

CARR CENTER FOR HUMAN RIGHTS POLICY HARVARD KENNEDY SCHOOL

Voting Rights

Reimagining Rights
& Responsibilities
in the U.S.



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Reimagining Rights & Responsibilities in the United States: Voting Rights

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INTRODUCTION

As Congress debated a \$2 trillion economic relief bill for coronavirus last March, President Donald Trump made a stunning announcement: “The things they had in there were crazy,” he told FOX News. “They had levels of voting, that is you ever agreed to it, you’d never have a Republican elected in this country again.”¹ His comments, referring to new proposals for remote voting and automatic voter registration, made explicit a strategy the Republican party has been pursuing for at least the past three years: to reduce voter participation in the United States.

After more than a century of expanding the voting rights of previously disenfranchised groups, the American electoral system today is confronted by political and legal maneuvers to curtail the hard-won rights of these same groups, ostensibly in the name of combating fraud and regulating voting, but actually to change the outcome of elections.

The Declaration of Independence proclaimed that “Governments are instituted among Men, deriving their just Powers from the Consent of the Governed.” Voting within a democracy is the primary means by which that consent is expressed. In a very direct way, the right to vote is the right through which all other rights are created and maintained. While the founders only entrusted that right to a narrow group of people—property-voting white men—suffrage has been expanded throughout the past two centuries to include virtually all Americans, allowing them a say in who will govern them and what policies they will pursue. Political campaigns to suppress or dilute votes corrode democracy, frustrate the popular will, and stimulate polarization.

Attacks on the integrity of the electoral system are not new. Throughout the 19th and much of the 20th century dominant political forces suppressed voting by African Americans and other minorities, women, immigrants, and young people.² Manipulation of voting in the 20th century included racist suppression of African American votes, first by Democrats and later by Republicans.³ These practices are blatant examples of the vulnerability of the electoral process to partisan manipulation and the necessity of reform to safeguard voting rights, especially among these vulnerable groups.

In the modern era, voting expansion peaked in 2008. Barack Obama was elected president that year by a coalition that included 15 million first-time voters, 11.5% of the total, including a larger proportion of minorities and young people than among returning voters. That year, African American voting participation increased by 5% and youth participation by 2% over 2004 election numbers, resulting in the highest participation by African American and 18-24 year-old voters thirty years.⁴ The African American turnout rate continued to increase to a high of 67% in 2012, exceeding the white turnout rate for the first time since the U.S. Census Bureau began reporting voting participation by race.⁵ By 2016, however, turnout had fallen by 7% for African Americans from their participation peak in 2012 and 6% for 18-24 year-old voters from their peak in 2008.⁶ From 2008 to 2016 the turnout of all racial minorities combined dropped by 5%.⁷

Many factors contributed to the 2016 falloff in voting participation by minorities and younger voters, including the identities of the candidates themselves. According to the Brookings Institution⁸, however, political efforts to halt the expansion of voting rights through voting regulations played a significant role, as did a Supreme Court decision invalidating core provisions of the

1. Reid Epstein and Stephanie Saul, “Trump says mail voting means Republicans would lose every election. Is that true? No.,” *Chicago Tribune*, April 10, 2020, <https://www.chicagotribune.com/nation-world/ct-nw-nyt-mail-voting-ballots-20200410-qfnxhakicve3ndpxz64lcsqzr4-story.html>.

2. Grace Panetta, Olivia Reaney, and Talia Lakritz, “The Evolution of American Voting rights in 242 Years Shows How Far We’ve Come – and How Far We Still Have To Go,” *Business Insider*, November 6, 2018, <https://www.businessinsider.com/when-women-got-the-right-to-vote-american-voting-rights-timeline-2018-10>

3. Carol Anderson, *One Person, No Vote: How Voter Suppression is Destroying Our Democracy*. New York: Bloomsbury, 2018

4. “Historical Reported Voting Rates,” US Census Bureau, <https://www.census.gov/library/visualizations/time-series/demo/voting-historical-time-series.html>

5. William H. Frey, “Census Shows Pervasive Decline in 2016 Minority Vote Turnout,” *Brookings Institution*, May 2017, <https://www.brookings.edu/blog/the-avenue/2017/05/18/census-shows-pervasive-decline-in-2016-minority-voter-turnout/>

6. “Historical Reported Voting Rates,” *US Census Bureau*

7. William H. Frey, “Census Shows Pervasive Decline in 2016 Minority Vote Turnout,” *Brookings Institution*, May 18, 2017, <https://www.brookings.edu/blog/the-avenue/2017/05/18/census-shows-pervasive-decline-in-2016-minority-voter-turnout/>

8. Rashawn Ray and Mark Whitlock, “Setting the Record Straight on Black Voter Turnout,” *Brookings Institution*, September 19, 2019, <https://www.brookings.edu/blog/how-we-rise/2019/09/12/setting-the-record-straight-on-black-voter-turnout/>

Voting Rights Act of 1965.⁹ Dubious electoral practices have been undertaken by both parties,¹⁰ but since 2008 a campaign of voter suppression has been carried out primarily by Republicans. Proponents of new voting restrictions, most prominently President Trump himself, have sought to justify these measures by making unsupported claims of widespread voter fraud, despite multiple studies that have found no evidence to justify such claims.

In response to the suppression campaign, a counter-movement has emerged that seeks to restore and expand voting rights. The voting restoration movement had major successes at the state level in the 2018 midterm elections. The gold standard of reform is automatic voter registration, which guarantees the right to vote for all citizens based on routine interaction with government agencies. Since 2010, 18 states and the District of Columbia have adopted automatic voter registration policies,¹¹ and comparable proposals are being considered in 14 other states.¹² Furthermore, civil society organizations have pushed to roll back voter restrictions through litigation in 11 states.¹³

EXPANDING THE RIGHT TO VOTE

The words of founder Alexander Hamilton in 1784 foretold the battle that continues today to achieve full voting rights for all citizens: “A share in the sovereignty of the state, exercised by citizens voting in elections, is one of the most important rights of the subject, and in a Republic ought to stand foremost in the estimation of the law.”¹⁴ Nevertheless, lofty sentiments about the importance of voting in a democracy rang hollow for nearly two centuries during the long and often bloody struggles to enfranchise African Americans, other minorities, women, and younger citizens.

There was no explicit right to vote in the original Constitution of 1789. The Constitution gives states the authority to administer and regulate voting, and each state determined who was eligible, leading to inconsistent voting participation among the states that continues today. Congress and the federal courts, however, have the authority to review state voting regulations under the requirements of the Constitution and to impose national standards through legislation or judicial review. The Voting Rights Act of 1965, a major achievement of the Civil Rights Movement, is a prime example of the power of Congress to impose national standards to uphold the constitutional protection of voting rights.

Originally, each state limited the electorate to male white property owners. Property ownership as a condition of voting was progressively abolished by the states before 1856. Subsequently, two centuries of struggle to overcome systemic discrimination and secure voting rights produced a series of constitutional amendments mandating that the right to vote cannot be abridged on account of race, color or previous condition of servitude, gender, or age for citizens above 18. As history has shown, much of the changes in voting rights started from a bottom-top approach with grassroots movements organizing to advocate for change.

Adopted in 1870, the 15th Amendment formally guaranteed the right to vote regardless of “race, color, or previous condition of servitude.” For nearly a century after its adoption, however, African Americans and other minorities were barred from voting in many states through racially targeted measures such as poll taxes, literacy tests, “good moral character” requirements and “grandfather” clauses.¹⁵ Attempts to break or protest this racist system of Jim Crow laws were constantly met with violence or retribution throughout the 19th and early 20th centuries. By 1912, African American voting in the South had been suppressed to just 2% from earlier participation rates of over 60% in the years immediately following ratification of the 15th Amendment. It took nearly a century and the enactment and extension of the

9. *Shelby County v. Holder*, 570 U.S. 529 (2013)

10. Democrats “employed Russian-style digital deception” in a special election for an Alabama Senate seat in 2017, creating false Facebook and Twitter accounts to rally support for Democrat Doug Jones and encourage Republicans to vote for a write-in candidate over Republican Roy Moore. (Alan Blinder, “Doug Jones Seeks Inquiry into Misinformation Efforts in Alabama Senate Race,” *The New York Times*, January 9, 2019 <https://www.nytimes.com/2019/01/09/us/doug-jones-alabama-senate.html>) Democrats in New Jersey tried to push through a new heavily gerrymandered map in December 2018, but their effort was opposed by the National Democratic Party and the proposal was dropped. Republicans in Wisconsin and Michigan state legislatures used lame duck sessions following the 2018 elections to strip powers from newly elected Democratic governors. (Trip Gabriel, “Voting Issues and Gerrymanders are now Key Political Battlegrounds,” *The New York Times*, January 2, 2019 <https://www.nytimes.com/2019/01/02/us/politics/voting-gerrymander-elections.html>)

11. “Automatic Voter Registration,” *National Conference of State Legislatures*, April 22, 2019, <https://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx>

12. “Automatic Voter Registration Bills, 2015- Present,” *Brennan Center for Justice*, June 27, 2018, <https://www.brennancenter.org/analysis/automatic-voter-registration-bills-2015-present>

13. Wendy Weiser and Max Feldman, “The State of Voting 2018,” *Brennan Center for Justice*, <https://www.brennancenter.org/our-work/research-reports/state-voting-2018>

14. Alexander Hamilton, “Second Letter from Phocion, [April 1784],” *Founders Online*, National Archives, <https://founders.archives.gov/documents/Hamilton/01-03-02-0347>

15. “Grandfather clauses” provided that only those citizens who had the right to vote before 1870 or their descendants would be exempt from the literacy, property, or tax requirements for voting. (Carol Anderson. *One Person, No Vote: How Voter Suppression is Destroying Our Democracy*. New York: Bloomsbury, 2018, pg. 3-4)

Voting Rights Act for African American voting participation again to reach the immediate post-Civil War levels.¹⁶ Passed with a bipartisan majority in 1965, the Voting Right Act was a crucial piece of legislation during the Civil Rights movement of the 1960s. It prohibited any kind of tests, such as a literacy test, in order to vote, and set up a system of federal monitoring in areas where racial discrimination was judged to have occurred, including the states of Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia.¹⁷

Voting rights were further expanded by a long campaign for suffrage by women, who used marches, civil disobedience, and lobbying to achieve the right to vote first at the state level—starting with Wyoming in 1890—and then nationally with the passage of the 19th Amendment in 1920. As a result of voting rights expansion, the number of eligible voters in the United States is now close to the total population of adult U.S. citizens. (Only those disenfranchised due to felony convictions, and citizens of territories such as Guam and American Samoa are excluded.)¹⁸

According to the U.S. Census Bureau, voter expansion and restriction have affected voting participation over the last two centuries.¹⁹ There was a surge in voters in 1828, attributable to the gradual extension of suffrage to non-property-owning white men. The brief upward trend after 1870 is a reflection of African American men receiving the right to vote in the 15th Amendment. The decrease from 1876 to 1910 shows the disenfranchisement of many African Americans under racist Jim Crow laws. The surge in voting in 1920 is a result of the extension of voting rights to women in the 19th Amendment. There is a slight increase in participation following the 1972 election when the 26th Amendment decreased the voting age from 21 to 18.

U.S. voting participation continues to be low by international standards.

The most recent increase in voting participation occurred between 1996 and 2008, when 58.2% of eligible voters participated, the highest U.S. voting level ever recorded. In the 2008 presidential election, with an African American presidential candidate on the ballot, there was an unprecedented surge of new minority and younger voters, including 65% of eligible African Americans, 50% of eligible Hispanic Americans, and 48% of eligible Asian Americans. This represented a substantial increase from 2004 when voting included only 60% of eligible African Americans, 47% of eligible Hispanics, and 44% of eligible Asians.²⁰ These new voters disproportionately voted for the Democratic candidate for President, Barack Obama. In fact, in 2008 and 2012, President Obama won 80% of the votes of all minority groups, leading to his victory, and worrying Republicans, leading to their subsequent adoption of voter-suppression tactics.²¹

U.S. voting participation continues to be low by international standards. According to the Pew Research Center, there is a large gap in U.S. voting eligibility and participation compared to other highly developed, democratic countries in national elections.²² In the 2016 election, only 55.7% of the United States' voting age population turned out to vote, which according to calculations by the Pew Research Center, places the U.S. 26th out of 32 countries in the OECD (Organisation for Economic Co-operation and Development) countries in voter turnout.²³

16. Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (New York: Crown, 2018), pg. 92.

17. "Voting Rights Act of 1965", *History.com*, November 9, 2009, <https://www.history.com/topics/black-history/voting-rights-act>; "Section 4 of Voting Rights Act", Department of Justice, May 5, 2020, <https://www.justice.gov/crt/section-4-voting-rights-act>

18. Grace Panetta, Olivia Reaney, and Talia Lakritz, "The Evolution of American Voting rights in 242 Years Shows How Far We've Come – and How Far We Still Have To Go," *Business Insider*, November 6, 2018, <https://www.businessinsider.com/when-women-got-the-right-to-vote-american-voting-rights-timeline-2018-10>

19. Population data from U.S. Census Bureau. Vote total data from U.S. Election Atlas. This chart represents the number of votes cast as a percentage of total population and does not compare either of those quantities with the percentage of the population that was eligible to vote. ("U.S. Vote for President as Population Share," *Wikipedia*, November 17, 2016, https://en.wikipedia.org/wiki/File:U.S._Vote_for_President_as_Population_Share.png)

20. "Voting and Registration Tables," *US Census Bureau*, <https://www.census.gov/topics/publicsector/voting/data/tables.2016.html>

21. John Shattuck, Aaron Huang, and Elisabeth Thoreson-Green, "The War on Voting Rights," *Carr Center for Human Rights*, Harvard University, February 28, 2019, https://carrcenter.hks.harvard.edu/files/cchr/files/ccdp_2019_003_the_war_on_voting_rights.pdf; Clare Malone, "The Republican Choice," *FiveThirtyEight*, June 24, 2020. <https://fivethirtyeight.com/features/the-republican-choice/>

22. 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. "Why Don't Americans Vote?," *The Sanders Institute*, <https://www.sandersinstitute.com/blog/why-dont-americans-vote>

23. Drew Desilver, "U.S. trails most developed countries in voter turnout," May 21, 2018, <https://www.pewresearch.org/fact-tank/2018/05/21/u-s-voter-turnout-trails-most-developed-countries/>

FEAR OF DEMOGRAPHIC CHANGE

Fear of demographic change, intensified by the surge in minority and youth voting in 2008, motivated a political campaign by the Republican Party to reverse the long-term trend of expanding voting rights by using the tools of regulatory suppression. The non-Hispanic white population in the United States is aging, and younger generations are increasingly more diverse.²⁴ Some Republican leaders have spoken candidly about how changes in the demographics of the electorate are becoming a threat to their party. In 2013, Republican Party Chairman Reince Priebus commented that “by the year 2050 we’ll be a majority-minority country,” urging the party to widen its base by pursuing policies such as immigration reform.²⁵

U.S. Census Bureau statistics show that the number of non-Hispanic white Americans is growing far more slowly than racial and ethnic minorities as a percentage of the overall population. Since 2013, there have been more births of minority than non-minority babies in the United States.²⁶ Non-Hispanic whites are the only population group projected to decline as a percentage of the population over the next forty years, by a predicted 8.2%, while mixed-race groups are projected to increase by 225.5%, Asians by 128.1%, Hispanics by 114.8%, and African Americans by 42%.²⁷ The non-Hispanic white population will no longer be a majority by 2044, when the U.S. will be a pluralist nation without any one racial or ethnic group constituting a majority.²⁸ These demographic trends have fueled fears among some non-minority voting blocs that their status and privilege are under threat, making the preservation of white identity a potent political issue.²⁹

Modern-day voting suppression laws over the past 10 years have mainly originated from the Republican Party. That is not to say one party is inherently more virtuous than another; after all, the Republican party is also “the party of Lincoln” which more than a century ago expanded the right to vote through the emancipation

and the enfranchisement of African American men. In the early 20th century, it was the Democratic Party that suppressed the vote of Black citizens through Jim Crow laws, demonstrating that parties will push for voter expansion or voter suppression if it is in their interest. As African Americans shifted to the Democratic party, and the two parties diverged in their demographic makeup, however, those demographics have increasingly favored the Democratic Party. Since 1964, when President Lyndon Johnson signed the Civil Rights Act into law, on average 88% of African American voters have voted for Democratic candidates.³⁰ Furthermore, in 2017, 59% of Democratic and Democratic-leaning registered voters were non-Hispanic whites; whereas, non-Hispanic whites made up 83% of Republican voters.³¹ Regardless of motivation, however, disenfranchisement of any group of people poses a severe threat to the democratic process, and a violation of the principle of “one person, one vote” upon which our democracy depends.

TOOLBOX OF VOTING REGULATIONS AND RESTRICTIONS

Voter suppression efforts since 2010 have employed a wide range of tools to regulate voting. The regulatory toolbox includes stricter identification requirements, proof of citizenship, restrictions on voter registration and voter registration drives, bans on voting by convicted felons, purges of voter rolls, limitations on early and absentee voting, and consolidation of polling places.

IDENTIFICATION LAWS:³² Some form of identification is required by 36 states as a reasonable safeguard against voter fraud. The requirement usually allows a range of acceptable documents such as a driver’s license or other state-issued ID card, a military or Veterans’ Affairs card, or a tribal ID. In some cases,

24. William H. Frey, “How Young Americans Are Set to Change the US Forever,” *BBC*, July 17, 2017, sec. US & Canada, <https://www.bbc.com/news/world-us-canada-40461666>

25. Benjy Sarlin, “6 Big Takeaways from the RNC’s Incredible 2012 Autopsy,” *Talking Points Memo*, March 18, 2013, <https://talkingpointsmemo.com/dc/6-big-takeaways-from-the-rnc-s-incredible-2012-autopsy>

26. Ezra Klein, “White Threat in a Browning America,” *Vox*, July 30, 2018, <https://www.vox.com/policy-andpolitics/2018/7/30/17505406/trump-obama-race-politics-immigration>

27. Ibid.

28. Monica Toft, “White Right? How Demographics is Changing US Politics,” *The Conversation*, January 7, 2019, <https://theconversation.com/white-right-how-demographics-is-changing-us-politics-107872>

29. Ibid.

30. Jamelle Bouie, “The Democrats’ Demographic Dreams,” *The American Prospect*, June 14, 2012, <https://prospect.org/power/democrats-demographic-dreams/>

31. J. Baxter Oliphant, “6 Facts About Democrats in 2019,” *Pew Research Center*, June 26, 2019, <https://www.pewresearch.org/fact-tank/2019/06/26/facts-about-democrats/>

32. “Voter Identification Requirements / Voter ID Laws,” *National Conference of State Legislatures*, <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

voters without an acceptable ID can sign an affidavit of identity or in some other way vouch for their identity to be allowed to vote. However, several states have enacted new stricter ID requirements since 2010 that eliminate the affidavit-of-identity option for voters and further restrict the types of IDs accepted at polling places, limiting voting by minorities and young people. States with new stricter ID requirements enacted since 2010 include Arizona, Kansas, Mississippi, North Carolina, North Dakota, Tennessee, and Virginia. These laws require voters to show a specified form of identification. In Tennessee, for example, the only acceptable forms of identification permitted by the 2011 law are state-issued IDs such as a driver's license or gun permit, US passports, or military IDs. Student IDs and non-photo IDs are not accepted.³³ North Dakota's 2017 ID law requires a form of ID that includes a residential address. This has threatened to suppress the vote of the 20,000 Native Americans who live on reservations in North Dakota, since an estimated 5,000 do not have conventional addresses. The address requirement was upheld by the Supreme Court in 2018.³⁴

Some states have enacted new identification requirements since 2010 giving discretion to local officials and poll workers the discretionary power to accept or reject identification. States with new discretionary requirements enacted since 2010 include Alabama, Arkansas, Iowa, Missouri, New Hampshire, North Dakota, Rhode Island, South Carolina, Texas, and Wisconsin.

PROOF OF CITIZENSHIP for registration has been required by some states since 2010. The Supreme Court ruled in 2013 that proof of citizenship cannot be required for voters registering with a federal registration form. States requiring proof of citizenship, therefore, can do so for people registering to vote in state and local, but

not federal, elections.³⁵ States with new proof-of-citizenship restrictions enacted since 2009 include Alabama, Arizona, Georgia, and Kansas. Kansas passed a proof of citizenship law in 2011, but it was struck down by a federal judge in 2018 based on the 2013 Supreme Court ruling and a pre-existing state 'universal registration' law.³⁶ Alabama and Georgia have passed proof of citizenship laws, but these have not been implemented because of the complications of establishing a bifurcated registration system following the Supreme Court ruling. Arizona enforces a proof of citizenship law for voters registering with the state registration form to vote in state and local elections.³⁷

RESTRICTIONS ON VOTER REGISTRATION DRIVES have been enacted by four states since 2010: Florida, Illinois, Iowa, Texas.³⁸ Such registration drives by civic organizations aim to increase voter participation by helping voters register to vote. While the law's advocates have stressed the need for training to ensure that forms are filled out directly, some grassroots organizations have seen enactment of such laws by Republican lawmakers as a thinly-veiled effort to decrease participation by minorities.³⁹

The Texas law requires anyone conducting a voter registration drive to undergo training to become a volunteer deputy registrar. According to the Secretary of State's instructions: "upon satisfactorily completing training and examination, if required, the voter registrar [of your county] will appoint you as a volunteer deputy registrar."⁴⁰ Florida and Iowa impose short, strict deadlines (2 days in Florida and 7 days in Iowa) for groups registering voters to officially submit registration forms.⁴¹ Illinois limits the period individuals have to turn in their voter registration forms (2 business days through mail and 7 days through personal delivery).⁴²

33. "What ID is Required When Voting?" *Tennessee Secretary of State*, <https://sos.tn.gov/products/elections/what-id-required-when-voting>

34. Gabriel Poggrund and Felicia Sonmez, "In Senate Battleground, Native American Voting Rights Activists Fight Back against Voter ID Restrictions," *The Washington Post*, October 12, 2018, https://www.washingtonpost.com/politics/in-senate-battleground-native-american-voting-rights-activistsfight-back-against-voter-id-restrictions/2018/10/12/7bc33ad2-cd60-11e8-a360-85875bac0b1f_story.html?utm_term=.6813dab4ebbc

35. Rebecca Beitsch, "'Proof of Citizenship' Voting Laws May Surge Under Trump," *Pew Charitable Trusts*, November 16, 2017, <http://pew.org/2zKkGDN>

36. Julie Bosman, "Judge Rejects Kansas Law Requiring Voters to Show Proof of Citizenship," *The New York Times*, June 19, 2018, <https://www.nytimes.com/2018/06/18/us/kris-kobach-voting-fraudlawsuit.html>

37. Dustin Gardiner, "Republican Secretary of State Candidates Spar Over Arizona's Voter-Registration Rules," *Arizona Republic*, July 6, 2018, <https://www.azcentral.com/story/news/politics/elections/2018/07/06/candidate-steve-gaynor-hitssecretary-state-michele-reagan-over-settling-voter-registration-lawsuit/746565002/>

38. Diana Kasdan, "State Restrictions on Voter Registration Drives," *Brennan Center for Justice*, November 30, 2012, <http://www.brennancenter.org/publication/state-restrictions-voter-registration-drives>

39. Reid Wilson, "Republicans Target Voter Registration Drives With New State Laws," *The Hill*, April 28, 2019, <https://thehill.com/homenews/campaign/440894-republicans-target-voter-registration-drives-with-new-state-laws>

40. "Texas Volunteer Deputy Registrar Guide," Texas Secretary of State, <https://www.sos.state.tx.us/elections/pamphlets/deputy.shtml>

41. General Assembly of Iowa, "Election Laws of Iowa 2017," *Legislative Services Agency*, <https://www.legis.iowa.gov/docs/publications/EL/864663.pdf>; Lizette Alvarez, "Judge to Block Changes in Florida Voter Registration," *The New York Times*, August 29, 2012, <https://www.nytimes.com/2012/08/30/us/judge-to-block-changes-in-florida-voterregistration.html>

42. Jordan Lebeau, "A State-By-State Guide to Voter Restriction Laws," *Forbes*, November 7, 2016, <https://www.forbes.com/sites/jordanlebeau/2016/11/07/a-state-by-state-guide-to-voter-restrictionlaws/#7d67ae2c75cc>



Office of Joyce Beatty | Voter registration drive in Ohio

In 2019, a new Tennessee law was signed into law that threatened civil and criminal charges against third-party voter registration. The state can fine groups that submit 100 or more voter registration forms lacking a complete name, address, date of birth, declaration of eligibility and signature.⁴³ In response, the Equity Alliance, a group registering African American voters in Tennessee said the law “is blatantly racist and mirrors the Jim Crow-era intimidation used to stifle decades of progress our nation and our state has made to ensure voting rights for people of color.”⁴⁴ A U.S. District Judge enjoined enforcement of the law in September 2019 calling it a “punitive regulatory scheme.”⁴⁵ Lawmakers ultimately repealed the law and passed a new one without the provisions on community voter registration efforts.⁴⁶ Training programs are required for community registration groups in Colorado, Illinois, New Mexico and Texas. There are deadlines for returning new registrations, and penalties for late returns, in

California (3 days), Delaware (5 days), Iowa (7 days), Maryland (5 days), New Mexico (2 days), Oregon (5 days), Texas (5 days), and Washington (5 days). Florida passed a law in 2011 that required groups registering voters to turn in registration forms within 48 hours. After the law was put into place, organizations such as the League of Women Voters and Rock the Vote stopped voter registration drives in Florida and voter registration declined significantly. In 2012, a federal judge blocked the provisions of the law requiring the 48-hour turn around, calling them “harsh and impractical.”⁴⁷

PROHIBITION OF VOTING BY PERSONS WITH FELONY CONVICTIONS is a longstanding limitation on the right to vote, notwithstanding the 15th Amendment’s prohibition against denying or abridging the right to vote “on account of a previous condition of servitude,” which some legal scholars argue should make denial of the right to vote for ex-felons unconstitutional.⁴⁸ Under the 14th Amendment, however, the right to vote can be abridged for “participation in rebellion, or other crime,” a provision that the Supreme Court ruled in the 1974 case *Richardson v. Ramirez* could be used to support felony disenfranchisement.⁴⁹

After 2010, three states adopted new restrictions on voting by persons with felony convictions: Florida, Iowa, and South Dakota. Florida’s law prohibiting people with felony convictions from voting has been challenged since 2018. Until 2018, Florida had the highest number of people barred from voting due to a felony conviction (approximately 1.4 million). In 2011, Republican Governor Rick Scott had implemented a multi-year waiting period before ex-felons could be considered on a case-by-case basis for clemency and reinstatement of voting rights.⁵⁰ In November 2018, however, Florida adopted a ballot initiative restoring voting rights to ex-felons, except for those convicted of murder and sex offenses.⁵¹ However, the Florida legislature weakened the constitutional amendment by passing a law (SB 7066) which

43. Jonathan Mattise and Elaina Sauber, “Federal Judge Blocks Tennessee Voter Registration Law, Citing Harm To ‘Constitutional Rights,’” *Tennessean*, September 12, 2019, <https://www.tennessean.com/story/news/2019/09/12/tennessee-voter-registration-law-blocked-judge-citing-harm/2300293001/>

44. Reid Wilson, “Republicans Target Voter Registration Drives with New State Laws,” *The Hill*, April 28, 2019, <https://thehill.com/homenews/campaign/440894-republicans-target-voter-registration-drives-with-new-state-laws>

45. Ibid.

46. “Tennessee Removes Anti-Voter Registration Provisions Following Federal Legal Challenge,” *American Civil Liberties Union*, April 2, 2020, <https://www.aclu.org/press-releases/tennessee-removes-anti-voter-registration-provisions-following-federal-legal>

47. Lizette Alvarez, “Judge to Block Changes in Florida Voter Registration,” *The New York Times*, August 29, 2012, <https://www.nytimes.com/2012/08/30/us/judge-to-block-changes-in-florida-voter-registration.html>

48. Garrett Epps, “What Does the Constitution Actually Say About Voting Rights?” *The Atlantic*, August 19, 2013, <https://www.theatlantic.com/national/archive/2013/08/what-does-the-constitution-actually-sayabout-voting-rights/278782/>

49. Eugene Volokh, “Why Has the Supreme Court Held That Felons Lack the Constitutional Right to Vote?” *The Washington Post*, April 29, 2015, <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/04/29/why-has-the-supreme-court-held-that-felons-lack-the-constitutional-right-to-vote/>

50. Emily Bazelon, “Will Florida’s Ex-Felons Finally Regain the Right to Vote?” *The New York Times*, September 26, 2018, <https://www.nytimes.com/2018/09/26/magazine/ex-felons-votingrights-florida.html>

51. Nicholas Nehamas, “More than a Million Convicted Felons in Florida Won Their Voting Rights Back. Now What?” *Miami Herald*, November 8, 2018, <https://www.miamiherald.com/news/politicsgovernment/election/article221301400.html>

required these people to pay court fines first before being able to vote. A U.S. District Court ruled that this requirement would amount to a poll tax and discriminate against people with felony convictions who cannot afford to pay.⁵² The 11th Circuit Court of Appeals, however, stopped the order from going into effect in July 2020, a decision upheld by the U.S. Supreme Court. The appeals court heard arguments on the case in August; however, it is unclear whether the court will rule before the 2020 election in November.⁵³

In Iowa, following a 2005 gubernatorial executive order, felons' voting rights were reinstated after completion of probation or parole. In 2011, this was reversed, and since then, ex-felons' recovery of voting rights is determined on a case-by-case basis that requires fulfillment of certain prerequisites such as paying back court costs.⁵⁴ In South Dakota, prior to 2012 people convicted of felonies lost their right to vote only while incarcerated, but since 2012 they have also lost their right to vote while on probation or parole.⁵⁵ In Kentucky, as in Iowa, felons lose their right to vote indefinitely unless granted a governor's pardon.

Since 2013, several states have conducted purges not in accordance with the National Voter Registration Act

In 10 states, felons lose their right to vote while on parole or probation and for some additional period after that. Restoration of voting rights depends on the nature of the crime. In 22 states, felons lose their right to vote while incarcerated and on parole or probation, but automatically regain the right to vote after that period. In 14 states and the District of Columbia, felons lose their right to vote while incarcerated but regain it as soon as they are released even if on parole or probation. In Maine and Vermont, felons retain their right to vote even while incarcerated.⁵⁶

VOTER ROLL PURGES are removals of registered voters from voting rolls. The stated goal of purges is to keep rolls up to date by removing voters who have died or moved away. However, voter roll purges can be used to shrink the voter base, and therefore must be conducted with clear criteria under strict due process standards. Federal standards for purges were established in the 1993 National Voter Registration Act (NVRA). The Act requires voter-list maintenance programs to be uniform, non-discriminatory, and in compliance with the Voting Rights Act of 1965. It also mandates that people may not be removed from voter rolls because they failed to vote, and voter purges cannot be undertaken within 90 days of a federal election. However, under the 1993 law, failing to respond to a mailing card confirming the registrant's address can cause people to be purged from the voter rolls.⁵⁷

Since 2013, several states have conducted purges not in accordance with the NVRA.⁵⁸ For example, Alabama and Maine have policies for using data from the Interstate Voter Registration Crosscheck Program to immediately remove voters from the rolls without providing the notice and waiting period required by federal law. Arizona regulations permit Crosscheck purges during the 90 days prior to an election, a period during which federal law prohibits large-scale purges.⁵⁹ Six states have implemented sweeping new voter roll purges since the 2016 election: Georgia, Indiana, Nevada, Ohio, Oklahoma, and Wisconsin.

The Crosscheck Program was created by Kansas Secretary of State, and put into use by 28 states, mainly with Republican

52. Patricia Mazzei, "Florida Law Restricting Felon Voting Is Unconstitutional, Judge Rules," *The New York Times*, May 24, 2020, <https://www.nytimes.com/2020/05/24/us/florida-felon-voting-court-judge-ruling.html>

53. Nina Totenberg, "Supreme Court Deals Major Blow to Felons' Right to Vote in Florida," *National Public Radio*, July 17, 2020, <https://www.npr.org/2020/07/17/892105780/supreme-court-deals-major-blow-to-ex-felons-right-to-vote-in-florida>; Gary Fineout, "Federal appeals court considers whether to uphold Florida felon voting law," *Politico*, August 18, 2020, <https://www.politico.com/states/florida/story/2020/08/18/federal-appeals-court-considers-whether-to-uphold-florida-voting-law-1309985>

54. Jason Noble, "Iowa Supreme Court Upholds Ban on Felons Voting," *Des Moines Register*, June 30, 2016, <https://www.desmoinesregister.com/story/news/politics/2016/06/30/iowa-supreme-court-upholdsban-felons-voting-iowa/86525128/>

55. "Elections & Voting," *South Dakota Secretary of State*, <https://sdsos.gov/elections-voting/voting/register-to-vote/felony-convictions.aspx>

56. "Felon Voting Rights," *National Conference of State Legislatures*, <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>

57. H.R. 2 (103rd Congress)

58. Kevin Morris, Myrna Perez, Jonathan Brater, and Christopher Deluzio, "Purges: A Growing Threat to the Right to Vote," *Brennan Center for Justice*, July 20, 2018, <https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote>

59. Ibid.

administrations. It was designed to identify individuals who have voted in multiple states, in order to find voters who have moved or committed fraud. It has been found, however, to be notoriously prone to error. One Stanford study found that it “would eliminate about 200 registrations used to cast legitimate votes for every one registration used to cast a double vote”—a 99.5% rate of error.⁶⁰ After numerous legal challenges, the system was shut down in December 2019.⁶¹

As an alternative, 30 states plus the District of Columbia have turned to a different system, the Electronic Registration Information Center (ERIC), which was developed by the Pew Charitable Trusts. That system conducts more extensive checks, comparing voter data to motor vehicle, Social Security, and other information, and has been found to be much more reliable than Crosscheck, though it is not without errors.⁶² States currently using ERIC include those with both Republican and Democratic administrations, including Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin and The District of Columbia.⁶³

In seven states, failing to vote and not replying to a postcard confirming one’s address triggers removal from the rolls.⁶⁴ In these states, people who have not voted in recent elections are put at risk of being purged. In 2018, the Supreme Court upheld state “use it or lose it” laws by a 5-4 vote that fell along ideological lines.⁶⁵ Federal law prohibits states from removing people from voter rolls “by reason of the person’s failure to vote.”⁶⁶ But it allows election officials who suspect that a voter has moved to

send a confirmation notice. Justice Alito’s majority opinion in the 2018 case stated that federal law “plainly reflects Congress’s judgment that the failure to send back the card, coupled with the failure to vote during the period covering the next two general federal elections, is significant evidence that the addressee has moved.”⁶⁷

Approximately 17 million voters were purged nationwide between 2016 and 2018, similar to the number between 2014 and 2016, but considerably higher than between 2006 and 2008.⁶⁸

NEW RESTRICTIONS ON EARLY VOTING have been imposed by nine states since 2010: Arizona, Florida, Georgia, Indiana, Iowa, Nebraska, Ohio, Tennessee, and West Virginia. The restrictions shorten the period allowed to vote early. In Nebraska, for example, the state legislature reduced the early voting period from 35 to 30 days. Ohio eliminated “Golden Week,” the week in which voters could register and vote at the same time. Some states have also placed new restrictions on mail-in and absentee voting, including Arizona, Iowa, and Ohio. Arizona made it illegal to turn in another voter’s completed mail-in ballot with his or her permission, and Ohio passed a law that prohibits county election boards from sending unsolicited absentee ballot applications.⁶⁹

THE CLOSING OF POLLING PLACES, purportedly to cut costs, has been carried out by several states since 2010. Voters whose precinct polling place has been closed are reassigned to another precinct, often further from where they live. This discourages voter turnout. A study concluded that between 2013 and 2016, counties in areas that had previously required federal “pre-clearance” because of a record of racial discrimination drastically reduced the numbers of polling places. In 165 of

60. Christopher Ingraham, “This Anti-Voter-Fraud Program Gets It Wrong Over 99 Percent of The Time. The GOP Wants To Take It Nationwide,” *The Washington Post*, July 20, 2017 <https://www.washingtonpost.com/news/wonk/wp/2017/07/20/this-anti-voter-fraud-program-gets-it-wrong-over-99-of-the-time-the-gop-wants-to-take-it-nationwide/>

61. Peggy Lowe, “Kansas Voter Tracking System Championed By Former SOS Kris Kobach Is ‘Dead,’” *KCUR*, December 10, 2019, <https://www.kcur.org/politics-elections-and-government/2019-12-10/kansas-voter-tracking-system-championed-by-former-sos-kris-kobach-is-dead>

62. Steve Lohr, “Another Use for A.I.: Finding Millions of Unregistered Voters,” *The New York Times*, November 5, 2018; <https://www.nytimes.com/2018/11/05/technology/unregistered-voter-rolls.html>

63. “Texas Joins Electronic Registration Information Center,” *Texas Secretary of State*, March 9, 2020, <https://www.sos.state.tx.us/about/newsreleases/2020/030920.shtml>

64. Trevor Brown, “In Latest Purge, Nearly 90,000 Inactive Voters Removed From Rolls,” *Oklahoma Watch*, April 22, 2019, <https://oklahomawatch.org/2019/04/22/nearly-90000-inactive-oklahomans-removed-from-voter-rolls/>

65. *Husted v. A. Philip Randolph Institute*, 584 US (2018)

66. Adam Liptak, “Supreme Court Upholds Ohio’s Purge of Voting Rolls,” *The New York Times*, June 11, 2018, <https://www.nytimes.com/2018/06/11/us/politics/supreme-court-upholds-ohios-purge-of-voting-rolls.html>

67. *Ibid.*

68. Kevin Morris, “Voter Purge Rates Remain High, Analysis Finds,” *Brennan Center for Justice*, August 1, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds>

69. Jackie Borchardt, “Ohio House passes bills to change absentee ballot rules, eliminate six days of early voting,” *Cleveland*, February 19, 2014, https://www.cleveland.com/open/index.ssf/2014/02/ohio_house_passes_bills_to_cha.html

381 counties examined, a total of 868 polling places were removed.⁷⁰ Arizona closed 212 polling places between 2012 and 2016, more than any other state, including a 63% reduction in Cochise County, 50% in Graham County, and 48% in Gila County -- counties with substantial minority populations.⁷¹

RESTRICTIONS ON STUDENT VOTING are implicitly imposed by domicile requirements. Two states have enacted new domicile requirements since 2010: Wisconsin and New Hampshire. New Hampshire requires voters to show that they are “domiciled” in the state in order to register, a requirement that impacts college students financially and deters them from voting, according to opponents.⁷² Proof of domicile must be shown by “a New Hampshire driver’s license, a New Hampshire vehicle registration, an armed services identification, or other photo identification issued by the United States government.”⁷³

In a 1972 Supreme Court ruling striking down a year-long residency requirement in Tennessee, the maximum residency period that a state can require to register to vote was set at 30 days. The Court held that “[t]he durational residence requirements (longer than 30 days) are violative of the Equal Protection Clause of the Fourteenth Amendment, as they are not necessary to further a compelling state interest.”⁷⁴ Today, 26 states have durational residency requirements from between 10 and 30 days, while 24 states do not have such requirements.⁷⁵

Polling place laws and ID requirement laws have also affected student voting. In 2019, Texas outlawed polling places that did not stay open during the entire early-voting period, which affects

The most effective way to dilute votes is through legislative gerrymandering.

temporary early voting sites on college campuses,⁷⁶ and Florida effectively banned early-voting sites at state universities by requiring all early-voting sites to offer “sufficient non-permitted parking.”⁷⁷ Wisconsin requires poll workers to check signatures on student IDs, but most schools do not issue student IDs with signatures. Wisconsin also mandates that IDs used for voting expire within two years, while most college ID cards have four-year expiration dates.⁷⁸ These barriers to voting reduced voting turnout. Student turnout in 2016 fell sharply in Wisconsin, when the state’s voter ID law first applied to students.⁷⁹

ELIMINATION OF SAME-DAY VOTER REGISTRATION is another tool to restrict voting, by making it impossible to register on the same day as voting. Ohio eliminated same-day voting registration in 2014. Currently, 21 states and DC allow voters to register on Election Day. In the remaining states, voter registration deadlines vary from 8 to 30 days before an election.⁸⁰

STRUCTURAL BARRIERS. The most effective way to dilute votes is through legislative gerrymandering. This technique involves the drawing of boundaries of electoral districts in a way that aims to maximize the chances of election by members of a given party. Gerrymandering makes it possible for

70. The Great Poll Closure, *The Leadership Conference Education Fund*, November 2016, <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>

71. Ibid.

72. Ethan DeWitt, “What You Need To Know About New Hampshire’s New Voter Residency Law,” *Concord Monitor*, July 16, 2018, <https://www.concordmonitor.com/Capital-Beat-Five-questions-about-the-internetsales-tax-bill-18814866>

73. National Conference of State Legislatures, “Voter Identification Requirements/ Voter ID Laws,” August 25, 2020. <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

74. *Dunn v. Blumstein*, 405 U.S. 330 (1972)

75. “The Canvass,” *National Conference for State Legislatures*, May 2016, http://www.ncsl.org/Documents/Elections/The_Canvass_May_2016.pdf

76. Jim Malewitz, “Schools May Be Flouting Law on Registering Students to Vote,” *The Texas Tribune*, September 28, 2016, <https://www.texastribune.org/2016/09/28/texas-law-requires-high-schools-register-students-/>

77. Kelly Sheridan, “Early Voting on Campus Boosts Youth, Minority Turnout, But Battle Brews Over Parking,” *WUSF*, August 15, 2019, <https://www.wusf.org/early-voting-on-campus-boosts-youth-minority-turnout-but-battle-brews-over-parking/>

78. Rose Wong, “New NC voter ID law levies restrictions on private colleges’ ID cards,” *The Duke Chronicle*, December 26, 2018, <https://www.dukechronicle.com/article/2018/12/north-carolina-voter-id-law-college-student-voting-identification>

79. Nancy Thomas, Inger Bergom, Ishara Casellas Connors, Prabhat Gautam, Adam Gismondi, and Alena Roshko, *Democracy Counts: A Report on U.S. College and University Student Voting*, *Institute for Democracy and Higher Education*, <https://idhe.tufts.edu/sites/default/files/NSLVE%20Report%202012-2016-092117%5B3%5D.pdf>

80. “Same Day Voter Registration,” *National Conference of State Legislatures*, <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>

The Electoral College presents a major impediment to free and fair elections.

the party that controls the drawing of district boundaries to receive a minority of votes in a future election but still gain a majority of legislative seats, turning redistricting into a partisan weapon to use against political opponents.

A wave of partisan gerrymandering after 2010 enabled Republicans, who by then controlled 58 state legislative chambers, to capture 54 percent of US congressional seats in 2012 while winning only 49 percent of the national congressional vote. Democrats also engaged in gerrymandering in Maryland, but since 2010 the practice has been carried out extensively, systematically and exclusively by Republicans.⁸¹ Anti-gerrymandering reforms require the appointment of independent commissions responsible for approving maps for legislative districts based on rational geographic and municipal boundaries.

The Electoral College presents a major impediment to free and fair elections. Created as a means of protecting the interests of less populous states in presidential elections, the Electoral College boosted the political power of Southern slaveholding states where the Constitution's notorious three-fifths compromise counted three out of five slaves as "people". After the Thirteenth Amendment abolished slavery and the Fifteenth Amendment expanded the right to vote, the Electoral College continued to discount the will of the majority in presidential elections, distorting politics by encouraging presidential campaigns to concentrate their efforts in a few states that are not representative of the country at large, and handing victory to the loser of the popular vote twice in the past two decades.⁸²

DISPROPORTIONATE EFFECTS OF VOTER SUPPRESSION

The demographic fears and increased turnout of young and minority voters have fueled voter suppression efforts. Since 2010, new regulations to restrict voting have been imposed in nineteen states.⁸³ These states are: Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Iowa, Kansas, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin. All of these states were won by the Republican candidate, President Trump, in the 2016 election. Only three states with Democratic legislatures, Illinois, Rhode Island, and West Virginia, have imposed new voting restrictions in the same period.⁸⁴

Voting restrictions can have a disproportionate impact on voting by minorities, the poor and foreign-born citizens. For example, stricter identification requirements make it harder for people without acceptable photo identification or stable addresses to vote.⁸⁵ A pattern of closing polling places in rural and mostly minority areas means that people have to travel longer distances to get to their polling place, a barrier for voters with limited access to transportation. Other new state policies, such as Georgia's purging of voters whose registration information is not an "exact match" to the information on their state-issued ID, have been found to have a disproportionate impact on minority voters.⁸⁶

Six states that enacted new voting regulations after 2010 showed significant drops in voter turnout between 2010 and 2016.⁸⁷ While decreases in turnout can be attributed to multiple factors, the new restrictions were a major factor. In Wisconsin, a study estimated that 16,800 people in two counties may not have voted in the 2016 election because they did not have the photo ID required by a new law enacted by the Republican-majority state legislature in 2011. A survey of registered non-voters in two counties showed that black and low-income non-voters were more likely than white and high-income non-voters to state that the reason they did not vote was Wisconsin's new photo ID law.⁸⁸

81. Christopher Ingraham, "What is gerrymandering and Why Is It Problematic?" *The Washington Post*, June 24, 2019

82. Wilfred Codrington, "The Electoral College's Racist Origins," *The Atlantic*, November 17, 2019, <https://www.theatlantic.com/ideas/archive/2019/11/electoral-college-racist-origins/601918/>

83. "State Partisan Composition," *National Conference of State Legislatures*, <http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx>

84. "New Voting Restrictions in America," *Brennan Center for Justice*, last modified November 19, 2019, <https://www.brennancenter.org/our-work/research-reports/new-voting-restrictions-america>

85. For example, a 2017 North Dakota law requiring voters to show a form of identification that includes a residential address, made it difficult for many Native Americans living on reservations to vote since many did not have residential street addresses.

86. Zachary Roth, "A New Lawsuit Claims Thousands of Georgia Voters Could Be Disenfranchised," *NBC News*, September 14, 2016, <https://www.nbcnews.com/politics/elections/lawsuit-exact-match-systemnegatively-impacts-georgia-s-minority-voters-n648251>

87. Turnout dropped by a higher rate than in the US as a whole. "Voting and Registration Tables," *US Census*, <https://www.census.gov/topics/public-sector/voting/data/tables.2016.html>

88. Philip Bump, "17,000 Wisconsinites in Two Counties Likely Didn't Vote in 2016 Because of the State's Voter ID Law," *The Washington Post*, September 26, 2017, <https://www.washingtonpost.com/news/politics/wp/2017/09/26/17000-wisconsinites-in-two-counties-likely-didnt-vote-in-2016-due-to-the-states-voter-id-law/>

Voting restrictions can have a disproportionate impact on voting by minorities, the poor and foreign-born citizens.

Another study conducted by researchers at the University of California San Diego concluded that strict photo identification laws can disproportionately affect the turnout of minorities and foreign-born citizens.⁸⁹ The largest impact was on foreign-born citizens, whom the study found were 12.7% less likely to vote in general elections and 3.6% less likely to vote in primaries in states with strict photo ID laws. The UCSD study also estimated that Democratic turnout dropped by an estimated 7 to 8% in general elections when strict photo identification laws are in place. The predicted drop in turnout for Republicans was 4 to 5%. (Other studies have disputed the findings.)

The disproportionate impact of new voting regulations on racial minorities has been exacerbated by the withdrawal of federal safeguards of minority voting rights. In its 2013 decision in *Shelby County v. Holder*, the Supreme Court struck down as unconstitutional the formula of the 1965 Voting Rights Act used by the federal government to determine whether state voting restrictions have a racially discriminatory impact.⁹⁰ In its majority opinion, the Court held that “the Voting Rights Act employed extraordinary measures to address an extraordinary problem, [but] the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions.”⁹¹ Despite the Court’s conclusion, the greatest decrease in voting by minorities following the *Shelby* decision has proven to be greatest in areas with a history of racial discrimination that were previously required to submit proposed voting law changes to the Justice Department for review. The impact of *Shelby* has made voting by minorities more difficult in some areas previously covered by the Voting Rights Act. The effect of invalidating the “pre-clearance” requirement can be seen in wide-sweeping voter roll purges and the closure of polling locations.

The disproportionate effect voter roll purges have on minority voters can be most clearly seen in the case of Georgia. Georgia’s “exact match” registration law requires voters’ personal information on their registration form exactly to match the information on their ID and Social Security cards. In a 2017 lawsuit challenging the “exact match” formula as discriminatory against minorities and low-income voters, a court order was issued requiring former Georgia Secretary of State (now Governor) Brian Kemp not to cancel voter registrations flagged by the system, but to label them as “pending,” allowing flagged voters to cast provisional ballots. In October 2018 an Associated Press investigation found that 53,000 registrations were listed as “pending” by the office of the Secretary of State, 70% of which were from African American voters.⁹² Kemp refused calls to step down as Secretary of State during his gubernatorial campaign.⁹³ Ten days before the election, a federal district judge issued an injunction blocking election officials from throwing out absentee ballots that did not meet “exact match” requirements and rejecting Kemp’s request to stay the injunction.⁹⁴

Researchers at Princeton University found widespread likely inaccuracies in the ‘exact match’ system used by Georgia. Based on a probabilistic analysis, 30% of eligible voters were not cleared by the ‘exact match’ algorithm, pointing to methodological flaws in using ‘exact match’ as a basis for voter roll purges. Furthermore, the study found that minority voters were disproportionately affected by ‘exact match’: “match rates using exact matching are nine and six percentage points lower for black and Hispanic voters, respectively, than for white voters.”⁹⁵ During the campaign, a hotline set up by Democratic gubernatorial candidate Stacey Abrams to report problems voters faced at the polls received more than 40,000 calls. A lawsuit filed on October 27, 2018 in the U.S. District Court in Georgia alleged widespread disenfranchisement of African American voters due to “exact match” requirements.⁹⁶

Jurisdictions that under the Voting Rights Act were required to ask permission from the federal government before enacting changes to voting laws—a process known as “pre-clearance”—have been purging their voter rolls more rapidly than jurisdictions that were not covered, following the Supreme Court’s 2013

89. Zoltan Hajnal, Najota Lajevardi, and Lindsay Nielson, “Voter Identification Laws and the Suppression of Minority Votes,” *The Journal of Politics*, April 2017, <https://www.journals.uchicago.edu/doi/abs/10.1086/688343>

90. *Shelby County v. Holder*, 570 U.S. 529 (2013)

91. *Ibid.*

92. Ben Nadler, “Voting Rights Become a Flashpoint in Georgia Governor’s Race,” *AP News*, October 9, 2018, <https://apnews.comfb011f39af3b-40518b572c8cce6e906c>

93. Eli Watkins, “Jimmy Carter Calls for Brian Kemp to Resign as GA Secretary of State,” *CNN*, October 30, 2018, <https://www.cnn.com/2018/10/29/politics/jimmy-carter-brian-kemp/index.html>

94. Michael Burke, “Federal Judge Rules against Kemp in Georgia Absentee Ballot Request,” *The Hill*, October 31, 2018, <https://thehill.com/regulation/court-battles/414117-judge-rules-against-kemp-in-absentee-ballot-request>

95. Ted Enamorado, “Georgia’s ‘Exact Match’ Law Could Potentially Harm Many Eligible Voters,” *The Washington Post*, October 20, 2018, https://www.washingtonpost.com/news/monkey-cage/wp/2018/10/20/georgias-exactmatch-law-could-disenfranchise-3031802-eligible-voters-my-research-finds/?utm_term=.7417d2fc3bf9

96. Letitia Stein, “U.S. Voting Rights Trampled in Georgia Governor’s Race: Lawsuit,” *Reuters*, November 27, 2018, <https://www.reuters.com/article/us-usa-election-georgia-idUSKCN1NW2B8>

decision in the *Shelby County* case. The median purge rate over the 2016–2018 period in jurisdictions previously subject to “pre-clearance” was 40% higher than the purge rate in jurisdictions that were not covered by Section 5 of the Voting Rights Act.⁹⁷ A survey conducted by the Election Administration and Voting Survey (EAVS) shows the vast disparity in purging rates between jurisdictions that were or were not covered by the Voting Rights Act.⁹⁸

As previously stated, polling place closures also disproportionately affect voting by racial minorities. Recent polling place consolidation in Arizona has disproportionately affected Hispanic voters, while recent closures in Georgia have disproportionately affected African American voters, according to an analysis by Reuters.⁹⁹ In a particularly blatant example of voter suppression, Dodge City, Kansas (population 27,000), informed voters less than six weeks before the 2018 election that the city’s only polling place would be moved to a new location six miles outside of downtown, and one mile from the closest bus stop. Dodge City’s population is 59% Hispanic. A lawsuit filed on behalf of several Dodge City voters asserted that the lack of additional polling places in more central locations would suppress Hispanic voters.¹⁰⁰

Polling places appear to be closing more rapidly in jurisdictions previously covered by the Voting Rights Act. The Leadership Conference on Civil and Human Rights found that the 13 states formerly covered by the Voting Rights Act have closed at least 1,688 polling places between 2012 and 2018. A total of 1,173 of those polling places were closed after the 2014 election - and after the Supreme Court issued its decision.¹⁰¹ Some areas have a

critical lack of polling locations, with more than one in five polling locations closed in Arizona and seven counties in Georgia now only having one polling place.

VOTER FRAUD: A RED HERRING

Proponents of stricter voting laws often claim restrictions are necessary to prevent voter fraud, but there is little evidence to support this assertion. President Trump has repeatedly claimed, without evidence, that widespread voter fraud was committed by his opponents in the 2016 election, asserting that “there were three to five million illegal votes cast in the 2016 election.”¹⁰² On November 27, 2016, the President tweeted: “In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally.”¹⁰³ On January 25, 2017, Trump tweeted: “I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are illegal and....even, those registered to vote who are dead (and many for a long time). Depending on results, we will strengthen up voting procedures!”¹⁰⁴ The White House produced no evidence to support these claims, which seem to have been intended to encourage regulation to suppress voting, not combat fraud.

Claims of widespread voter fraud have been made without evidence by other Republican officials. Kris Kobach, former Secretary of State of Kansas, has been outspoken campaigner against voter fraud – for example, claiming without evidence that “fraudulent votes tipped the election in Minnesota for (former Senator Al) Franken.”¹⁰⁵ In 2005, the U.S. Senate Republican

97. Ibid.

98. Brennan Center for Justice, “Hearing on Voting Rights and Election Administration in America,” October 17, 2019, <https://www.congress.gov/116/meeting/house/110060/witnesses/HHRG-116-HA08-Wstate-WaldmanM-20191017-U1.pdf>

99. John Whitesides, “Polling Places Become Battleground in U.S. Voting Rights Fight,” *Reuters*, September 16, 2016, <https://www.reuters.com/article/us-usa-election-vote-precincts-insight/polling-places-becomebattleground-in-u-s-voting-rights-fight-idUSKCN11MOWY>

100. Pierre Meilhan, Dave Alsup and Nicole Chavez, “Their Only Polling Place Was Moved Outside the City. A Lawsuit Opposed the Change, but a Judge Says It’s Too Late,” *CNN*, November 2, 2018, <https://www.cnn.com/2018/11/02/politics/kansas-dodge-city-polling-site-lawsuit/index.htm>

101. Andy Sullivan, “Southern U.S. States Have Closed 1,200 Polling Places in Recent Years: Rights Group,” *Reuters*, September 10, 2019, <https://www.reuters.com/article/us-usa-election-locations/southern-us-states-have-closed-1200-polling-places-in-recent-years-rights-group-idUSKCN1VV09J>

102. Aaron Blake, “Trump and Kobach Say Illegal Votes May Have Given Clinton The Popular Vote. The Math Disagrees,” *The Washington Post*, July 19, 2017, <http://www.washingtonpost.com/news/thefix/wp/2017/07/19/the-white-house-still-thinks-illegal-votes-may-have-given-clinton-the-popular-votebasic-logic-and-math-disagree/>

103. Ryan Struyk and Lauren Peale, “Fact-checking Trump’s Repeated Unsubstantiated Claim of Widespread Voter Fraud,” *ABC News*, May 11, 2017 <https://abcnews.go.com/Politics/fact-checking-trumps-repeatedunsubstantiated-claim-widespread-voter/story?id=45021067>

104. Tal Kopan and Ariane de Vogue, “Lawsuits Cite Trump to Challenge Voting Panel,” *CNN Politics*, July 11, 2017, <https://www.cnn.com/2017/07/10/politics/voting-panel-trump-tweets/index.html>

105. Kris W. Kobach, “Kobach: Razor-Thin Margin of Victory in Kansas Illustrates Why We Must Stop Voter Fraud,” *Breitbart*, August 21, 2018, <https://www.breitbart.com/big-government/2018/08/21/kobach-razorthin-margin-of-victory-in-kansas-illustrates-why-we-must-stop-voter-fraud/>



A study conducted by researchers at the University of California San Diego concluded that strict photo identification laws can disproportionately affect the turnout of minorities and foreign-born citizens.

Policy Committee stated in a report that “voter fraud continues to plague our nation’s federal elections, diluting and canceling out the lawful votes of the vast majority of Americans.”¹⁰⁶ The report contained no credible evidence to back up the claim.

Since 2018, there have continued to be multiple accusations of election fraud again presented without evidence. In the 2018 elections, there were allegations of fraud in Florida and Arizona made by Republican politicians. In Florida’s Senate race, Republican Rick Scott filed a lawsuit alleging “rampant fraud” in the counties that heavily favor Democrats because the counties took longer to tally the votes.¹⁰⁷ The lawsuit led to a Broward County Circuit judge ordering the Broward County Supervisor of Elections to release records requested by Scott and the National Republican Senatorial Campaign Committee related to voting tabulations. The records released did not include any evidence to support the accusations of fraud, and the Florida Department of State, which oversees elections, did not receive or observe any credible evidence of fraud or criminal activity.¹⁰⁸

In Arizona’s 2018 Senate race, the Arizona Republican Party accused the Maricopa County Recorder of “premeditated destruction of evidence” after “voting irregularities” in the election. However, no evidence of voter fraud was produced and Republican Martha McSally conceded the race to Democrat Krysten Synema. In Kentucky, Governor Matt Bevin claimed that there were a “number of significant irregularities” and “thousands of absentee ballots that were illegally counted” in the November 2019 gubernatorial election.¹⁰⁹ No evidence was produced to back up this claim and Bevin eventually conceded the race after losing a recount.¹¹⁰

Bipartisan studies have concluded that there has been little evidence of widespread voter fraud in modern American elections.

The Heritage Foundation, a conservative think tank, has compiled a nationwide database of charges of voter fraud over 37 years (from 1982 to 2019). During this period, 1,085 charges resulted in criminal convictions, an average of just 29 convictions nationally per year.¹¹¹ A 2017 national voting study by the Brennan Center for Justice, an academic policy center and think tank, concluded very few noncitizens voted in the 2016 election. Across 42 jurisdictions studied, election officials who oversaw the tabulation of 23.5 million votes referred only an estimated 30 incidents of suspected noncitizen voting for further investigation or prosecution. In other words, improper noncitizen votes accounted for 0.0001% of the 2016 votes in those jurisdictions.¹¹² Forty of the jurisdictions — all but two of the 42 studied — reported no known incidents of noncitizen voting in 2016. In the ten counties with the largest populations of noncitizens in 2016, only one reported any instances of noncitizen voting, consisting of fewer than 10 votes. In California, Virginia and New Hampshire — the states where President Trump claimed the problem of noncitizen voting was especially acute — no official identified an incident of noncitizen voting in 2016.

In 2002, the Justice Department established the Ballot Access and Voting Integrity Initiative to prosecute voter fraud. From 2002 to 2006, just 86 people across the country were convicted of ballot fraud offenses.¹¹³ Voter fraud convictions were an infinitesimal part of the overall vote of more than 110 million votes cast nationwide.

In February 2017, President Trump established the Presidential Advisory Commission on Election Integrity to investigate voter fraud in the 2016 election. The Commission found no significant evidence of voter fraud and was disbanded in January 2018 after it became the target of eight lawsuits accusing it of violating federal laws ranging from transparency to discrimination.¹¹⁴ Documents

106. Lorraine C. Minnite, “The Politics of Voter Fraud,” *Project Vote*, http://www.projectvote.org/wpcontent/uploads/2007/03/Politics_of_Voter_Fraud_Final.pdf

107. Christal Hayes, “This is Why Republicans Are Claiming Voter Fraud in Florida and Arizona,” *USA News*, November 9, 2018, <https://www.usatoday.com/story/news/politics/2018/11/09/florida-and-arizona-elections-why-republicans-claiming-voter-fraud/1947000002/>

108. German Lopez, “The Florida Voter Fraud Allegations, Explained,” *Vox*, November 12, 2018, <https://www.vox.com/policy-and-politics/2018/11/12/18084786/florida-midterm-elections-senate-governor-results-fraud>

109. Miles Parks, “Skeptics Urge Kentucky Governor to Show Proof of Voter Fraud Claims,” *MPR News*, November 10, 2019, <https://www.mprnews.org/story/2019/11/10/npr-skeptics-urge-kentucky-governor-to-show-proof-of-voter-fraud-claims>

110. Campbell Robertson, “In Kentucky, a Governor Who Picked Fights Loses a Big One,” *The New York Times*, November 15, 2019, <https://www.nytimes.com/2019/11/14/us/kentucky-governor-race-matt-bevin.html?auth=link-dismiss-googleltp>

111. “Election Fraud Cases from Across the United States,” *The Heritage Foundation*, <https://www.heritage.org/voterfraud>

112. Douglas Keith, Myrna Perez, and Christopher Farmighetti, “Noncitizen Voting: The Mission Millions,” *Brennan Center for Justice*, May 5, 2017, <https://www.brennancenter.org/our-work/research-reports/noncitizen-voting-missing-millions>

113. “Fact Sheet: Department of Justice Ballot Access and Voting Integrity Initiative,” *Department of Justice*, July 26, 2006, https://www.justice.gov/archive/opa/pr/2006/July/06_crt_468.html

114. Michael Tackett and Michael Wines, “Trump Disbands Commission on Voter Fraud,” *The New York Times*, January 20, 2018, <https://www.nytimes.com/2018/01/03/us/politics/trump-voter-fraudcommission.html>; Christopher Ingraham, “Trump’s Voter Commission is Now Facing At Least 7 Federal Lawsuits,” *The Washington Post*, July 18, 2017, <https://www.washingtonpost.com/news/wonk/wp/2017/07/18/trumps-voter-fraud-commission-is-now-facing-at-least-7-federal-lawsuits/>

released from the lawsuits, including e-mails and PowerPoint presentations from the two meetings held by the panel, contained no evidence of widespread voter fraud.^{115, 116}

A 2017 study published in the *Electoral Studies Journal* examined President Trump's accusations of voter fraud by looking closely at three states where Trump claimed such fraud took place: New Hampshire, Virginia, and California. The study found "little evidence consistent with widespread and systematic fraud, . . . no evidence of problems in the vein raised by Donald Trump, . . . [and] no suspicious patterns in result timing" that would imply a "rigged" election.¹¹⁷ The study's results were "consistent with various state-level investigations conducted in the initial months of 2017, all of which have failed to find any evidence of widespread voter fraud in the 2016 General Election."¹¹⁸

In an earlier preliminary study by *The New York Times*, 26 states and the District of Columbia reported no credible allegations of voter fraud in the 2016 election, and eight states reported only one credible allegation. The highest numbers of credible allegations were very low: Tennessee (40 allegations out of 4.3 million votes cast in the primary and general elections) and Georgia (25 allegations out of 4.1 million votes cast in the primary and general elections). There was no evidence of widespread fraud.¹¹⁹

A 2014 study published in the *Electoral Law Journal* looked for evidence of voter impersonation, the type of fraud targeted by strict voter ID laws and later cited as a basis for President Trump's short-lived Advisory Commission. The study found few reports of impersonation and concluded that "the proportion of the population reporting voter impersonation is indistinguishable

from that reporting abduction by extraterrestrials."¹²⁰ (Nor has there been significant evidence of fraud in voting by mail; see section on "Response to the Novel Coronavirus," below.) In fact, the only significant case of voter fraud in recent years has been the case of a Republican political operative accused of ballot tampering, perjury, and obstruction of justice in connection with the 2018 congressional race in North Carolina. The case is currently pending in state district court.¹²¹

Despite this consistent lack of evidence, prevention of voter fraud has long been used to justify voter suppression. For example, in 1981 in Alabama, a "re-identification" bill was passed, with the claimed justification of preventing fraud, which purged voting rolls in three mostly African American counties and required purged voters to go to the courthouse to "re-identify" themselves to reregister. This resulted in a 43% decline in African American registration in these counties.¹²² In 1986 a "ballot integrity" program was launched by the Republican National Committee (RNC) in Louisiana, Indiana and Missouri without legislative authority under a claim that dead or fictional people were casting ballots. State party officials sent mail to registered voters in heavily Democratic areas in the three states with a return address of the Ballot Integrity Group Inc, a Chicago company hired by the RNC. The Ballot Integrity Group turned over the returned letters to election officials to encourage them to purge voters from election rolls, using the returned letters as evidence that voters no longer resided at their listed addresses.¹²³ Democrats filed a lawsuit, which turned up a memo that described the program's goal: "I would guess that this program will eliminate at least 60-80,000 folks from the rolls," one GOP operative wrote. "If it's a close race, which I'm assuming it is, this could keep the black vote

115. "What's remarkable about the documents," said Matthew Dunlop, a Democratic former member of the commission, "is what's not in there, and what's not in there is any substantiated evidence of voter misconduct at any scale. In fact, one of the troubling things about the documents that we saw was that before we were even really meeting, commission staff were working on a framework of a report. And several sections of report talk about voter fraud, and those sections are completely blank. They didn't insert any information whatsoever. So that's why we've been saying that, even though the idea was to investigate voter fraud, it is pretty clear that the purpose of the commission was to actually affirm and validate the president's claims whether or not we had any evidence of any such voter misconduct." (Matthew Dunlop, "Member of Disbanded Trump Voter Fraud Commission Speaks Out," *NPR*, August 4, 2018, <https://www.npr.org/2018/08/04/635668304/member-of-disbanded-trumpvoter-fraud-commission-speaks-out>)

116. "PACEI Docs Page", *Maine Secretary of State*, <http://paceidocs.sosonline.org/>

117. David Cottrell, Michael Herron, and Sean Westwood, "An Exploration of Donald Trump's Allegations of Massive Voter Fraud in the 2016 General Election," *Electoral Studies* 51 (2018): 124.

118. Cottrell, Herron, and Westwood, 138.

119. Michael Wines, "All This Talk of Voter Fraud? Across U.S., Officials Found Next to None," *The New York Times*, December 22, 2017., <https://www.nytimes.com/2016/12/18/us/voter-fraud.html>

120. John S. Ahlquist, Kenneth R. Mayer, and Simon Jackman, "Alien Abduction and Voter Impersonation in the 2012 U.S. General Election: Evidence from a Survey List Experiment," *Election Law Journal: Rules, Politics, and Policy*, August 27, 2014, <https://doi.org/10.1089/elj.2013.0231>.

121. Richard Gonzales, "North Carolina GOP Operative Faces New Felony Charges That Allege Ballot Fraud," *NPR*, July 30, 2019, <https://www.npr.org/2019/07/30/746800630/north-carolina-gop-operative-faces-new-felony-charges-that-allege-ballot-fraud>; Carli Brosseau, Josh Shaffer, Dane Kane, Will Doran, "Bladen County Political Operative Faces New Perjury, Obstruction of Justice Charges," *The News & Observer*, July 30, 2019, <https://www.newsobserver.com/news/politics-government/article233308957.html>

122. Anderson, Carol. *One Person, No Vote: How Voter Suppression is Destroying Our Democracy*, 29. New York, NY: Bloomsbury Publishing, 2018.

123. Thomas Edsall, "'Ballot Security' Effects Calculated," *The Washington Post*, October 25, 1986, https://www.washingtonpost.com/archive/politics/1986/10/25/ballot-security-effects-calculated/ed2bcf92-b3ee-4b6c-96ce-cd18ea471727/?utm_term=.668f49e893c9

down considerably.”¹²⁴

RESTORING THE RIGHT TO VOTE

Despite the success of voter restrictions and regulation in suppressing the vote between 2008 and 2018, a sustained counter-campaign to restore the right to vote helped produce a record-breaking turnout in the 2018 midterm elections. More than 122 million people voted in the 2018 elections, the highest in a midterm election in forty years. The year 2018 also marked the first time since 1982 that the voter turnout rate in a midterm election surpassed 50%. This was a stark reversal from the previous midterm year when turnout had decreased – from 45.5% in 2010 to 41.9% in 2014.¹²⁵ All major racial minorities had an increased turnout. Hispanic, Asian, and African American voters increased their turnout rates by over 10 percentage points over the last midterm election 2014.¹²⁶ The record midterm turnout was also fueled by higher participation by young people and minorities. 40.3% turnout among the 10 million students tracked by Tufts University’s Institute for Democracy & Higher Education was more than double the youth participation rate in the 2014 midterms.¹²⁷

Although a wide variety of voting restrictions have been implemented since 2010, grassroots legislative efforts and federal court challenges have pushed back against voter suppression and succeeded in enacting new voting reform laws to implement automatic voter registration, same-day voter registration, pre-registration, online registration, vote-at-home, no-excuse absentee voting, ex-felon voting rights restoration, and early voting. In January 2019 legislation was introduced in Congress seeking to incorporate many of these reforms at the federal level; while it passed the House last December, it has not been taken up by the Senate.¹²⁸ And notably, in 2019, the Washington Voting Rights Act was signed into law by Washington state Governor Jay Inslee, which established an easier process for cities, counties

and school districts to switch from at-large, city-wide elections to district elections, allowing for more representation in areas with minorities.¹²⁹ This measure enabled candidates to better reflect the demographic, ethnic and economic make-up of their neighborhoods. Some laws passed in recent years to expand voting include the following:

AUTOMATIC VOTER REGISTRATION (AVR)¹³⁰ is one of the most effective ways that states can increase voter participation. By automatically registering eligible voters when they interact with government agencies, AVR streamlines the voter registration process and removes barriers to registration. Since 2013, 16 states and the District of Columbia have implemented Automatic Voter Registration (AVR). These include Alaska, California, Colorado, Connecticut, DC, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, Nevada, Oregon, Rhode Island, Vermont, Virginia, Washington, and West Virginia. This makes voter registration “opt-out” instead of “opt-in”—eligible citizens who interact with government agencies for any reason are automatically registered to vote or have their existing registration information updated, unless they affirmatively decline.¹³¹

TRANSPARENCY IN VOTER ROLL PURGES. In September 2019, Ohio released a list of 235,000 names to the public that were proposed to be purged from the voter rolls before the purging actually took place.¹³² Voters could check their registration status online, and voting rights organizations were able to cross-check the list with their own records. It was found that 20% of the people on the list should not have been at risk of purging. Making these records transparent allowed people the chance to check their registration, and prevent themselves from being wrongly removed from the rolls.

RESTORATION OF VOTING RIGHTS FOR EX-FELONS. Since 2010, nine states have taken major steps to restore the voting rights of former felons. In 2016, Virginia Governor Terry McAuliffe announced that he would restore voting rights for ex-

124. Heather Cox Richardson, “Voter Fraud is a Myth That Helps Republicans Win, Even When Their Policies Aren’t Popular,” *The Boston Globe*, October 23, 2018, <https://www.bostonglobe.com/ideas/2018/10/23/voter-fraud-myth-helps-republicans-win-even-when-their-policies-aren-popular/dqYDx92NkJ1Ia4nvX2LuiK/story.html>

125. Jens Manuel Krogstad, Luis Noe-Bustamante, and Antonio Flores, “Historic Highs in 2018 Voter Turnout Extended Across Racial and Ethnic Groups,” *Pew Research Center*, May 1, 2019, <https://www.pewresearch.org/fact-tank/2019/05/01/historic-highs-in-2018-voter-turnout-extended-across-racial-and-ethnic-groups/>

126. Ibid

127. Nancy Thomas, Adam Gismondi, Prabhat Gautam, and David Brinker, *Democracy Counts 2018: Increased Student and Institutional Engagement*, *Institute for Democracy and Higher Education*, <https://idhe.tufts.edu/sites/default/files/DemocracyCounts2018.pdf>

128. H.R. 1 (116th Congress). <https://www.congress.gov/bill/116th-congress/house-bill/4/text>

129. “Washington Senate passes Voting Rights Act,” *The Seattle Times*, January 19, 2018, <https://www.seattletimes.com/seattle-news/politics/washington-senate-passes-voting-rights-act/>

130. “History of AVR & Implementation Dates,” *Brennan Center for Justice*, November 7, 2018, <https://www.brennancenter.org/analysis/history-avr-implementation-dates>

131. Ibid; “Automatic Voter Registration,” *National Conference of State Legislatures*, February 6, 2019, <http://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx>

132. Nicholas Casey, “Ohio Was Set to Purge 235,000 Voters. It Was Wrong About 20%,” *The New York Times*, October 14, 2019, <https://www.nytimes.com/2019/10/14/us/politics/ohio-voter-purge.html>

felons with completed sentences on an individual basis every month after the Virginia Supreme Court struck down his earlier executive order that provided blanket voting rights restoration to ex-felons with completed sentences. To date, Virginia has restored voting rights to over 170,000 people with felony convictions.¹³³ In 2016, Maryland restored voting rights of 40,000 ex-felons by legislation (immediate restoration after prison release).¹³⁴ In 2017, Wyoming eased the process for ex-felons who had been convicted of non-violent crimes to restore voting rights after completing probation and other requirements mandated by their sentence.¹³⁵ In 2013, Delaware passed a constitutional amendment to expand opportunities for ex-felons to regain their voting rights. In 2018, New York Governor Andrew Cuomo announced a plan to restore voting rights to 35,000 New Yorkers on parole.¹³⁶ In 2019, Colorado enacted legislation giving voting rights to individuals on parole, and Nevada enacted a bill to restore the right to vote to anyone convicted of felonies upon release from prison.¹³⁷ Kentucky's newly elected Democratic governor, Andy Beshear, signed an executive order on December 12, 2019 restoring the vote and the right to hold public office to more than 140,000 residents who had completed sentences for nonviolent felonies.¹³⁸ In 2020, New Jersey implemented the restoration of all voting rights to people who are on parole or probation.¹³⁹

ONLINE VOTER REGISTRATION. Over the last decade the registration process has been simplified in many states through legislative or administrative action permitting voters to register online. Since 2010, 40 states and the District of Columbia have authorized online registration, including: Alabama, Alaska, Arizona, California, Colorado, Connecticut, DC, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.¹⁴⁰

ABSENTEE BALLOTS. Most states have adopted a permissive approach toward absentee ballots. Currently, 37 states and the District of Columbia allow voters to cast an absentee ballot for any reason.¹⁴¹ Since 2010, nine states have liberalized their laws on filing absentee ballots. In 2014 Mississippi expanded absentee voting for deployed emergency response providers, Oklahoma expanded absentee voting for people living on tribal lands, and South Carolina expanded absentee voting options for military voters and their families.¹⁴² In 2017 Florida, Kansas, New Jersey, Tennessee, and Utah expanded absentee voting opportunities,¹⁴³ and in 2018 Michigan adopted no-excuse absentee voting.¹⁴⁴

133. "Voting Rights Restoration Efforts in Virginia," Brennan Center for Justice, April 20, 2018, <https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-virginia>; Vann Newkirk II, "How Letting Felons Vote is Changing Virginia," *The Atlantic*, January 8, 2018, <https://www.theatlantic.com/politics/archive/2018/01/virginia-clemency-restoration-of-rights/campaigns/549830/>

134. "Voting Laws Roundup 2016," *Brennan Center for Justice*, April 18, 2016, <http://www.brennancenter.org/analysis/voting-laws-roundup-2016>

135. Ruth Kimata, "As of This Month Former Wyoming Felons Will Have the Right To Vote," *KGWN*, July 21, 2017, <https://www.kgwn.tv/content/news/Former-Wyoming-felons-will-have-the-right-to-vote--435839693.html>

136. Vivian Wang, "Cuomo Plans to Restore Voting Rights to Paroled Felons," *The New York Times*, April 18, 2018, <https://www.nytimes.com/2018/04/18/nyregion/felons-pardon-voting-rights-cuomo.html>

137. "Felon Voting Rights," *National Conference of State Legislatures*, October 14, 2019, <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>

138. Michael Wines, "Kentucky Gives Voting Rights to Some 140,000 Former Felons," *The New York Times*, December 12, 2019, <https://www.nytimes.com/2019/12/12/us/kentucky-felons-voting-rights.html>

139. Reid Wilson, "New Jersey governor signs voting rights restoration bill," *The Hill*, December 18, 2019, <https://thehill.com/homenews/state-watch/475101-new-jersey-governor-signs-voting-rights-restoration-bill>

140. "Online Voter Registration," *National Conference of State Legislatures*, <https://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>

141. "Absentee and Early Voting," *National Conference of State Legislatures*, January 25, 2019, <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>

142. "States That Expanded Voting Since the 2012 Election," *Brennan Center for Justice*, May 9, 2016, <http://www.brennancenter.org/states-expanded-voting-2013-and-2014>

143. "Voting Laws Roundup 2017," *Brennan Center for Justice*, May 10, 2017, <https://www.brennancenter.org/analysis/voting-laws-roundup-2017>

144. "Michigan Proposal 3, Voting Policies in State Constitution Initiative (2018)," *Ballotpedia*, [https://ballotpedia.org/Michigan_Proposal_3_Voting_Policies_in_State_Constitution_Initiative_\(2018\)](https://ballotpedia.org/Michigan_Proposal_3_Voting_Policies_in_State_Constitution_Initiative_(2018))

SAME-DAY REGISTRATION.¹⁴⁵ Same-day registration allows voters to re-register or update their registration at the voting polls.¹⁴⁶ According to the National Conference of State Legislatures, it has increased voter turnout by between 3% and 7% in states that have adopted it. As of June 30, 2019, a total of 21 states and the District of Columbia enacted same-day voter registration, including California, Colorado, Connecticut, DC, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Utah, Vermont, Washington, Wisconsin, and Wyoming.

EARLY VOTING.¹⁴⁷ Currently, 39 states and the District of Columbia now permit voters to cast ballots for a period of days or even weeks before an election. States that have recently adopted or expanded early voting in recent years include: Delaware, Florida, Illinois, Maryland, Massachusetts, Michigan, New York, Utah, Virginia.^{148, 149}

PRE-REGISTRATION. In order to encourage youth voting, six states since 2013 have adopted procedures allowing 16- and 17-year-old citizens to pre-register so that they are immediately eligible to vote when they turn 18, including: California (2014), Colorado (2013), Louisiana (2014), Massachusetts (2014), Utah (2017), and Washington (2018). This brings the number of states allowing preregistration at age 16 to thirteen.¹⁵⁰

RANKED-CHOICE VOTING (RCV) is a potential means of broadening representation and reducing polarization. By having voters rank candidates in order of their preferences and elect the candidate with the highest number of total preferences, RCV can broaden representation and reduce polarization. RCV

replaces elections where the winning candidate may receive only a plurality of votes (and be opposed by a majority of voters) with elections where the winning candidate receives a majority of voting preferences. 19 jurisdictions, 18 cities and the state of Maine have adopted RCV as of July 2020.¹⁵¹ The state of Maine adopted rank choice voting in 2016 and first used it in 2018 for all state and federal primary elections and all Congressional general elections.

LITIGATION has been successfully used to push back against state legislative and administrative efforts to restrict voting rights. Major court victories were recorded in six states in 2018.¹⁵² In Arizona, a settlement was reached on a lawsuit challenging the state's requirement that voters show documentary proof of citizenship. While Arizona will continue to require proof of citizenship to vote in state and local elections, it agreed to ease the process by automatically searching state records for documentation of citizenship for any voter who registers using either the state or federal form. In Florida, a federal district court stopped the Secretary of State from eliminating early voting on college campuses. In Indiana, a federal district court blocked the state from implementing a voter purge law that would have used the unreliable "cross-check" program to eliminate voters from voting rolls. In Iowa, a county district court blocked some provisions of a law limiting early and absentee voting, stating that it "substantially and directly interferes with Iowans' constitutional rights to vote."¹⁵³ In Kansas, a federal district court struck down a documentary proof of citizenship law estimated to have blocked more than 35,000 voters from registering. Finally, in Michigan, a federal district court overturned a ban on straight-ticket voting after determining that it had been passed with the intent to

145. "Same Day Voter Registration," *National Conference of State Legislatures*, January 25, 2019, <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>

146. George Pillsbury and Miles Rapoport, "Not a Typo: States Made 2019 a Historic Year for Election Reform," *The American Prospect*, January 14, 2020, <https://prospect.org/civil-rights/states-made-2019-a-historic-year-for-election-reform/>

147. "Absentee and Early Voting," *National Conference of State Legislatures*, January 25, 2019, <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>

148. "Voting Laws Roundup 2013," *Brennan Center for Justice*, December 19, 2013, <http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup#expansive>; States That Expanded Voting Since the 2012 Election, *Brennan Center for Justice*, May 2016, https://www.brennancenter.org/sites/default/files/legal-work/Expansive_Appendix_Post-2012.pdf

149. Rebecca Klar, "Virginia Governor Signs Legislation Dropping Voting Restrictions," *The Hill*, April 13, 2020, <https://thehill.com/homenews/state-watch/492462-virginia-governor-signs-legislation-dropping-voting-restrictions>

150. "Preregistration for Young Voters," *National Conference of State Legislatures*, March 28, 2018, <http://www.ncsl.org/research/elections-and-campaigns/preregistration-for-young-voters.aspx>

151. "Ranked Choice Voting 101," *FairVote*, <https://www.fairvote.org/rcv>

152. Max Feldman and Wendy R. Weiser, "The State of Voting 2018 - Updated," *Brennan Center for Justice*, August 3, 2018, <https://www.brennancenter.org/blog/state-voting-2018-updated>

153. Stephen Gruber-Miller, "Iowa Voter ID Law: Judge Tells State to Undo Some Early Voting Restrictions for 2018 Election," *Des Moines Register*, July 25, 2018, <https://www.desmoinesregister.com/story/news/crime-and-courts/2018/07/25/iowa-voter-id-law-paul-pate-judge-issues-injunction-early-voting-absentee-ballot-signature-matching/836202002/>

discriminate against African Americans.¹⁵⁴

Earlier successful litigation against voter suppression is summarized in the following chart:¹⁵⁵

State	Year of Ruling	Law Blocked/ Mitigated	Outcome
Alabama, Georgia, Kansas	2016	Documentary proof of citizenship for registration	Blocked for use on federal voter registration form
Georgia	2016	"No match, no vote" purge practice	State agreed to suspend the practice before a hearing was held. New "no match, no vote" bill subsequently enacted in 2017.
Kansas	2014, 2016	Documentary proof of citizenship for registration	Documentation requirement for the DMV voter registration form, the state voter registration form (challenged in state court), and the federal registration form all blocked.
North Carolina	2016	Single legislative package of restrictions: strict voter ID; cutbacks to early voting; elimination of same-day registration, preregistration, and out-of-precinct voting	Struck down
Texas	2012, 2016	Strict voter ID	Struck down, both before and after the <i>Shelby</i> ruling. Legislature subsequently passed an amended voter ID law in 2017.
Wisconsin	2016	Strict voter ID; early voting, residency, absentee ballot distribution, and student voting restrictions	Process for obtaining free voter ID modified and restrictions on use of certain types of ID struck down. Other challenged restrictions struck down.
Arizona	2013, 2014	Documentary proof of citizenship for registration	Blocked for state and federal voter registration form.
Arkansas	2014	Voter ID	Struck down by state court. New voter ID law subsequently enacted in 2017.
Pennsylvania	2014	Strict voter ID	Struck down by state court.
Florida	2006, 2007, 2008, 2012	Cutbacks to early voting; restrictions on voter registration drives; restrictions on processing voter registration forms	Cutbacks to early voting struck down in part. Restrictions on registration drives and form processing blocked.
South Carolina	2012	Voter ID	Blocked for 2012 election, and most harmful effects mitigated for future elections
Georgia	2005, 2006	Strict voter ID	Blocked for 2006 elections by state and federal courts, but an amended version of the law was subsequently upheld
Missouri	2006	Strict voter ID	Struck down by state court
Ohio	2006	Documentary proof of citizenship for naturalized citizens at the polls	Struck down

154. In its opinion, "the Court finds that eliminating the Democratic Party's success with straight-ticket voters—success especially driven by African-Americans residing in communities with high voting age African-American populations—was a motivating consideration in the Michigan Legislature's enactment of PA 268. The goal of ending the Democratic Party's success with straight-ticket voters, therefore, was achieved at the expense of African-Americans' access to the ballot. The historical background of PA 268 suggests that the Michigan Legislature harbored a discriminatory intent or purpose. The overwhelming majority of African American voters in Michigan staunchly support the Democratic Party...What is more, in 2016, in communities where African-Americans constituted 40% or more of the voting-age population, 94.8% of straight-ticket votes were for the Democratic Party...Michigan legislators recognized these facts in passing PA 268 and were not just motivated by policy concerns in enacting the law." (Wendy Weiser and Max Feldman, "The State of Voting 2018," *Brennan Center for Justice*, June 5, 2018, <https://www.brennancenter.org/our-work/research-reports/state-voting-2018>)

155. *Ibid.*

RESPONSE TO THE NOVEL CORONAVIRUS

COVID-19 has brought unprecedented disruptions to many areas of Americans' lives, including voting. Recommendations for social distancing, including prohibitions on gathering in large groups and standing within six feet of one another have made it difficult—even potentially life-threatening—for people to go to the polls to vote in-person. This is particularly the case for older Americans and those with pre-existing medical conditions, who have been put in the difficult position of having to choose between their health and their right to vote.

These concerns have led many officials and voting rights organizations to advocate for universal voting by mail, in order to allow people to vote without leaving the safety of their own homes. In May 2020, Democratic Senators Amy Klobuchar of Minnesota and Ron Wyden of Oregon introduced the National Disaster and Emergency Ballot Act of 2020 which would guarantee every voter a secure mail-in paper ballot, expand early voting to allow for people who must vote in-person due to disability while also reducing potential waiting lines, and help states cover the cost of printing, self-sealing envelopes, ballot tracking and postage.¹⁵⁶ Senate Rules Committee chairman, Republican Senator Roy Blunt, however, blocked an attempt to pass the bill by unanimous consent, citing concerns over limiting state and local control over elections.¹⁵⁷

Moving to universal voting by mail would present some challenges that would have to be addressed by the federal government.¹⁵⁸ There are more than nine thousand voting districts in the country,

with varying rules and regulations. Some of these jurisdictions would require an act of the state legislature to allow no-excuse absentee voting, and others would require a constitutional amendment. Election officials would need time and training in order to adapt.¹⁵⁹ Voting by mail also runs the risk of having a disparate effect on some populations. In some cases, clerks have disproportionately challenged the authenticity of signatures on mail-in ballots cast by people of color and younger voters. In 2018, for example, a report by the American Civil Liberties Union found younger and minority voters in Florida were twice as likely to have their votes rejected in the previous two presidential elections.¹⁶⁰ Also, mail delivery is not uniform across the nation. Native Americans on reservations may in particular have difficulty with all-mail elections since they often do not have street addresses, and their P.O. boxes may be shared.¹⁶¹

Regardless of these logistical challenges, Several states already conduct all elections entirely by mail, including Colorado, Hawaii, Oregon, Utah, and Washington.¹⁶² In response to COVID-19, Alaska and Wyoming also switched to voting entirely by mail in their respective Democratic primaries.¹⁶³ Additionally, thirty states allow voters to request an absentee ballot without having to provide an excuse.¹⁶⁴

The GOP has challenged efforts to expand voting by mail in response to the coronavirus pandemic, citing fraud and partisan concerns.¹⁶⁵ President Trump has repeatedly attacked universal mail-in voting, saying for example, "It's much easier for them to

156. Amy Klobuchar and Ron Wyden, "Here's How to Guarantee Coronavirus Won't Disrupt Our Elections," *The Washington Post*, March 16, 2020, <https://www.washingtonpost.com/opinions/2020/03/16/heres-how-guarantee-coronavirus-wont-disrupt-our-elections/>

157. Maggie Miller, "GOP Senator Blocks Bill To Boost Mail-In and Early Voting During Pandemic," *The Hill*, <https://thehill.com/policy/cybersecurity/504171-gop-senator-blocks-bill-to-boost-mail-in-and-early-voting-during>

158. Sue Halpern, "Voting in the Time of the Coronavirus," *The New Yorker*, March 20, 2020, <https://www.newyorker.com/news/campaign-chronicles/voting-in-the-time-of-coronavirus-social-distancing>

159. Amy Gardner and Isaac Stanley-Becker, "Mail Voting Could Secure the November Election. But Can Election Officials Make it Happen in Time?" *The Washington Post*, March 20, 2020, https://www.washingtonpost.com/politics/mail-voting-could-secure-the-november-election-but-can-election-officials-make-it-happen-in-time/2020/03/20/9fedc2ea-69f1-11ea-b313-df458622c2cc_story.html

160. Sue Halpern, "Voting in the Time of Coronavirus," *The New Yorker*, March 20, 2020, <https://www.newyorker.com/news/campaign-chronicles/voting-in-the-time-of-coronavirus-social-distancing>; "Vote-By-Mail Ballots Cast in Florida," ACLU Florida, September 19, 2018, <https://www.aclufl.org/en/publications/vote-mail-ballots-cast-florida>

161. "All-Mail Elections (aka Vote-By-Mail)," *National Conference of State Legislatures*, March 24, 2020, <https://www.ncsl.org/research/elections-and-campaigns/all-mail-elections.aspx>

162. Ibid.

163. Nick Corasaniti and Stephanie Saul, "15 States Have Postponed Their Primaries Because of Coronavirus. Here's a List.," *The New York Times*, April 7, 2020, <https://www.nytimes.com/article/2020-campaign-primary-calendar-coronavirus.html>

164. Sue Halpern, "Voting in the Time of the Coronavirus," *The New Yorker*, March 20, 2020, <https://www.newyorker.com/news/campaign-chronicles/voting-in-the-time-of-coronavirus-social-distancing>

165. Elise Viebeck, Amy Gardner and Michael Scherer, "Trump, GOP Challenge Efforts To Make Voting Easier Amid Coronavirus Pandemic," *The Washington Post*, April 4, 2020, https://www.washingtonpost.com/politics/trump-gop-challenge-efforts-to-make-voting-easier-amid-coronavirus-pandemic/2020/04/04/61f889fe-75bb-11ea-87da-77a8136c1a6d_story.html



Sending Mail-in Ballot, 2020 | Shebley CL

forge ballots and send them in, it's much easier for them to cheat with universal mail-in ballots." At the same time, however, he has supported absentee voting, which is essentially the same thing as mail-in voting and follows the same processes. The states that conduct mail-in voting have implemented extensive verification systems to prevent fraud, and there has been no evidence that mail-in voting has led to fraud any more than in-person voting. Highlighting the partisan motivation behind such attacks, President Trump has declared that mail-in voting in Florida—a must-win state for Republicans, which voted to elect Trump in 2016—is "safe and secure," while decrying mail-in voting in states such as Nevada, which voted for Trump's opponent in the last election.¹⁶⁶

However, there is no conclusive evidence that universal voting by mail would benefit a certain political party. Studies of all-mail elections in Colorado in 2014 and Utah in 2016 found that both states saw overall turnout increase, especially among voters who are considered least likely to participate in elections, but no political party had a consistent advantage over the other.¹⁶⁷ Moreover, historically voting by mail was seen as especially helpful to older people and rural voters, who are more likely to vote Republican. Additionally, some key groups of the Democratic base may be negatively impacted by universal voting by mail; Black and Latino voters, for example are 5% less likely to favor it than

white voters.¹⁶⁸ And younger people and lower-income people tend to be more transient or less likely to have a mailing address on file. Therefore, there is no evidence that voting by mail would give Democrats a political advantage in elections.

An example of the urgent need for being able to vote from home is the Wisconsin Democratic primary. On April 7, 2020, the state held its primary election in person after the Republican-led state legislature blocked efforts by the Democratic legislators and governor Tony Evers to postpone voting and extend the deadline for absentee voting. The Supreme Court decided on April 6, 2020 along ideological lines that a federal judge is not entitled to change a state's absentee-voting procedures just days before an election.¹⁶⁹ In dissent, Justice Ruth Bader Ginsburg wrote that "the court's order, I fear, will result in massive disenfranchisement."¹⁷⁰ On voting day, in Milwaukee, just five of 180 polling sites remained open. Voters who had not already cast absentee ballots — an overwhelmingly black and Hispanic population — waited in lines for hours to vote in-person, and many people said that their absentee ballots never arrived.¹⁷¹ This case in Wisconsin highlights the urgent need for states and the federal government to develop plans for people to be able to vote from home.

166. Hope Yen, "AP Fact Check: Trump Misleads on Mail Ballots, Virus Vaccine," *Associated Press*, August 8, 2020, <https://apnews.com/c751ee2efb2b84d66c56ff4109db9751>

167. Reid J. Epstein and Stephanie Saul, "Does Vote-by-Mail Favor Democrats? No. It's a False Argument by Trump," *The New York Times*, April 10, 2020, <https://www.nytimes.com/2020/04/10/us/politics/vote-by-mail.html?referringSource=articleShare>.

168. *Ibid.*

169. Adam Liptak, "Supreme Court Blocks Extended Voting in Wisconsin," *The New York Times*, April 6, 2020, <https://www.nytimes.com/2020/04/06/us/politics/supreme-court-voting-wisconsin-virus.html?action=click&module=RelatedLinks&pgtype=Article>

170. *Ibid.*

171. "Wisconsin Primary Recap: Voters Forced to Choose Between Their Health and Their Civic Duty," *The New York Times*, April 7, 2020, <https://www.nytimes.com/2020/04/07/us/politics/wisconsin-primary-election.html>

about their opinions on electoral candidates.

POLICY RECOMMENDATIONS

RENEWING RIGHTS AND RESPONSIBILITIES:

- **RESTORE THE VOTING RIGHTS ACT.** Enact safeguards against voter regulations that have racially discriminatory impact by reinstating federal government oversight of state or local jurisdictions with a recent or previous history of racial discrimination. These jurisdictions should not be permitted to change their electoral regulations without prior federal approval.
- **IMPROVE ACCESS TO VOTER REGISTRATION.** Pass state or federal laws to implement same-day registration and universal automatic voter registration. Ensure adequate funding and training for citizen-facing government agencies to include voter registration in the course of their regular processes. States should also pass registration to pre-register 16- and 17-years-olds to vote.
- **ELIMINATE OR SIMPLIFY VOTER ID LAWS.** 15 states do not require voter identification and none of these states have experienced widespread voter fraud. If states do not want to remove ID requirements altogether, they should standardize issuance of state ID cards to ensure that all eligible voters have an acceptable form of ID. For example, states could issue a state ID card to all residents when they turn 18.
- **AUTHORIZE UNIVERSAL VOTING BY MAIL OR IN PERSON.** 37 states and the District of Columbia have already implemented early voting and all-purpose absentee voting by mail, which allows any voter to request an absentee ballot for any reason. States that have not already done so should adopt all-purpose absentee voting and expand early voting periods to at least two weeks before an election. States can also ease access to voting by allowing voters to register at the same time they vote, a practice currently in place in ten states and the District of Columbia.
- **PREVENT AUTOMATIC VOTER ROLL PURGES:** States should enact legislation to prevent the automatic purging of voters from state voter rolls. Removing a voter from the rolls should require a transparent procedure and specific evidence showing that the voter is ineligible, and an opportunity for the voter to contest the evidence and proposed removal.
- **RESTORE VOTING RIGHTS FOR CITIZENS WITH FELONY CONVICTIONS:** Federal and state voting rights should be restored to citizens with felony convictions immediately and automatically upon their release from prison, and voting rights should be restored to convicted felons previously released and living in the community.
- **IMPLEMENT RANKED-CHOICE VOTING:** RCV increases the representation of voters' interests and reduces polarization. Currently, 18 cities and the state of Maine have RCV, and more jurisdictions should consider changing their voting system to allow voters to express more information
- **PREVENT PARTISAN GERRYMANDERING.** States should establish independent redistricting commissions to determine the boundaries of congressional districts. Several models have been tried in different states in recent years. While there is no single best model, the Brennan Center for Justice has identified a set of best practices to ensure that redistricting commissions remain impartial and effective, including the following: Select commission members from a pool of citizen applicants, include nine to fifteen members on the commission representing geographic and demographic diversity of the state, establish clear rules and priorities for redistricting before beginning the map-drawing process, hold public hearings on the proposed redistricting map before finalizing it, criteria should include equality of district populations, protection against minority vote dilution, geographical contiguity and compactness, a final map should be approved through a consensus mechanism that incentivizes compromise.
- **REINFORCE THE RESPONSIBILITY TO VOTE AND MAKE ELECTION DAY A NATIONAL HOLIDAY.** Voting participation should be made an explicit responsibility of citizenship. Election day should be moved to Veterans Day to honor citizens who have served their country and increase voter participation by providing for voting in person to be on a national paid holiday and voting by mail to be universally authorized.
- **AMEND THE CONSTITUTION TO ABOLISH THE ELECTORAL COLLEGE.** The Electoral College undermines core democratic values by treating votes unequally, giving them more or less weight based on where voters live, encouraging presidential candidates to focus on a handful of swing states, and potentially enabling a candidate who loses the popular vote to win the presidency.

Reimagining Rights & Responsibilities in the United States

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