Social and Political Union, which campaigned for women’s suffrage in the United Kingdom.

- **Language and information accessibility:** Voting information, not merely ballots, should be available in multiple languages, especially in regions with diverse linguistic populations. This includes voter education materials, candidate profiles, and ballot papers.
- **Voting accessibility:** Polling stations should be distributed evenly and fairly across a state, with special considerations for remote and marginalized communities. Polling stations should be accessible to people with disabilities. Ballots should be accessible, with accommodations such as tactile ballots and other applicable innovations.
- **Electoral security:** Voter safety is paramount for participation. Ensuring electoral security means preventing voter intimidation, coercion, or violence during campaigns and on Election Day.
- **Transparency and accountability:** The electoral process must be transparent and accountable to prevent fraud. This includes ensuring a clear chain of custody for ballots and allowing for election observation and monitoring of the entire electoral process.
- **Electoral technology:** Electoral technology can enhance electoral access, though ensuring the integrity of electronic voting is still a challenge. When properly and effectively implemented, electronic voting machines, voter registration systems, and result tabulation mechanisms can streamline the process and improve accuracy.
- **Election observation:** International and domestic election observation missions play a vital role in ensuring electoral access. Independent observers assess the fairness and credibility of the electoral process, providing recommendations for improvements where necessary.

Constitutional protections and guarantees

- **The 15th Amendment (1870)** prohibits the denial of the right to vote based on race, color, or previous condition of servitude and was aimed at enfranchising African American men previously denied the vote.
- **The 19th Amendment (1920)** prohibits denying or abridging the right to vote on account of sex and

was aimed at ensuring women’s right to vote in all U.S. elections.

- **The 24th Amendment (1964)** prohibits the use of poll taxes in federal elections. Poll taxes were used to disenfranchise voters who could not afford to pay to vote and were targeted at African Americans.
- **The 26th Amendment (1971)** sets the voting age at 18 years, ensuring that citizens who are 18 or older cannot be denied the right to vote based on age, and was aimed at ensuring that men old enough to be drafted for military service were eligible to vote.

Other constitutional provisions protect voting rights indirectly and are used in litigation on discrimination claims. For instance, the equal protection clause of the 14th Amendment is used to challenge discriminatory voting practices that are unequally applied to marginalized groups.

It is important to note that constitutional protections have been further strengthened by subsequent federal legislation, such as the Voting Rights Act of 1965 and the National Voter Registration Act of 1993. These laws aim to eliminate barriers to voting and ensure the right to vote for all eligible U.S. citizens.

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3.7. Economic Barriers to Voting

Lower-income voters consistently vote at dramatically lower rates than higher-income voters. Economic necessity often forces otherwise eligible voters to choose between voting and their incomes. Studies by Jan E. Leighley, the Washington Center for Equitable Growth, and other organizations suggest that reforms reducing economic voting barriers for lower-income citizens, such as voting leave and no-excuse absentee voting, could impact the outcome of an election, injecting partisan considerations into an issue of equity.



Key Concepts and Principles

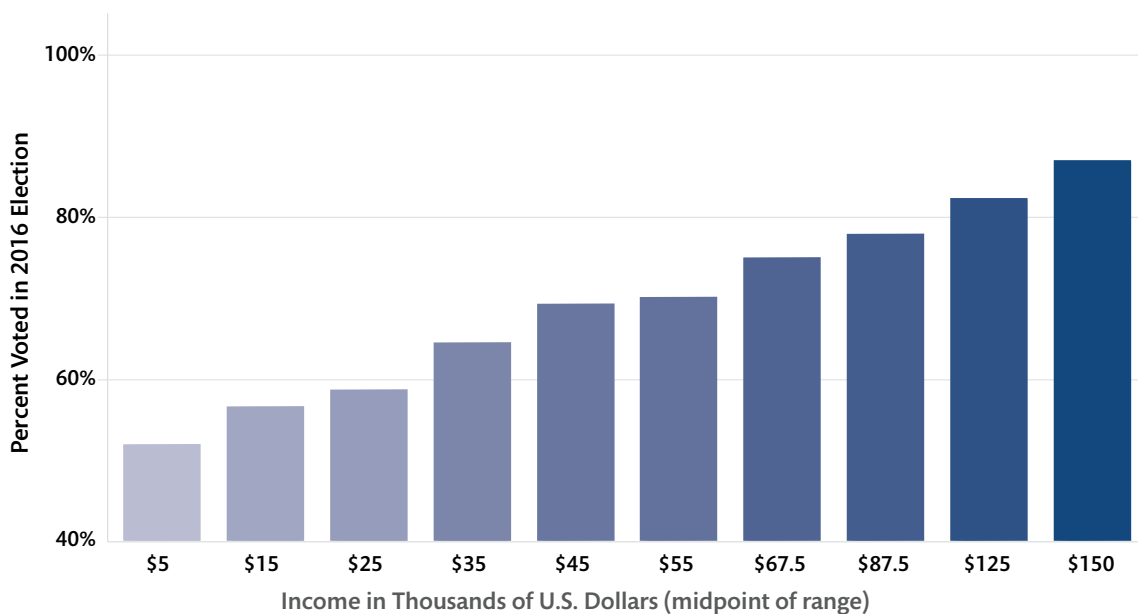
- There is a turnout gap between lower- and higher-income voters, which may be the result of time constraints related to voter registration and the time off work needed to vote.
- State policies that reduce the time required for voting, such as automatic registration, same-day registration, extended voting hours, no-excuse absentee voting, and all-mail voting, can positively impact low-income voter turnout.

The time required to obtain an ID, register, or go to the polls often means sacrificing income. Voters who struggle to find time to vote due to demanding work or caretaking schedules typically also face time-related challenges in obtaining the required voter ID. A hurdle for those who move often is voter registration deadlines before election day, a problem associated more with lower-income renters than higher-income homeowners.

Homeownership generally correlates with higher household incomes; the median annual household income for homeowners in 2021 was \$78,000, while the median annual household income for renters was \$41,000.

These difficulties faced by low-income voters can be seen in the turnout gap between lower- and higher-income voters. In the 2016 presidential election, only 48% of eligible voters in the lowest household income bracket cast a ballot, while 86% of eligible voters in the highest household income bracket voted. A similar trend occurred in the 2022 midterm elections, during which 58% of eligible homeowners voted, compared to 37% of eligible renters, highlighting the difference between owners and renters.

Voter Turnout by Family Income
2016 Election



Source: Current Population Survey
EconoFact econofact.org

Legal framework

Research by Jan E. Leighley indicates that implementing measures to simplify the voting process can lead to a 2% to 3% increase in turnout among low-income voters. Some states have already implemented policies that make the voting process easier, helping lower-income voters. For example, 21 states and Washington, D.C., require paid leave for voting under certain conditions. While many states have adopted automatic or same-day voter registration to reduce the time and cost associated with becoming a registered voter, 22 states have not implemented these policies. Finally, 28 states and Washington, D.C., allow no-excuse absentee voting.

While only five states adopted same-day registration before 2004, more states have adopted the practice since. Nine states allowed same-day registration in 2016 compared with 15 states in 2020. State policies adopting all-mail voting have also become more popular. Oregon was the first state to adopt all-mail voting in 1998, and seven other states and Washington, D.C., have adopted similar policies since 2011. At the national level, congressional representatives have made numerous attempts to make Election Day a federal holiday. Bills to this effect were introduced in the House of Representatives in 2018 and 2021 but never voted upon, while the Senate failed to pass a

similar measure in 2022. Most recently, representatives introduced a bipartisan bill in November 2023, which was referred to the Committee on Oversight and Accountability.

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Module 4

Voting and Inclusion

4.1. Language Access

Language access requires comprehensive and equitable language services, including translation and interpretation, to ensure that those with limited English proficiency can fully participate in the electoral process and exercise their voting rights.



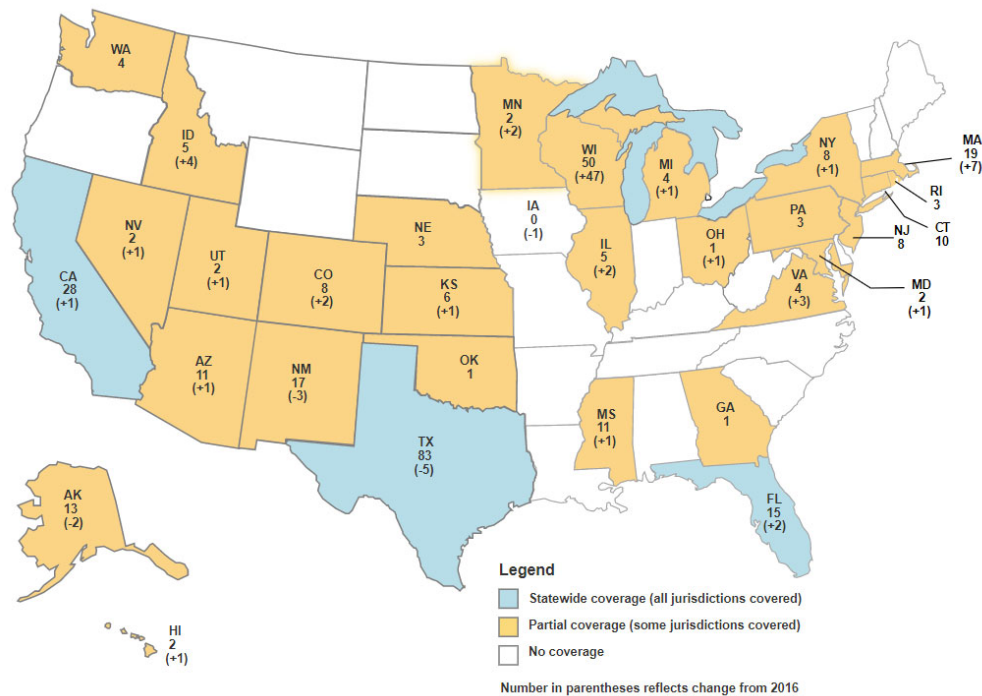
Key concepts and principles

- Increased immigration during and following the Reconstruction Era occasioned the passage of state

and local policies, such as English literacy tests, that aimed to limit immigrant voter participation.

- The Voting Rights Act, Section 203, prohibits language-based discrimination against Alaskan Native, American Indian, Asian, and Spanish language speakers. Voting information for these communities (education, ballots, information materials, etc.) is required to be in these languages for elections in covered jurisdictions in both print and oral formats.

Number of County-Level Jurisdictions Covered Under Section 203, by State, in the December 2021 Determinations



Source: Lawyers Committee for Civil Rights Under Law

- Covered jurisdictions are determined through the U.S. Census Bureau every five years based on whether 5% of eligible voters in a county, municipality, or state speak limited English or if there are more than 10,000 eligible voters with limited English proficiency in a jurisdiction.

How many jurisdictions are covered?

In December 2021, the Census Bureau identified 331 jurisdictions that met the language access threshold for the 2022 midterm elections. This is the highest number of covered jurisdictions ever recorded, surpassing the 2016 count by 68.

Where are covered jurisdictions?

Most of the covered jurisdictions are counties and municipalities, while there are three states with complete coverage: California, Florida, and Texas. These three states must offer Spanish-language voting materials in all statewide elections, even though specific localities within these states may not be required to provide bilingual ballots for local contests.

Georgia legal framework and statutory provisions

In Georgia, localities and municipalities may decide to provide voting materials in other languages without court intervention. However, absentee ballots do not have to be provided in languages other than English. (See *Georgia Ass'n of Latino Elected v. Gwinnett Cty.*, 36 F. 4th 1100 [11th Cir. 2022]). Only Gwinnett County is covered under Section 203. Under Georgia Code §

21-2-409, voters may designate someone, other than an employer or union representative, to provide language assistance while voting.

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4.2. Accessibility for People with Disabilities

Accessibility for voters with disabilities requires physical accommodations, assistive technologies, and alternative voting methods. Several federal laws protect the voting rights of people with disabilities.

Key concepts and principles

- **The Americans with Disabilities Act of 1990:** Title II of the ADA requires state and local governments to provide equal voting opportunities to individuals with disabilities. They are to do this by ensuring physical accessibility, effective communication through aids like sign language interpreters, alternative ballot formats, and reasonable modifications to

policies and procedures, such as curbside voting or voting from home, to accommodate individual needs.

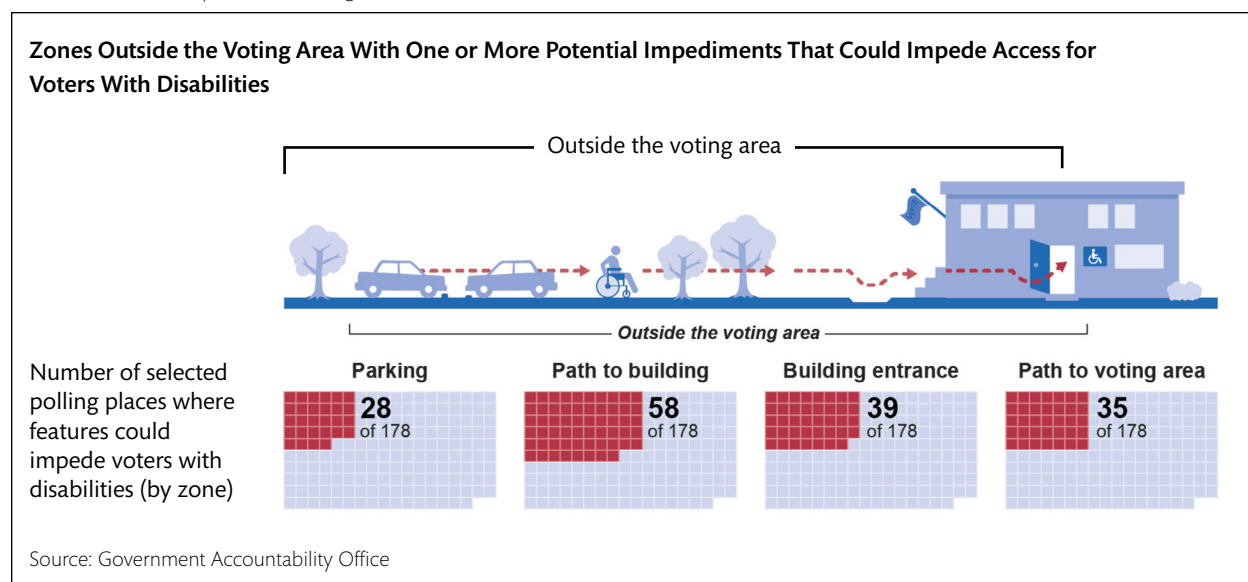


A voter in a wheelchair visits an accessible polling place.

Common Barriers and Potential Temporary Solutions

Potential Barrier	Temporary Solution
Parking is provided at a polling place but there are no accessible parking spaces.	Create accessible parking by using traffic cones and portable signs to mark accessible spaces and access aisles.
Sidewalks lack a curb ramp, preventing wheelchair users from accessing polls.	Install a ramp at least 36 inches wide, with a slope no more than 1:12, to provide access over curbs or onto sidewalks.
Drinking fountains, coat racks, fire extinguishers, or other protrusions may pose hazards to voters with vision disabilities.	Place traffic cones or other barriers that can be detected with a cane (planters, portable railings, etc.) at or under protruding objects.
Doorknobs or handles require tight grasping, pinching, or twisting.	Install temporary levers or other adapters. Alternatively, temporary doorbells may be used to alert poll workers to open doors for voters.
Door openings are less than 32 inches wide.	If one door of a double-leaf door is not wide enough, propping open the second door may provide enough clearance.
The voting area is crowded, making it difficult for voters with mobility disabilities to move through the voting area.	Arrange check-in tables and voting stations to provide an accessible path for voters throughout the entire voting process.

Source: U.S. Justice Department Civil Rights Division



- **The Voting Rights Act of 1965:** The VRA requires election officials to allow blind or disabled voters to receive voting assistance from a person of their choosing, excluding certain individuals, such as employers or union representatives.
- **The Voting Accessibility for the Elderly and Handicapped Act of 1984:** VAEHA requires accessible polling places in federal elections for the elderly and those with disabilities. If an accessible location is unavailable, alternative voting methods must be provided to these voters on election day.
- **The National Voter Registration Act of 1993:** The NVRA requires public assistance offices and state-funded programs primarily serving persons with disabilities to offer accessible voter registration opportunities in federal elections to improve the historically low registration rates of people with disabilities.
- **The Help America Vote Act of 2002:** HAVA requires jurisdictions overseeing federal elections to ensure at least one accessible voting system for individuals with disabilities at each polling place, with equal access, including privacy and independence, as provided to other voters.
- In 2020, 11% of voters with disabilities, nearly 2 million people, experienced voting difficulties.
- If people with disabilities voted at the same rate as people without disabilities, there would be about 1.75 million more voters.



Georgia legal framework and statutory provisions

In Georgia, any voter who is 75 years of age or older or who is disabled and requires assistance in voting may vote immediately at the next available voting compartment or booth without needing to wait in line. Georgia Code § 21-2-409.

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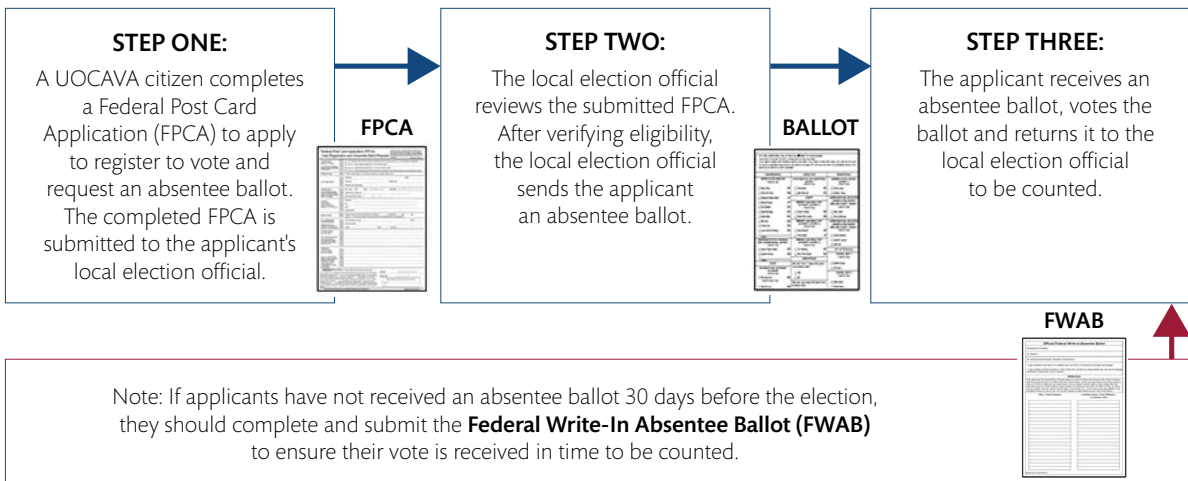
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4.3. Standards for Unique Voters: Military and Overseas, Jailed, Student, Absentee, and Provisional Ballot Voters

Unique voters are eligible voters who need to use specialized voting methods due to their life circumstances. It is essential to ensure that members of the military, students, and jailed individuals can vote to meet democratic principles and promote inclusivity.

In turn, these unique voters' participation in the electoral process helps to identify and address disparities, formulate effective policies, and foster public trust in the electoral process. Many of these voters can use absentee ballots.

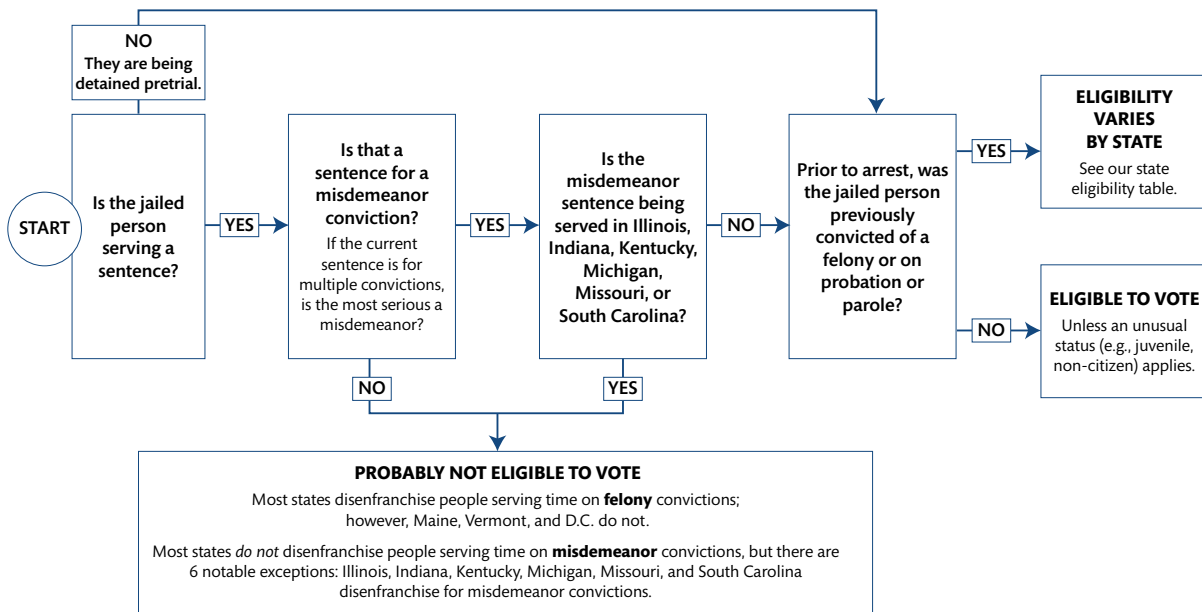
Voting Process for Active Military Members and Overseas Citizens



Source: Lake County, Ohio, Board of Elections

Most People in Jail Can Vote, but Eligibility Varies by State

Whether someone in jail can vote depends on both the reason for their current incarceration and whether they have any prior criminal history that triggers their state's disenfranchisement laws.



Source: Prison Policy Initiative



Key concepts and principles

- **The Uniformed and Overseas Citizens Absentee Voting Act of 1986** protects the voting rights of members of the uniformed services (on active duty) and U.S. citizens residing outside the U.S.
 - Active-duty military personnel and citizens living abroad may register and request an absentee ballot annually through the Federal Post Card Application (FPCA), which guarantees ballot delivery 45 days before an election.
 - In 2021, Georgia lawmakers passed a provision for implementing Ranked-Choice Voting ballots for military and overseas voters starting in 2022.
- **Jailed voters:** Typically, most people in jail are awaiting trial, serving misdemeanor sentences, or awaiting transfer to state prisons, and retain their voting eligibility as long as they have not been convicted of a felony in a state where a felony conviction is disenfranchising. Unlike UOCAVA voters, jailed individuals can only register and cast ballots if granted access by jail administrators.
- **Student voters:** College students must determine their voting residency and fulfill state-specific requirements for registration and voting. These tasks often involve burdensome application processes. As for

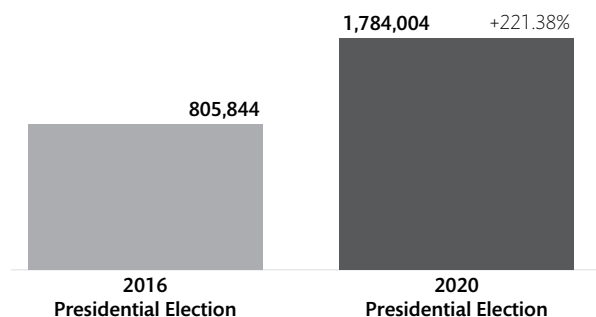
many other mobile populations, student mobility complicates voting, with about 31% of students attending college out of their home state.

- **Absentee voters:** Most unique voters are also absentee voters, though not all absentee voters fit into the unique voter categories listed above. Absentee voters are any voters who are eligible to vote but cannot do so in person at their polling location on Election Day. Depending on the state law, they can request an absentee or mail-in ballot to vote remotely. Absentee ballots are commonly used by those out of their jurisdiction, such as military personnel or students away from home, or individuals with illness or disability. Some states automatically mail out absentee ballots while others require a new application for each election.

When voters secured easier access to absentee voting, participation rates soared. Absentee voting was made easily accessible to most voters in 2020, due to the pandemic, which resulted in absentee ballot requests that were over 200% higher than in the 2016 presidential election.

- **Provisional ballot voters:** Section 302 of the Help America Vote Act of 2002 establishes the right for a voter to cast a provisional ballot if the voter is not listed on the registration list or the voter's eligibility

Absentee Ballot Requests 6 Weeks Out From the Presidential Election



Source: The Lantern

is challenged by an election official on Election Day for any reason. After the polls close, the voter's status is checked. If the voter is eligible to vote, the ballot is counted, and if not, the ballot remains uncounted.

Georgia legal framework and statutory provisions

- Military and overseas voters, registration: Georgia Code § 21-2-219.
- Forms and RCV information, <https://sos.ga.gov/page/military-and-overseas-voting>.
- Jailed voters: Georgia Code § 21-2-385.
- Voter registration: Georgia Code, Title 21, Chapter 2, Article 6.
- Provisional ballots: Georgia Code, § 21-2-418.
- Absentee voting: In Georgia, voters may vote absentee by mail or in person during the early vote

period. Voters may submit their absentee ballot through the mail, to their polling site, or via a drop box at their early voting site. Georgia Code, § 21-2-385.

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4.4. Re-enfranchisement

Re-enfranchisement is the restoration of voting rights to people previously disenfranchised due to criminal convictions or other circumstances, such as being adjudicated as mentally incompetent.

Key concepts and principles

- People with felony convictions are often barred from voting, sometimes permanently. The Supreme Court determined in *Richardson v. Ramirez*, 418 U.S. 24 (1974), that disenfranchising convicted felons is permitted under the 14th Amendment.
- However, in recent decades, there has been a growing trend among states to reinstate voting rights,



In some states, people with felony convictions can resume voting after completing their sentences.

including the automatic restoration of voting rights, as in Georgia. Typically, people are eligible for re-enfranchisement after their sentence is satisfied.

- Automatic restoration of rights does not mean automatic voter registration. Usually, prison officials inform election authorities of restored rights, and individuals must re-register through standard procedures.
- As of 2021, half of states automatically restore voting rights.
- People who are deemed mentally incompetent by a judge, or who are barred from voting because of felony disenfranchisement laws in another state, are required to submit a “Restoration of Rights and Removal of Disabilities” application with the State Board of Pardons and Paroles.

How could re-enfranchisement impact election outcomes?

In the fiercely contested 2000 election, George W. Bush won Florida by the razor-thin margin of only 537 votes out of nearly 6 million cast. Florida makes up 27% of the U.S. population disenfranchised by felony. With such a narrow margin of victory, the results might have changed had people with felony convictions been permitted to vote.

How does re-enfranchisement work in Georgia?

A person is re-enfranchised once they are “off-paper,” meaning that all felony conviction requirements have been met, including the completion of incarceration, probation, and parole, as well as the payment of all conviction-related fines.

Upon re-enfranchisement, people must register to vote, even if they have previously voted in an election. To register to vote in Georgia, you must:

- Be a citizen of the U.S.
- Be a legal resident of the county in which you intend to register.

- Be at least 17.5 years of age to register and 18 years of age to vote.
- Not be serving a sentence for a felony conviction involving moral turpitude.
- Not have been found mentally incompetent by a judge.

Citizens may register to vote online, through the mail, or at their local county registrar. People should register to vote in their county of residence by using the following:

- Valid Georgia driver’s license.
- Copy of a current and valid state or federal ID.
- Copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows their name and address.

People can register by mailing or scanning a copy of their identification with their voter registration application or by showing their identification to their county registrar.

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4.5. Stakeholder Mapping

Stakeholders are people or groups with an interest in the outcome of an issue. Stakeholder mapping is a visual process whereby stakeholders are identified by name, contact information, role, organization, and pertinent information related to their role, along with their view on a particular issue. Importantly, stakeholder mapping identifies influential relationships between individuals, organizations, and issues that can be leveraged to support advocacy efforts.



Key concepts and principles

- Stakeholder maps are a crucial tool for identifying actors who play significant roles in shaping policies, procedures, and outcomes.
- Identifying stakeholders and the relationships between them is the first step in understanding the vested interests in an issue and undergirds future advocacy efforts.
- Community leaders often provide deep insight into election and voting issues and their impact on voters.
- Actors identified in stakeholder maps can be assembled into advocacy coalitions.
- Election stakeholders include secretaries of state, election administrators, governmental agencies, nongovernmental organizations, political parties, politicians, and voters.

Case study

Consider the case of several nonprofit groups advocating for expanded early voting opportunities in Georgia. Through stakeholder mapping, lawyers and advocates identified election administrators, the Secretary of State's Office, and local government agencies as influential stakeholders. They engaged in discussions and provided data-driven information to support their proposal. By highlighting the benefits of increased early voting, such as higher voter turnout and improved accessibility, they successfully persuaded the stakeholders to implement their recommendations.

Recommended approach

Research and map stakeholders according to issue area, influence, and issue interest. This will help you



Election stakeholders often hold widely varying opinions on election issues such as the use of absentee ballots and drop boxes.

build relationships, understand community needs, and recommend targeted solutions. The use of visual tools is often a more effective approach for representing complex relationships between stakeholders and can be tailored to the needs of your research. These tools include software (Miro, for example), spreadsheets, simple diagrams or graphs, and other methods that produce visual representations of relationships and contact information.

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Module 5

What Does a Well-Run Election Look Like?

5.1. Election Administration

Election administration is the term that covers the broad range of functions necessary for elections. These functions include voter registration and voter file maintenance, polling station selection and operations, voting equipment management, poll worker training, ballot preparation and printing, alternative voting operations (e.g., vote-by-mail and early-in-person voting), vote counting, and verification and final certification of results. These functions are structured by state laws and regulations, in compliance with state and federal constitutions and federal laws such as the VRA and the HAVA.



Key concepts and principles

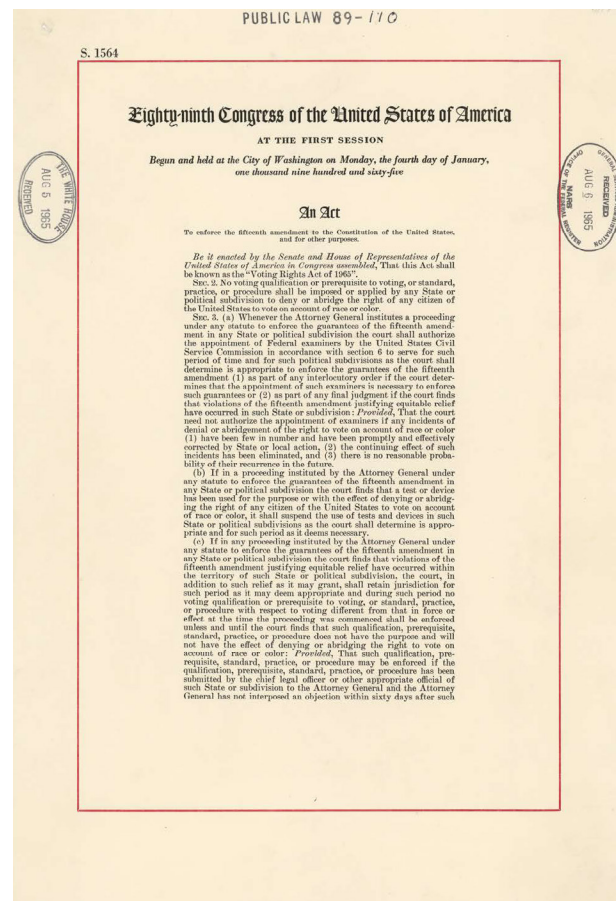
The administration of elections must be:

- **Transparent**, particularly to representatives of competing parties and candidates.
- **Secure**, particularly against foreign and domestic infiltration or manipulation.
- **Verifiable**, to allow for post-election audit or recount to ensure accuracy of results.
- **Efficient**, to meet expectations of fast announcement of results.
- **Impartial**, to ensure fairness both in fact and in perception.

Key features of U.S. election administration and trends to watch

1. Decentralization and local control

Unlike most modern democracies, in the U.S., the conduct of elections is primarily the responsibility of



The Voting Rights Act of 1965 was framed as a law to enforce the 15th Amendment to the Constitution.

local government. More than 10,000 distinct electoral jurisdictions exist around the country, some with 100 citizens, others with millions. Authority over local

election jurisdictions can be in the hands of an elected or appointed individual official, local board, or some combination of these actors.

In each state, there is also a state-level election authority, usually the secretary of state, and in some an election board, while in others, a combination of both. The state authority typically plays a coordinating, rather than a command-and-control, role.

Trends to watch

In recent decades, the relative importance of state authority has increased. This is due to a recognition that decentralization has been a contributing factor to some highly politicized election controversies as well as increasing concern regarding electoral security. New federal requirements, such as the mandate for state centralization of the voter registry, have also contributed to this trend.

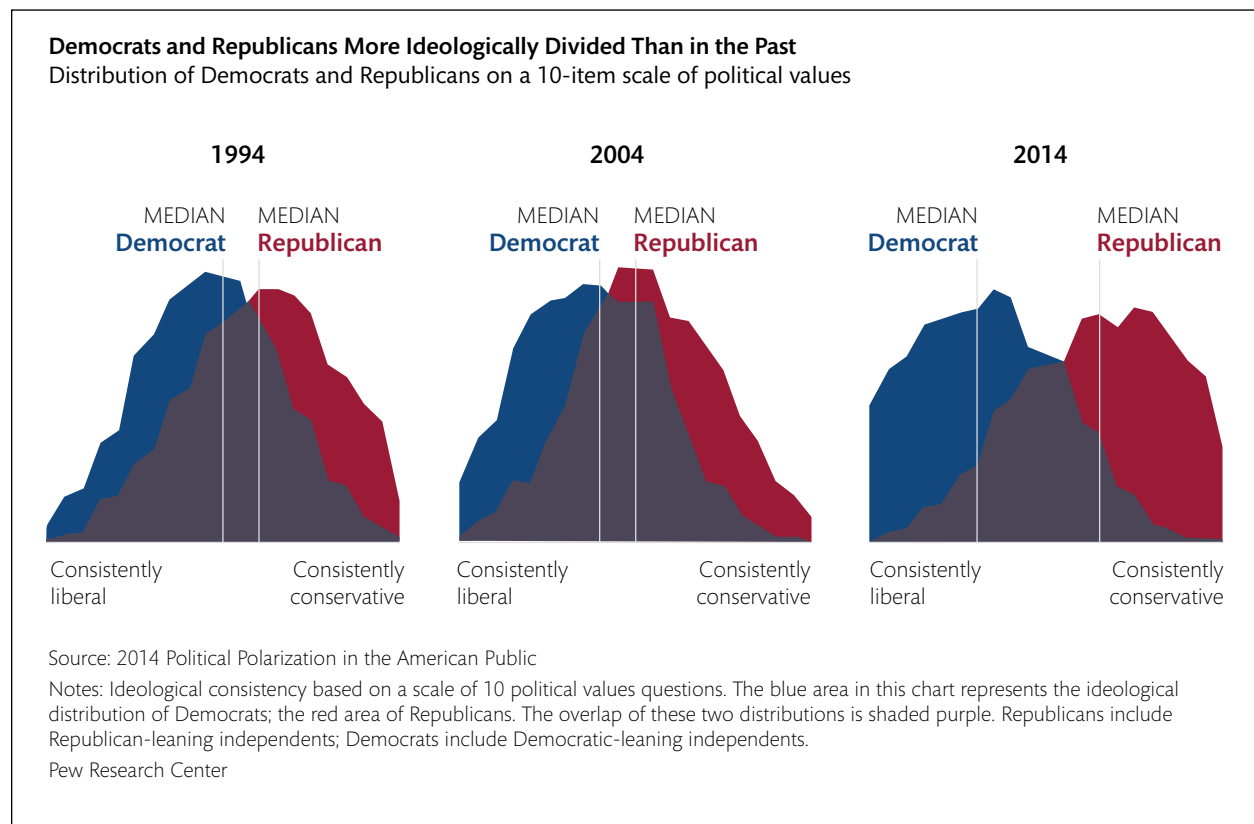
Because of continuing concerns regarding voting security and electoral quality, we can expect the trend of centralization to continue. For example, because the U.S.—unlike other democracies—does not have a national voter registration database, citizens moving to different states might be on two or more voter rolls at once, creating the opportunity for someone to vote twice. One way to address this problem is by having

one national voter roll or coordinating state-level voter rolls. Additionally, local governments may not have the expertise to make good decisions on electoral administration or resist local pressure to make bad decisions. An example could be the decision by Shasta County, California, to end the use of tabulation machines and rely on less accurate hand counting of ballots based on unfounded claims of machine counting fraud.

The protection of election officials against partisan accusations and harassment has become more challenging in recent years, which negatively impacts staff recruitment. Several states have begun to address this issue through legislation, including by strengthening election official training and qualification requirements at the state level, thus shifting authority further away from local government.

2. Significant involvement of political parties and party-affiliated individuals

The U.S. is also unique in the degree to which political parties are involved in election administration, with extensive party involvement in administering elections rare outside the U.S. By law, almost every election board in the U.S. is composed exclusively or primarily of representatives of the two largest political parties. In every state with an elected secretary of state, that



position is elected in partisan elections and is usually won by a prominent party member. At the local level, approximately 60% of local election jurisdictions are led by individuals elected in partisan elections.

Trends to watch

Intensifying polarization raises questions about the continuing viability of party-based election administration. In 2022, many secretary of state candidates ran on blatantly partisan platforms, while the failure of bipartisan canvass boards in Michigan to declare election results exposed vulnerabilities in the system. Polls show that the public does not trust partisan electoral systems and that there is strong support for reform, including the nonpartisan election of electoral officials. As the share of nonaffiliated voters grows, so does the strength of arguments against giving party members priority in election administration. For example, in *Common Cause v. Moore*, 1:22-cv-611 (M.D.N.C.), plaintiffs challenged the structure of North Carolina's election board as a violation of the unaffiliated's First Amendment rights.

3. The politically contested nature of election administration

Rules for election administration are intensely fought over in the U.S., both politically and through litigation. Often these fights boil down to how rules will affect voter turnout. Rules seen as reducing voter turnout are perceived to benefit Republicans whereas those that will likely increase voter turnout are perceived to benefit Democrats. It should be noted that this is not always true. Regardless, this perception drives hundreds of lawsuits every election cycle.

Trends to watch

The intensity of political battles for control over election rules and election administration may be reaching a new phase in the U.S., one that brings into question fundamental elements of the separation of powers in state government. A new theory has emerged, the Independent State Legislature Theory (ISLT), arguing that state legislatures should not be constrained by either state constitutions or state courts in their implementation of the role set for them in the U.S.

Constitution: "Regulating the Time, Place, and Manner of Elections."

In the recently decided *Moore v. Harper*, 600 U.S. __ (2023) case, the Supreme Court considered the ISLT and rejected the extreme version of the theory presented by plaintiffs while indicating that there are limits to the extent to which state courts can interpret state election statutes. However, in not completely rejecting ISLT, it seems likely that extensive litigation will test those limits in the future.

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5.2. Poll Workers

Poll worker recruitment, training, and retention are essential to any election process. Poll workers are average citizens who give their time, usually at low pay or as volunteers, to support the electoral process. They are where the electoral “rubber meets the road,” responsible for tasks that include setting up polling places, checking in voters, and counting ballots. They also ensure that elections in each polling place are conducted in accordance with state and federal laws.

Effective training of poll workers is critical so that these volunteers understand their roles and responsibilities and can execute them, ensuring that voting is safe, lawful, inclusive, and secure. Because election procedures are usually determined at the local government level, poll worker training typically takes place in a similarly decentralized manner, with specific content that is determined by local election officials.



Key concepts and trends

Partisan composition: Forty-eight states have laws that require a specific partisan composition of polling teams. These laws are grounded in the idea that partisan participation from individuals belonging to each major political party will result in nonpartisan outcomes that all parties can trust.

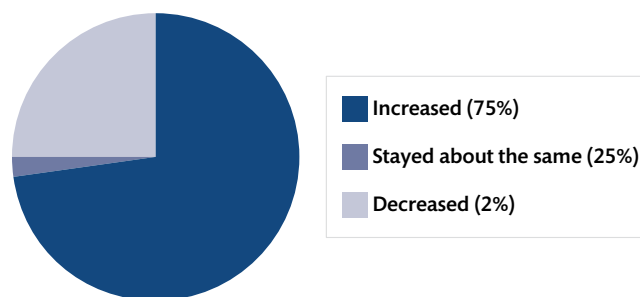
However, such laws can pose a practical challenge to election officials, as many electoral districts are dominated by one party. Recruiting sufficient Democratic poll workers in a heavily Republican district and vice versa may require sustained outreach and close coordination with local party representatives. In 2022, the Republican Party focused its attention on these laws, filing legal challenges in Arizona, Michigan, Nevada, and Virginia seeking the appointment of more Republican poll workers.

Recruitment and retention: It has become increasingly difficult to recruit and retain poll workers. Threats, harassment, and intimidation of election workers have been pervasive problems since the 2020



Poll workers in Fulton County, Georgia, receive a voter.

Regardless of whether or not you have personally been threatened because of your job as a local election official, do you feel that threats against election officials have increased, decreased, or have stayed the same as in recent years?



Source: The Brennan Center for Justice

election cycle, with 73% of local election officials perceiving that threats against them have increased. In response, some states have passed laws to protect election workers, largely by reinforcing protections for their personally identifying information and/or criminalizing attempts to intimidate them. Other states have introduced laws to increase compensation for poll workers.

At the same time, numerous states have enacted legislation to criminalize or increase penalties for improper actions taken by election officials, such as knowingly mailing an early ballot to a voter who has not requested one. If potential poll workers fear prosecution, these laws may have a chilling effect on

individuals' willingness to serve as election officials or poll workers.

During the 2022 election cycle, concerns emerged in some states that rogue poll workers could seek to disrupt the electoral process through their work. The Brennan Center, in collaboration with All Voting is Local, published guides to the poll worker process in Arizona, Florida, Georgia, Michigan, Nevada, New Hampshire, North Carolina, Ohio, Pennsylvania, Texas, and Wisconsin that highlighted state-specific safeguards and sought to reassure those concerned about potential election disruptions.

Legal framework, statutory provisions, and other reference materials

The legal framework governing poll workers, including statutes related to qualifications, compensation, residency requirements, and any necessary training or certifications, varies by state. The EAC maintains a state-by-state compendium of major provisions. In Georgia, laws governing poll workers are contained in the Georgia Election Code, particularly Subject 183-1-12: Preparation for and Conduct of Primaries and Elections. The Georgia Secretary of State's Office also makes copies of the state poll worker training manual and other materials related to its poll worker process available online.

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Module 6

Litigation Strategies and Examples

6.1. Pre-litigation Strategies

Pre-litigation strategies are measures taken by parties, candidates, or stakeholders before the formal filing of a lawsuit related to election matters that aim to address potential issues, clarify legal concerns, and seek resolution without resorting to litigation. Lawyers determine the optimal strategy or strategies by monitoring election processes, engaging stakeholders, and conducting cost-benefit analyses.

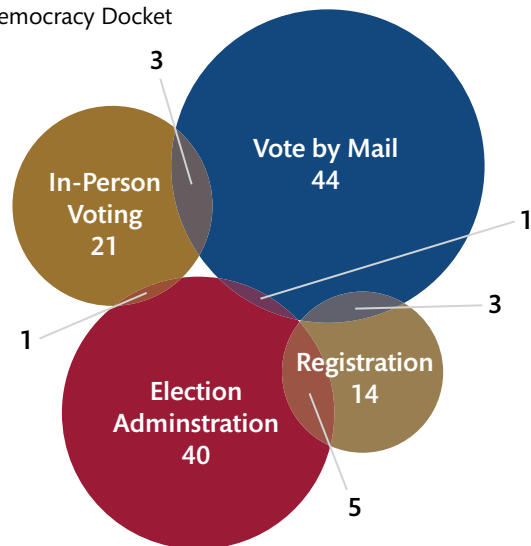
Identifying election issues

- **Pinpoint issues early:** Promptly identify potential legal issues or irregularities related to voter registration, ballot access, election procedures, or campaign activities.
- **Due diligence:** Conduct thorough research and analysis to understand relevant election laws, regulations, and judicial precedents.
- **Cost-benefit analysis:** Evaluate the potential costs, risks, and benefits of pursuing litigation versus seeking alternative resolutions.

Taking action

- **Voter education and outreach:** Engage in campaigns to inform voters and stakeholders about their rights, registration procedures, and voting methods to prevent potential disputes over voter eligibility or procedures.
- **Community alliances:** Collaborate with other

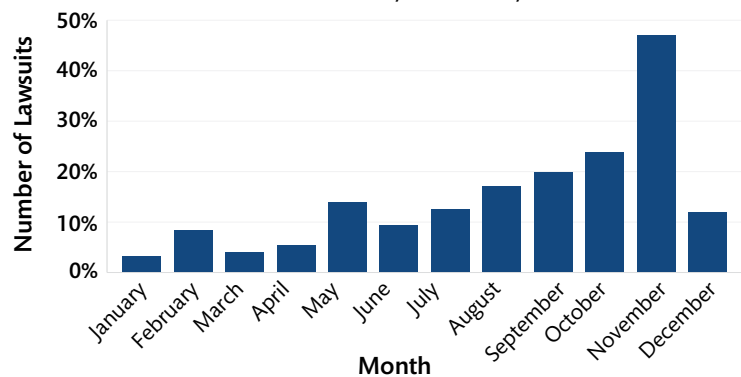
Lawsuits Filed in 2022 by Topic
Lawsuits in dozens of states, as tracked by Democracy Docket



Source: Democracy Docket

Lawsuits Filed in 2022 by Month

Lawsuits in dozens of states, as tracked by Democracy Docket



Source: Democracy Docket

stakeholders, organizations, or advocacy groups to learn how to support a community best and identify systemic issues. Alliances can also assist in identifying plaintiffs, should litigation become the best option.

- **Communicate with election authorities:** Establish constructive dialogue with election officials to address concerns, seek clarifications, and potentially resolve issues through administrative channels.
- **Engage with opposing parties:** Explore avenues for negotiation, mediation, or alternative dispute resolution to find mutually agreeable solutions before pursuing formal litigation.
- **Demand letters:** Consider drafting clear and well-reasoned demand letters that outline concerns, provide legal analysis, and propose remedies to encourage resolution without going to court.
- **Public relations and advocacy:** Coordinate strategic press efforts to raise awareness of potential election issues, garner public support, and pressure parties to resolve concerns.

Case study: Advocacy, not litigation, led to policy change in Georgia

During the 2020 elections, at the height of the pandemic, Georgia closed several voting sites, leaving little opportunity to vote in person. Further, the U.S. Postal Service’s funding was significantly cut before the election, raising concerns that voting by mail would be unreliable. Many organizations sued the state of Georgia, but local advocates pushed for drop boxes

across the state in accordance with guidance provided by the federal government.

As a result, the secretary of state authorized drop boxes to be used for the first time in Georgia, though their use was not codified under law. Nonprofit organizations mobilized to provide educational materials to all 159 counties in the hope they would adopt drop boxes according to the secretary’s authorization. They provided cost-effective strategies, like using deer cameras to monitor drop boxes, to make their adoption easier. Voters used them, which reduced the pressure on voting sites. With the success of drop boxes, the legislature codified their use in 2022. Drop boxes are now available across every county, allowing for alternative ballot submission.

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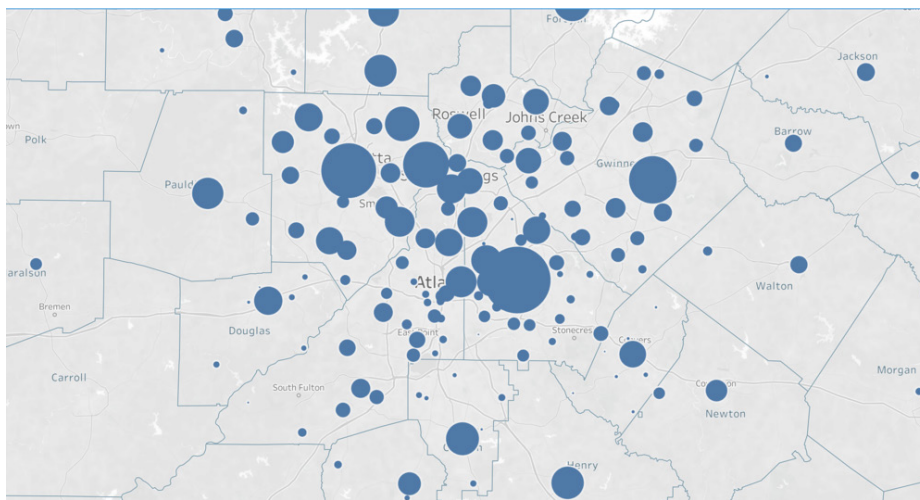
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This map, centered on the metro Atlanta area, represents where more than 550,000 voters used drop boxes in Georgia during the 2020 election.



Source: Georgia Public Broadcasting

Case study: Cobb County early-voting site closures

In January 2021, Georgia held a runoff election for two U.S. Senate seats in which Senators Raphael Warnock and Jon Ossoff were ultimately elected. The stakes of this election were high, as control of the U.S. Senate was on the line.

In the run-up to the special election, the Cobb County Board of Elections and Registration indicated that it intended to close five of the 11 advance voting locations it had provided to voters in the November 2020 general election and previous elections. Most of the locations scheduled to close were located in Black communities, creating a risk of racial disparity in access to advance voting locations for the runoff.

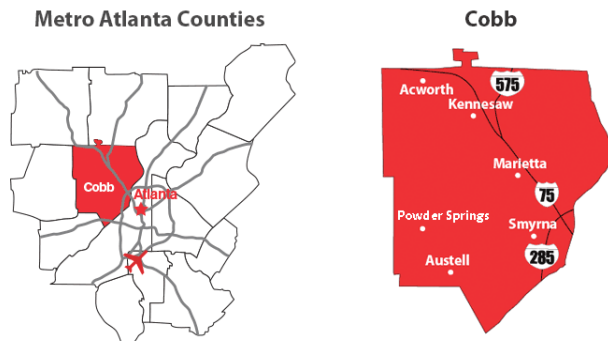
A coalition of voting and civil rights lawyers, working closely with local advocates, took action. First, the coalition analyzed the closures to evaluate their impact on Black communities and determined that these closures would have a racially discriminatory effect, potentially giving rise to legal claims. Second, the coalition memorialized their concerns in letters demanding that the director of Cobb County elections reverse the decision to close these locations and threatening litigation. Third, the coalition developed a campaign to mobilize the community around their concerns and generate both local and national media coverage of the planned closures.

At first, election officials resisted the calls to reopen the sites. But after several days of pressure and under the threat of litigation, elections officials relented and agreed to retain several of the sites in Cobb County's predominantly Black neighborhoods.

Lessons from this case study

- Civil rights lawyering is not exclusively about litigation: Lawyers and advocates can often accomplish important victories through advocacy and public education. Community organizing, public education, and issue advocacy campaigns can all be effective when used intentionally and judiciously.
- Social change is often led from the ground up. Although voting and civil rights lawyers conducted the analysis and drafted the letters, these lawyers took their lead from members of the affected community who would be directly harmed by

Map of Cobb County, Georgia



Source: KNOW Atlanta

these changes were they to have gone into effect. The positive outcome was only possible because community members acted and demanded relief.

- Monitoring is key. All too often, harmful and racially discriminatory changes to voting rules are implemented without little notice or action. This has been especially true since *Shelby County v. Holder*, 570 U.S. 529 (2013), rendered Section 5 of the Voting Rights Act ineffective in 2013. According to one report, more than 1,600 polling places have closed since then. To avoid negative outcomes, voting rights lawyers must be in regular contact with community leaders and those who can alert them to changes like polling place closures.

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6.2. Election Day Disputes

Pre- and post-election day litigation has increased dramatically in the U.S. during the past 20 years. This growth in litigation is true even after discounting the special circumstances of 2020, when much of the litigation reflected the need to adapt procedures to an ongoing pandemic. As a result of this growth, both major parties now invest considerable financial and human resources in recruiting lawyers who can protect the interests of their candidates through litigation.

More generally, election-related litigation ensures that the electoral process adheres to the rule of law and that losing parties have legitimate grievances addressed by an independent judiciary promptly. Thus, it is crucial for judges, law clerks, those working on elections in a legal capacity, and others involved in resolving disputes at the state or federal levels to have familiarity with basic legal principles associated with handling electoral disputes.

Foundational concepts and principles

From a practical perspective, election disputes may emerge at any time during the election cycle. Pre-election disputes may entail challenges to the constitutionality of an election, to the fairness of the constituency boundary drawing, to the inclusion or exclusion of a candidate from the ballot, to the rules governing early and absentee voting, and many other issues. On election day, claims may revolve around polls opening late, campaigning at polling sites, an individual excluded from the voter registry, failure of voting machines, or potential bias of polling officials. Post-election, parties and candidates may raise concerns regarding the lack of transparency in the count, the transmission of results, or the accuracy of those results.

Standards for reversing an election result

Election disputes require especially prompt engagement. Judges are aware of the deadlines imposed by the legislatively prescribed electoral calendar and schedule hearings and issue decisions accordingly. Equally important is understanding the reluctance of courts to nullify election results. As Edward Foley has written in *Politico*:

“Not every defect in the voting process renders an election invalid.... We must draw a bright line between a flawed election and one that has truly failed. A flawed election is not ideal, but its results



Harper's Weekly

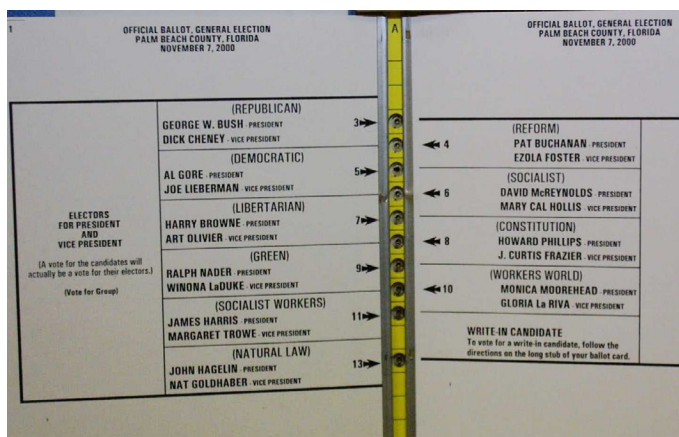
A 19th-century political cartoon compared a disputed presidential election to a game of football.

still should be accepted, unlike in a failed election, which does not represent the choice of the voters.”

And, as articulated by Larry Garber and Thessalia Merivaki in their “All Elections Have Irregularities; That Doesn’t Necessarily Invalidate Them” article, “before calling into question the validity of an election, a court will demand concrete evidence that irregularities occurred, that they were intentionally committed for malign purposes, and that they were of sufficient magnitude to demonstrably affect the outcome.”

Key cases and statutory provisions regarding dispute resolution of presidential elections

In the U.S., disputes following the 1876, 2000, and 2020 presidential elections form the core of electoral dispute resolution jurisprudence. The 1876 election was hotly contested, with competing slates of electors presented to Congress, which formed a 15-member commission to investigate the complaints. The commission divided 8-7 along party lines, and the Republican candidate, Rutherford B. Hayes, was sworn into office. As a result of this experience, Congress adopted the Electoral Count Act of 1887, which governed procedures for resolving disputes in presidential elections for the next 130 years.



Confusing and error-prone punch-card “butterfly” ballots were a major problem in the 2000 presidential election in Florida.

In 2000, an extremely close presidential election led to multifaceted lawsuits, culminating in a Supreme Court decision that resulted in George W. Bush winning the presidency. The *Bush v. Gore*, 531 U.S. 98 (2000), majority opinion held that the remedy afforded by the Florida Supreme Court for a statewide recount would result in the disparate treatment of ballots cast across the state and thus violated the equal protection clause of the 14th Amendment. A concurring opinion endorsed by three judges established the foundation for what has become known as the ISLT, which interprets the U.S. Constitution as providing state legislatures with plenary powers to determine election outcomes. In a 2023 decision, the Supreme Court in *Moore v. Harper*, 600 U.S. ___ (2023), pared back an expansive interpretation of the ISLT but did not dismiss the idea entirely.

The 2020 presidential election kept election litigators busy as well. Courts ultimately heard and rejected more than 60 cases presented by then-President Trump and his allies, including several contesting election results in multiple states. Trump also sought to persuade then Vice President Mike Pence that he should reject certification of the slates of electors put forward by half a dozen states when certifying the 2020 election results in Congress based on a novel interpretation of the Electoral Count Act of 1887.

While Pence ultimately rejected this interpretation, this led to the realization that vague language in the Electoral Count Act of 1887 required revision. The result was the bipartisan adoption of the Electoral Count Reform Act of 2022. The 2022 version fills gaps in the 1887 act by laying out clear procedures for selecting electors and transmitting their votes to Congress, outlining how Congress counts the votes,

and defining the scope of the vice president’s role in certifying the results of a presidential election.

Key provisions of the Electoral Count Reform Act of 2022

- Identifies state governors as the sole officials responsible for submitting the certificate of ascertainment identifying the state’s electors.
- Allows for expedited judicial review of certain claims related to a state’s certificate identifying its electors.
- Describes the role of the vice president as ministerial only and precludes the vice president from accepting or rejecting disputes over electors.
- Increases the threshold required to object to electors, to one-fifth of the House and the Senate.

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6.3. Ballots: Recounts and Audits

Many election disputes arise after, rather than before or during, the election. Post-voting disputes center on challenging the validity of election results by challenging the count and requesting recounts or audits.

In the 2020 presidential election, the Trump campaign demanded reviews in several states, including Georgia, where the campaign was entitled to request a recount by right based upon the closeness of the result. The campaign also filed lawsuits in Arizona, Michigan, Wisconsin, and Pennsylvania, alleging fraud and requesting recounts. Michigan's secretary of state agreed to a state audit, and Wisconsin recounted votes in specific counties, though the results did not change. Several lawyers faced sanctions for filing frivolous lawsuits in these states. While litigation concerning recounts and audits is frequent, it is vital both for the health of our democracy and for one's individual career to initiate such litigation responsibly.

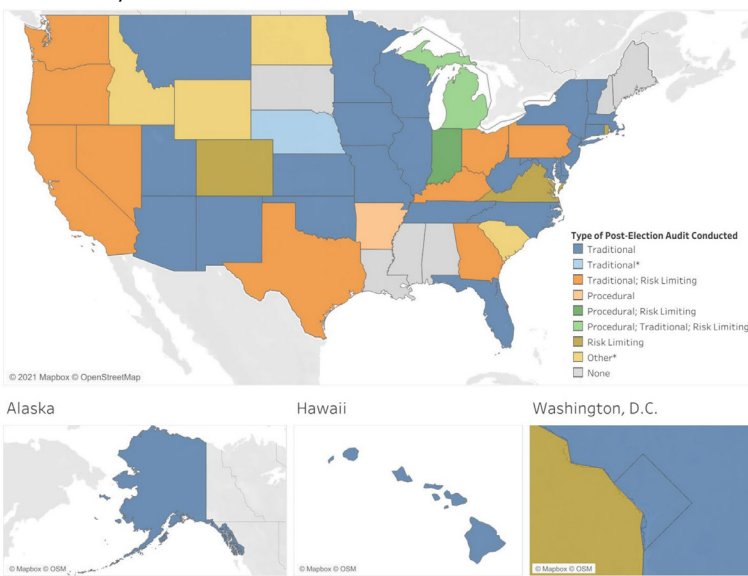


Key concepts and principles

- A recount is the process of reviewing ballots by examining unclear markings, confirming reported outcomes, and retabulating ballots to ensure accuracy. Recounts can be requested by candidates, parties, or voters to verify results or correct errors.
- An audit is an assessment conducted after voting to confirm accurate vote counting (results audit), proper procedural adherence (process audit), or both. Process audits can also occur between elections to ensure that procedures are being followed correctly.
- Ultimately, results audits must conclude before declaring final election results to safeguard official results and the credibility of the process from discovered fraud or errors. Remedies, if serious fraud or errors are found, can include updating the results or holding a special election.
- Recounts and audits rarely alter election results, even when new votes are counted as valid or fraudulent votes are excluded. However, when they do, it can have a big impact, shifting control of a legislature or even the presidency.
- Lawsuits to prevent vote certification can allege violations of the First and 14th amendments, with remedies sought under 42 U.S.C. Sections 1983 and 1988. These may also be used to challenge state election laws.
- In 22 states and D.C., automatic recounts occur when top candidates' margins fall within specific limits. The threshold ranges from 1% to a tie vote, with 0.5% as the most common trigger. In Georgia, a candidate can request a recount if the margin is less than or equal to 0.5%. That request must be made within five days of certification.

State Audit Policies

Post-election audit methods vary by election. The map below shows audit methods that were either required or optional by state law in 2020. Some states also implemented additional RLA pilot programs, although it was not mandated by statute.



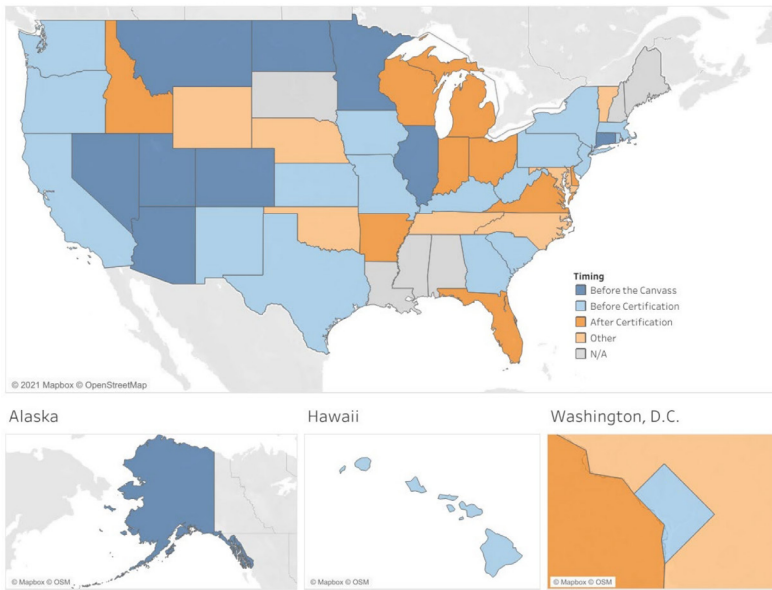
Source: U.S. Election Assistance Commission

Case study: Litigation altering results

On June 6, 2005, the Chelan County Superior Court in Washington state resolved a closely contested governor's race by dismissing numerous Republican challenges. The court upheld Democratic Gov. Christine Gregoire's narrow victory over former State Sen. Dino Rossi. Gregoire's win resulted from the state's first hand recount of a state-wide election, which also marked the first instance of overturning Rossi's lead in earlier counts.

Timing of Post-Election Audits

This map shows the timing of post-election audits by state.



Source: U.S. Election Assistance Commission

After a two-week trial, in *Borders v. King County Wash. Sup. Ct., Chelan Co.*; 2005. No. 05-2-00027, the court acknowledged about 1,678 illegal ballots but found no proof that Gregoire's victory was due to illegal votes or fraud. Rossi, following the extensive ruling, chose not to appeal, ending the contest abruptly.

Trends to watch

The 2020 election brought an exceptional volume of post-election litigation, a trend persisting into the 2022 midterms. Partisan challenges seem to be increasing, and the impact of fraud allegations is likely to continue to erode public trust in the electoral process.

Georgia legal framework and statutory provisions

Georgia state law does not mandate automatic vote recounts, but candidates can ask for one when the margin is less than or equal to 0.5%. This must be done within two business days after the results are certified. Candidates for federal or state office or election officials can seek recounts by petitioning the secretary of state if they suspect errors or discrepancies in the results. See O.C.G.A. § 21-2-495.

As of 2024, Georgia law requires local election superintendents to conduct precertification risk-limiting audits following federal and state primaries, elections, and runoffs. O.C.G.A. § 21-2-498 defines an RLA as

a “protocol that makes use of statistical methods and is designed to limit to acceptable levels the risk of certifying a preliminary election outcome that constitutes an incorrect outcome.”

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6.4. Post-election Litigation

Responsible, well-reasoned post-election litigation seeks to clarify legal matters while ensuring fairness, accuracy, and public trust in the electoral process. Conversely, poorly reasoned litigation can support the spread of disinformation and reduce trust in the electoral process.

Key concepts and principles

- Post-election lawsuits typically originate from campaigns facing defeat. These suits often allege ballot mishandling, including ballot harvesting, double voting, and lost or miscounted ballots, among other irregularities or errors.
- While statutes provide the legal basis for claims' legitimacy, factual evidence, such as community affidavits, patterns of targeted behavior, or indications of ballot tampering, are the lens through which those statutes (and their case law) are interpreted.
- The U.S. Supreme Court has developed legal tests to guide courts in assessing legal disputes, but the interpretation and application of these tests differ by jurisdiction.

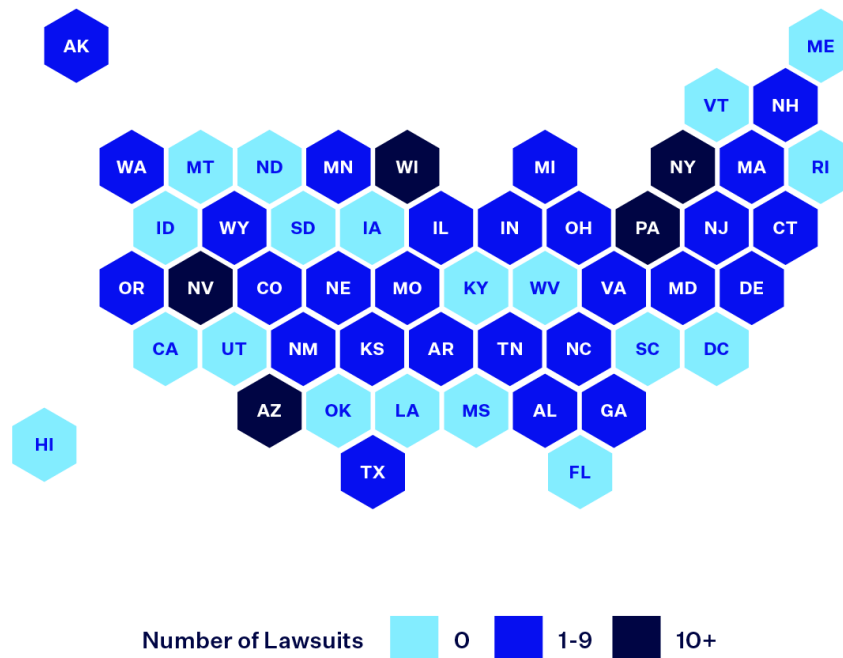
Legal tests

There are five major tests the court has established for determining the validity of election laws.

1. Anderson-Burdick test for voter ID rules and election administration issues

This—the most-used test—weighs state-imposed participation burdens against asserted benefits in voter ID rules and election administration cases and is named after two Supreme Court cases. Unfortunately, the court's application of the test has not provided clear

Lawsuits Filed in 2022 by State

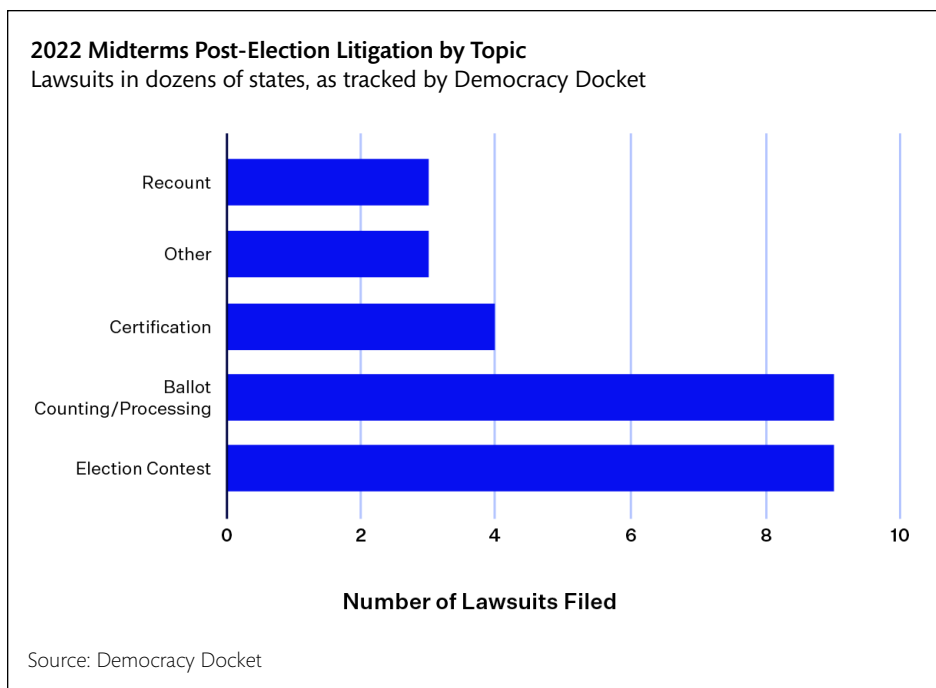


Source: Democracy Docket

guidance. In *Anderson v. Celebrezze*, 460 U.S. 780 (1983), a filing deadline's early nature was deemed unconstitutional. *Burdick v. Takushi*, 504 U.S. 428 (1992) upheld Hawaii's ban on write-in voting. *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008) involved Indiana's voter ID law but yielded divided opinions on how to apply the Anderson-Burdick test. Writing for the majority, Justice John Paul Stevens saw the test as flexible, whereas Justice Antonin Scalia saw a more rigid two-tier approach, and Justices David Souter, Ruth Bader Ginsburg, and Stephen Breyer dissented. The lack of consensus among the justices of the Supreme Court has caused lower courts to struggle to apply Anderson-Burdick.

2. Purcell principle for checking rules before an election

Named after *Purcell v. Gonzalez*, 549 U.S. 1 (2006), the Purcell Principle prevents courts from altering rules close to elections. Litigants invoke Purcell to halt lower court decisions that change rules before appeals are heard. Under the principle, courts assess factors



like the likelihood of success on appeal and potential harm, along with the potential for voter confusion and practical implementation challenges, often under tight time constraints. Notable cases like *Veasey v. Perry*, 135 S. Ct. 9 (2014), and *Republican National Committee v. Democratic National Committee*, 140 S. Ct. 1205 (2020), have referenced *Purcell*, where it was applied to halt Wisconsin’s extended absentee ballot deadline and to justify blocking decisions that could alter the election’s nature.

3. Arlington Heights factors for determining intentional discrimination

Courts use the Arlington Heights factors to evaluate discriminatory intent in 14th Amendment equal protection cases challenging laws based on discrimination. The factors include:

- Statistics revealing discrimination patterns.
- Historical context of the decision.
- Sequence of events and comparable decisions.
- Deviations from standard procedures.
- Relevant legislative and administrative history.
- Consistent pattern of harm to minorities.

4. Gingles and Shaw for discriminatory redistricting and racial gerrymandering

Courts apply the test from *Thornburg v. Gingles*, 478 U.S. 30 (1986), to assess whether redistricting maps

violate Section 2 of the VRA by diluting minority votes. The court considers the local context, including a history of discrimination, when deciding if the map hinders minority participation, using three criteria: the minority group must be sizable, geographically cohesive, and politically cohesive. The majority group must also be politically cohesive.

Shaw v. Reno, 509 U.S. 630 (1993), states that race cannot be the main reason for district placement. To win under the Shaw test,

plaintiffs must show race as the main factor, and if so, the court assesses whether it serves a compelling government interest. Recent signals from the court following oral arguments in the case of *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. ____ (2024), raise questions about the future applicability of this test.



Georgia Legal Framework and Statutory Provisions

The most recent post-election challenges in Georgia centered on nullifying absentee ballots and decertification because of fraud. These cases were dismissed for lack of substantiating evidence and/or lack of standing. See *Perdue v. Barron*, Order Dismissing Case, 2021CV357748, May 11, 2022 (Judgment affirmed, *Perdue v. Barron*, 367 Ga.App. 157 (2023), 885 S.E.2d 210 (2023)), *Wood v. Raffensperger*, 501 F.Supp.3d 1310 (2020) (alleging absentee ballot fraud) (affirmed on appeal to the 11th Circuit Court of Appeals, *Wood v. Raffensperger*, 981 F.3d 1307 (11th Cir. 2020); writ of certiorari denied (*Wood v. Raffensperger*, 1:20-cv-04651, (N.D. Ga. Feb 23, 2021) ECF No. 77); *Pearson v. Kemp*, Complaint, *Pearson v. Kemp*, 1:20-cv-04809, (N.D. Ga. Nov 25, 2020) ECF No. 1 (decertification based on fraud) (case dismissed by the court on Dec. 7, 2020, Order on the Motion to Dismiss, *Pearson v. Kemp*, 1:20-cv-04809, (N.D. Ga. Dec. 7, 2020) ECF No. 74).

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Electoral dispute resolution: Neglected, yet essential

Electoral dispute resolution (EDR) in the U.S. typically moves through the normal courts, albeit expeditiously. Internationally, while many countries use judicial bodies, some also use quasi-judicial or less formal conciliation bodies.

The guidelines for EDR are established in international treaties. The Universal Declaration of Human Rights, the foundation of international human rights law, states, “Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law.” But what is an effective remedy? The International Covenant on Civil and Political Rights sets the base standard in noncriminal cases as follows:

- All persons shall be equal before the courts and tribunals.
- Everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal.
- Every judgment shall be made public.

In countries with a low-functioning judicial system, the best way to achieve these goals can be through an



Eleanor Roosevelt holds a French-language copy of the Universal Declaration of Human Rights.

ad hoc electoral dispute resolution structure. This was done in a series of countries, including Bosnia and Herzegovina, Kosovo, and Afghanistan, around the turn of the 21st century.

The Afghan case was the most extreme, as the state had been completely eviscerated by invasion and civil war, meaning courts of general jurisdiction were nonfunctional or nonexistent. In the 2004 Afghan presidential elections, the legal framework contained no provision for appealing decisions of the election management body, leading to an electoral crisis after candidates alleged voting irregularities and there was no legal remedy. For the 2005 National Assembly and Provincial Council elections, an independent Election Complaints Commission was established, charged with adjudicating all election disputes.

The ECC established Provincial Complaint Commissions to hear complaints. These decisions were appealable to the ECC itself in Kabul. The commissioners, three international U.N. staff members, and two Afghan jurists, made their decisions based upon written submissions and would issue final written decisions on electoral issues, detailing the relevant law, the reason for the decisions, and the final judgment. The detailed decisions enhanced the acceptance of the ECC’s judgments, and Afghanistan avoided a repeat of the 2004 crisis.

While the 2005 ECC was imperfect, it helped deliver the most credible Afghan election in modern history. Unfortunately, EDR is rarely front and center in election planning, and later Afghan elections suffered, in part, due to a lack of an effective EDR mechanism.

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United Nations Photo. Photo #83980. November 1949. Flickr Creative Commons. Accessed at: https://www.flickr.com/photos/un_photo/31145729760.

6.5. Election Crimes

Ideally, federal and state laws criminalize certain acts to protect the integrity of election processes and results. Such election crimes are acts or omissions that result in ineligible persons voting or result in eligible persons' exclusion from the voting process. Election crimes also encompass other acts meant to interfere with or invalidate election results.

Of course, there are times when election crimes are established primarily to promote political aims and influence who can vote to advantage one party or another. In recent years, this has been encouraged by the perception that election fraud is widespread. In response to this perception, some state legislatures have introduced legislation creating additional election-related crimes, including conspiracy, solicitation, ballot harvesting, and trafficking.

While increased attention has led to a growing number of investigations and arrests for voter fraud in local, state, and national elections, **research demonstrates that voter fraud and voter impersonation are rare in modern U.S. elections.** Research also demonstrates that many instances of voter fraud (though not all) are apparently good-faith errors on the part of voters, with no impact on the outcome of elections.

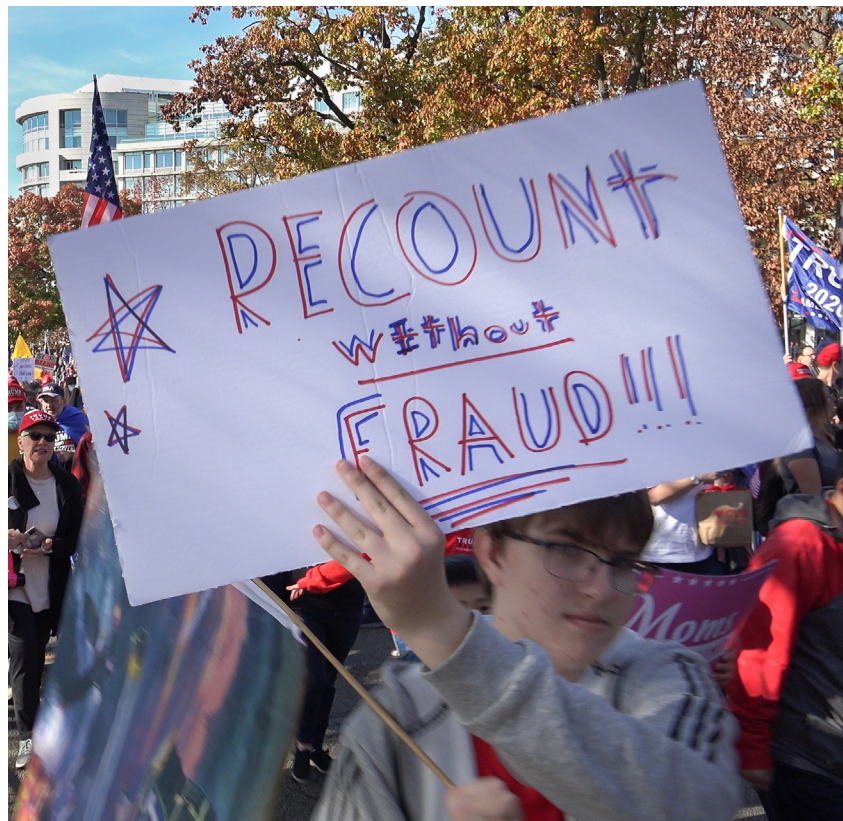


Key concepts and principles

- Reports by several organizations conclude that nearly all allegations of voter fraud are without merit.
 - In 2018, the now-disbanded federal Voting Integrity Commission initiated by the Trump administration found no evidence supporting widespread voter fraud allegations.
 - Statewide investigations in Colorado, Florida, Georgia, Iowa, Kansas, Maine, Texas, and Wisconsin yielded little to no evidence of election fraud.
 - Regardless, in 2022, Republican legislators across 27 states introduced 148 election-related bills.
- Recent polling shows that more than 60% of Republican voters still believe the 2020 election was illegitimate due to alleged voter fraud.
 - Overall, only 20% of all Americans believe in the integrity of U.S. elections.
 - Since the 2020 elections, 14 states have introduced 46 bills designed to intensify investigation or prosecution of election crimes.
 - New statutes aimed at preventing voter fraud address a wide range of activities that may not involve obvious tampering with or influencing elections, such as delivering water to those in line at polling stations. Bias in enforcing election laws may result in criminalizing behaviors that have little bearing on electoral fraud while reducing voter confidence.

Legal Framework

- Federal law divides election crimes into three broad categories: voter/ballot fraud, civil rights violations, and campaign finance. Examples of federal election crimes include threatening a voter with harm unless



Polling shows that more than 60% of Republican voters still believe the 2020 election was illegitimate because of alleged voter fraud.

the individual votes in a particular way, voting more than once in a federal election, and intentionally giving false information when registering to vote.

- Some states have established election crimes units or specific offices with the mission of investigating and/or prosecuting election crimes.
- In Georgia, election crimes under O.C.G.A. §§ 21-2-560 to 604 are first reviewed by the Secretary of State's Office and then investigated by the Georgia Bureau of Investigations. A county District Attorney's Office can also proceed with an indictment without the secretary of state's investigation.
- Misdemeanor voting crimes in Georgia carry a sentence of up to one year in jail, a fine of \$100 to \$1,000, or both, at the discretion of the trial judge. Generally, felony convictions carry either a one- to 10-year sentence, a fine of up to \$10,000, or both. Criminal solicitation to commit election fraud in the first degree carries a one- to three-year sentence. Additionally, several felony convictions are punished more severely and may incur a fine of up to \$100,000.

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Module 7

Voting: Keeping Clients Safe

7.1. Election Cybersecurity in Georgia

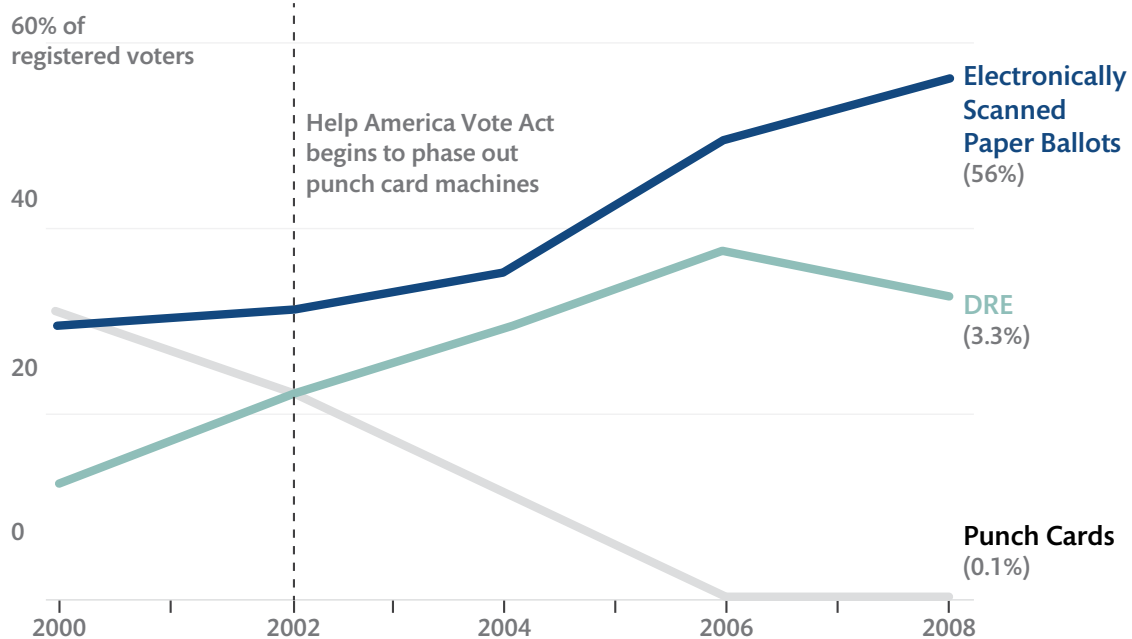
Following the adoption of the Help America Vote Act in 2002, many states began using statewide electronic voter registration lists and electronic voting machines to assist with the election process. However, the use of computers raised new concerns about cybersecurity for election administrators. While every election system is vulnerable to bad actors, cyberattacks can make large-scale fraud much easier absent careful attention to security and can be harder to detect. The lack of transparency in many computerized voting systems can amplify voter concerns.



Key concepts

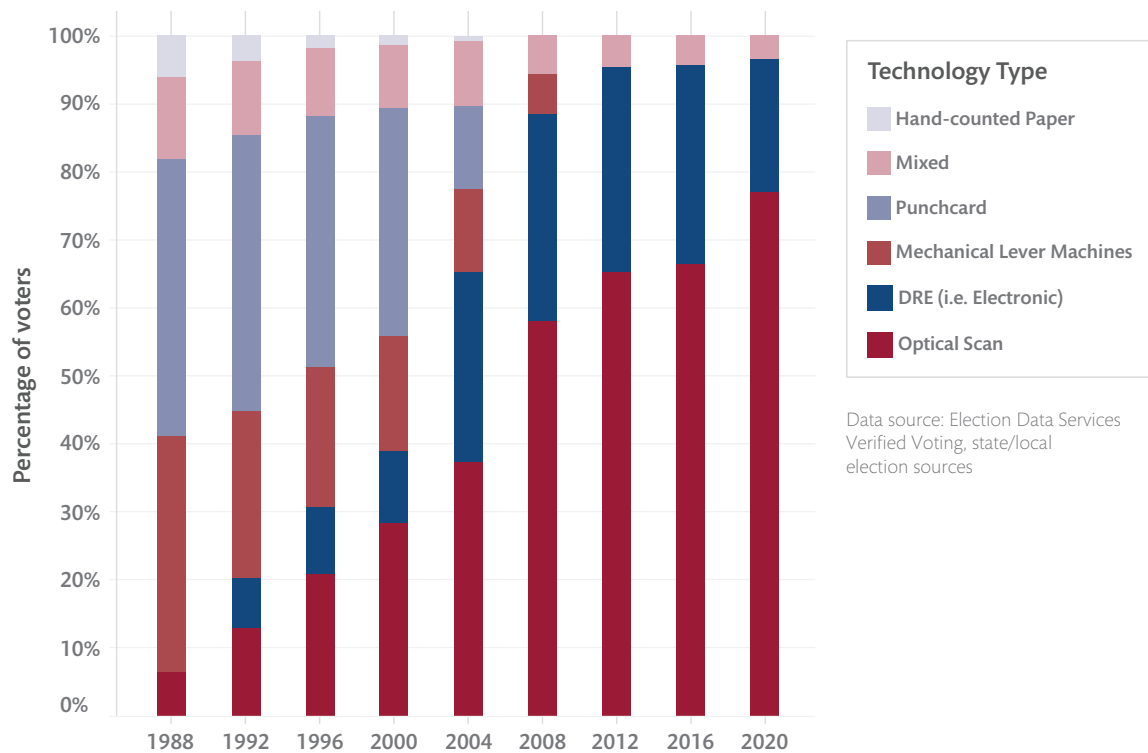
- There is no evidence that any U.S. election result has ever been compromised by hacking of electronic voting equipment or registration databases.
- Many concerns about cybersecurity can be addressed through the physical security of voting equipment.
- Pre-election testing and post-election audits provide means by which potential compromise of a system can be discovered and rectified.

Effect of Help America Vote Act on Voting Systems in the U.S.



Source: Election Data Services

Voting Technology Usage Over Time in the U.S.



Source: MIT Election Data and Science Lab

- States use a variety of election equipment, but Georgia uses a single statewide system.
- Georgia’s system uses ballot-marking devices (BMDs), which are touchscreens that print a paper ballot that voters can verify before placing the paper ballot in a scanner.
- Paper ballot systems allow for better post-election audits than paperless voting systems.

Key questions

How does Georgia protect its voter registration database?

Georgia’s statewide database is called GARViS (pronounced JAR-vis), which stands for Georgia Registered Voter Information System. It is hosted on servers that meet the Federal Risk and Authorization Management Program standards for security. County election officials in all 159 counties access GARViS on internet-connected computers to update voter registration records. Login credentials are protected using two-factor verification.

How do Georgia’s voting machines work?

Georgia’s Dominion ballot-marking devices are electronic ballot markers that do not store information on the touchscreens. After checking in, a voter makes their selections on a touchscreen, and the machine prints a paper ballot with the voter’s selections. The paper ballot includes a QR code that encodes the voter’s selections along with a human-readable portion for voters to check their selections. The human-readable portion of the paper ballot is the controlling section in any audit or hand recount. Voters place their paper ballots into scanners, which capture an image of the ballot and tabulate the ballot while retaining the paper ballot in a locked container for post-election use if needed. No component of the Dominion BMD system is ever connected to the internet.

What physical security requirements exist for Georgia voting equipment?

Georgia county officials are required by State Election Board regulations to carefully guard voting equipment, including requiring cameras in warehouses and carefully controlling access. The central Election Management System server for each county is required to be in a

separate locked room with limited access. State Election Board regulations prohibit connecting voting equipment to the internet.

What pre-election testing does Georgia conduct?

To ensure election equipment is functioning correctly before each election, county election officials are required to conduct logic and accuracy (L&A) testing. That process involves creating test decks of ballots on each voting machine that are scanned and checked to ensure accuracy.

What auditing requirements does Georgia use during an election?

At each precinct, election officials are required to reconcile the number of voters who checked in, the number of ballots created on the ballot marking devices, and the number of ballots scanned. This ensures that extra ballots have not been added during the election process.

What auditing requirements does Georgia use after an election?

Following each election, Georgia election officials conduct a risk-limiting audit of at least one race. An RLA verifies the outcome of the election and can catch any problems with the functioning of the BMDs. Using a statistical process, a particular number of ballots are removed from various batches of ballots in each county to be verified by human review.

Trends to watch

Georgia has faced litigation in court involving election equipment, first in the early 2000s, later after it adopted BMDs in 2019, and following the 2018 and 2020 elections. None of those cases has resulted in

mandated changes to voting machines, but at least one recent case remains pending.

Legislation has been proposed in the General Assembly to provide each county with the option of selecting its own voting equipment, but that legislation has not been successful. When one county attempted to abandon BMDs and use hand-marked ballots, it faced fines from the State Election Board and dropped that plan.



Georgia legal framework and statutory provisions

O.C.G.A. § 21-2-300 requires the statewide use of BMDs for in-person voters.

State Election Board regulations govern the handling and storage of election equipment, along with the processes for L&A testing. Ga. Comp. R. & Regs. r. 183-1-12-.04, -.05, -.06, -.07, -.08, -.14, -.16.

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7.2. Political Violence

Political violence is “violence aimed at political ends—meant to control or change who benefits from, and participates fully in... political, economic, and socio-cultural life.” In the U.S., political violence has been rising for years. The Jan. 6, 2021, insurrection was the most prominent example, but less visible acts like threats against election workers and other public officials also have risen dramatically since 2020, with 45% of election officials reporting fear for the safety of their colleagues. This change is reflected in public attitudes. More than one-third of Americans agree that

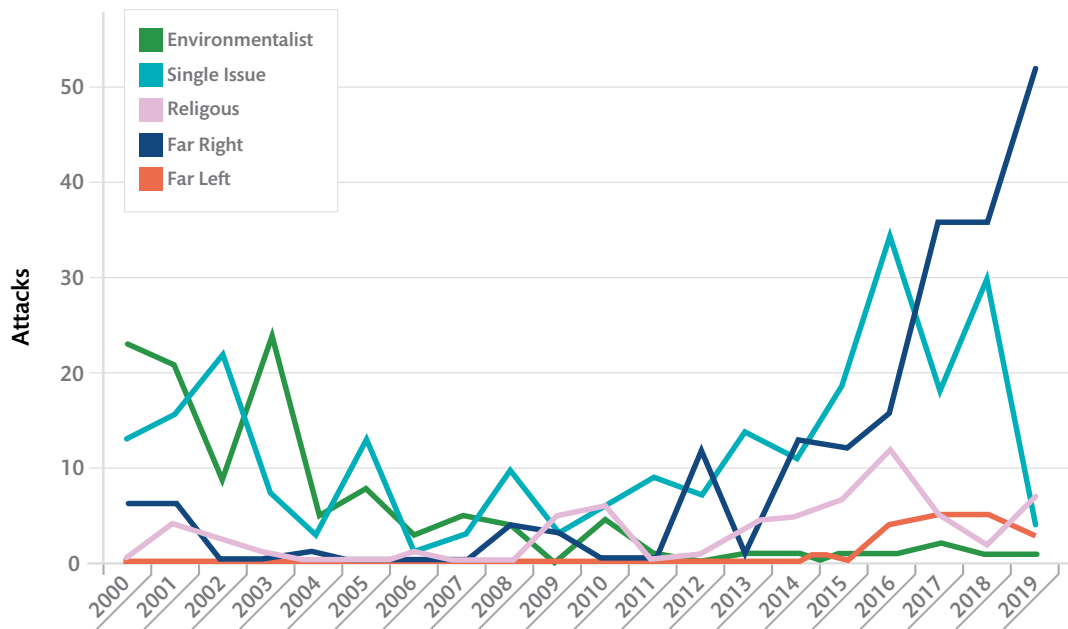
“The traditional American way of life is disappearing so fast that we may have to use force to save it.” By some estimates, this includes 56% of Republicans, 35% of independents, and 22% of Democrats.



Key concepts and principles

Political violence is not like other forms of violence or criminality. It can impact group behavior and have a chilling effect on free speech, public participation in civic life, and even voting. Unchecked, political violence can constitute a systemic threat to democracy.

Terrorism in the United States by Ideology, 2000–2018



Source: Journal of Democracy

- Political and media elites play a key role in creating conditions that can make political violence more or less likely. Elites who routinely demonize specific groups and/or employ violent language create an enabling environment and a permission structure for political violence.
- State and federal law affords sufficient tools for prosecuting acts of political violence. However, the First Amendment, as interpreted since *Brandenburg v. Ohio*, 395 U.S. 444 (1969), makes addressing the demonization and hate speech that fuels political violence difficult.
- The U.S. political system has been racialized since the end of the Civil War, with one or the other dominant political party being more favorable to racial equity. In this context, there has long been substantial overlap between acts of racial and political violence.

Who is engaging in political violence in the U.S.?

The source of political violence has changed over time. In the late 1960s and 1970s, these violent fringes were mostly on the far left. Researcher Rachel Kleinfeld writes: “Starting in the late 1970s, political violence shifted rightward with the rise of white supremacist, anti-abortion, and militia groups.... Although incidents

from the left are on the rise, political violence still comes overwhelmingly from the right, whether one looks at the Global Terrorism Database, FBI statistics, or other government or independent counts.”

Why is this happening now?

In the U.S., risk factors for political violence have been increasing for years. Key among these are: (1) elite factionalization, (2) societal polarization, (3) rising hate speech and violent rhetoric, and (4) declining trust in institutions.

Trends to watch

Continued violent and dehumanizing language used by politicians and media figures should be monitored. Gerrymandering favoring right-leaning candidates, a Trump 2024 electoral win with a minority of the popular vote, or frustration over other countermajoritarian structures in the U.S. political system could stoke increased political violence from the left.

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7.3. Misinformation, Disinformation, and Malinformation Targeting Elections

Misinformation, disinformation, and malinformation describe the inadvertent or intentional weaponization of information. Misinformation refers to false or misleading information where the origin or amplifier is unintentionally mistaken. Disinformation refers to the spread of information known to be false. Malinformation refers to the spreading of true information, such as someone's address, to cause them harm. An example of malinformation is "doxing," or publishing someone's private or identifying information on the internet with malicious intent.



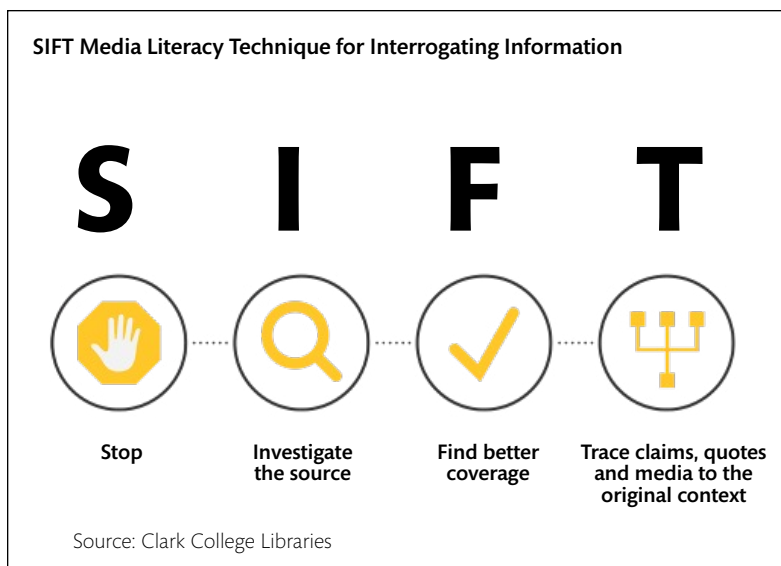
Key concepts and principles

- Disenfranchising someone through disinformation can be illegal depending on the circumstances. In March 2023, Douglass Mackey was convicted of the charge of conspiracy against rights for his attempt to deprive individuals of the right to vote in the 2016 presidential race by encouraging supporters of candidate Hillary Clinton to "vote" via text message or social media.
- Stephen Richer, a Republican election official in Arizona, sued Kari Lake, a former candidate in Arizona's 2022 gubernatorial race, for defamation after she falsely accused Richer of sabotaging the election by inserting more than 300,000 invalid ballots into the election. Richer criticized Lake for undermining the public's confidence in Arizona elections.
- Online platforms like Facebook, YouTube, and other social media sites have a variety of policies and potential responses to false information, including de-platforming, reducing the visibility of content, applying a fact-check label, and more. Alternatively, some platforms take a more permissive approach that permits content without consideration of its accuracy.

- For individuals and groups targeted by disinformation, defamation lawsuits are occasionally pursued. Consider the case of Dominion Voting Systems, which recently settled its defamation lawsuit with Fox News over the network's role in promoting false election conspiracy theories centered on Dominion. (Dominion is still pursuing lawsuits against Newsmax and OAN, as well as against Trump allies Rudy Giuliani, Sidney Powell, and Mike Lindell.)
- The threat of misinformation, disinformation, and malinformation targeting election administration in the U.S. comes from both domestic and foreign sources and includes individual actors, networks of actors, formal groups, and state actors like Russia.
- Misinformation, disinformation, and malinformation thrive in closed media environments and information voids, especially during time-sensitive periods like Election Day or breaking national news stories.
- Online false information can lead to offline harm, including violence like the Jan. 6, 2021, attack on the U.S. Capitol.



Social media influencer Douglass Mackey, aka Ricky Vaughn, leaves a federal courthouse in New York in March 2023.



How can it be prevented?

While misinformation, disinformation, and malinformation will always exist, some actions can limit its proliferation. Below are some potential steps to improve the information environment:

- Election officials can follow best practices for both election administration and communications, especially during voting.
- Social media platforms can disincentivize false information by not algorithmically amplifying it, “correcting the record” by alerting users that they have previously seen false information, demonetizing content and content creators who spread misinformation, disinformation, and malinformation, and taking other enforcement actions.
- Media consumers and citizens can be taught better media literacy techniques, such as the SIFT method: Stop, investigate, find better coverage, and trace media to the original source, to interrogate information. (See the Carter Center’s Media Literacy training modules on YouTube: <https://www.youtube.com/playlist?list=PLSIaOxPPzOrs6ZMcUuHcntrCFd7MSNU>.)

Trends to watch

Threats to election workers: According to the Brennan Center, one in six election officials report having experienced threats because of their job.

Platform policies: After tightening policies following the Jan. 6 attack on the U.S. Capitol, some platforms, like YouTube, are now rolling back restrictions on false election-related information.

Alternative media and platforms:

The growth of alternative media and social media platforms poses new challenges for preventing the spread of misinformation, disinformation, and malinformation, as many of those platforms were created with the explicit goal of providing an almost completely unmoderated media environment.

Legislation: Lawmakers on the left and right, in state legislatures and the U.S. Congress, have called for, proposed, and occasionally passed legislation aimed at regulating online content, including false information. For example, some Democrats and Republicans have called for the amendment or repeal of Section 230

of the Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996), which shields companies like Facebook and Google from liability for what their users post on their platforms. Some civil rights groups, such as the American Civil Liberties Union, have warned of the potential negative effects on free speech if the Supreme Court were to dismantle or weaken Section 230.



Georgia-specific threats

In 2020, the tight presidential election made Georgia a central target for misinformation, disinformation, and malinformation. Georgia will likely be a battleground state in 2024, meaning the state is likely to see significant instances of these.

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