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## Voting Laws

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The right to vote is an essential principle of representative democracy. Despite its fundamental importance, the right to vote, sometimes referred to as the *franchise*, was historically restricted to certain populations in the United States and continues to face threats in the first decades of the twenty-first century. Voting laws are determined at both the federal and state level, with state voting laws subject to federal oversight to ensure voters can exercise their right freely.

In 2013, the Supreme Court ruled to suspend some of the federal government's authority over state voting laws. The contentious 2020 national elections further compounded concerns about voting rights, as President Donald Trump and his supporters promoted false claims about voter fraud and election malfeasance before and after his loss to Joe Biden. Lawmakers in several states have used the fear and uncertainty caused by these claims to advance bills that critics contend target specific groups of voters and would result in lower voter participation.

Main Ideas

- Constitutional amendments and congressional legislation define and protect the voting rights of US citizens.
- Though states are required to follow federal mandates related to voter registration and the voting process, state laws directly affect the registration process and determine the ballot options.
- Voter turnout rates vary greatly depending on the election. Nearly 70 percent of eligible voters participated in the 2020 presidential election, a substantial increase over the 2016 election. More than 52 percent of eligible voters participated in the 2022 midterm elections.
- Allegations of voter fraud have led several states to require registered voters to produce photo IDs to cast their ballots. Studies reveal that voter fraud is an extremely rare occurrence in the United States.
- Researchers have determined that closing large numbers of polling stations, mandating photo IDs, and purging voter rolls disproportionately affect Black communities.
- Following Republican president Donald Trump's defeat in the 2020 election and his unsubstantiated claims of widespread voter fraud, Republican lawmakers in many states began introducing laws that critics characterized as attacks on voting rights.
- Congressional lawmakers have introduced legislation to strengthen national voting protections and reassert federal oversight of local voting laws. As of December 2023, such legislation has failed to receive support in the US Senate.

## Background

Article 1 of the US Constitution grants states the responsibility of overseeing elections. The right of individuals to vote first appears in the US Constitution in the Fourteenth Amendment, adopted in 1868. The amendment charges that any state that denies the right to vote to any male citizens of at least twenty-one years of age, except for participation in "rebellion, or other crime," will lose their proportional representation in the US Congress.

In 1870 Congress ratified the Fifteenth Amendment, which made it illegal to restrict a citizen's right to vote based on their race, color, or "previous condition of servitude." This amendment was intended to give formerly enslaved men the right to vote as full US citizens. However, because state governments oversee elections, many Southern states enacted laws that discouraged or blocked Black citizens from voting in the decades following the amendment's ratification. Nearly fifty years later, in 1920, the Nineteenth Amendment declared that the right to vote could not be restricted because of a person's sex. In 1971 the Twenty-Sixth Amendment lowered the voting age from twenty-one to eighteen.

The Voting Rights Act (VRA) of 1965 enforced the Fifteenth Amendment by banning the use of voting restrictions designed to disenfranchise Black voters. These included so-called literacy tests, which were deliberately unanswerable tests given by white poll workers. The VRA also required certain jurisdictions with a history of discriminatory voting practices to obtain clearance from the federal government before changing any voting laws. In 2013, however, the Supreme Court ruled in *Shelby County v. Holder* that the federal government could not continue to enforce this requirement unless Congress updated the criteria. According to the Brennan Center for Justice, nearly one hundred laws that created obstacles and reduced voter access were passed in twenty-nine states in the decade following the ruling. These laws have disproportionately affected voters of color.

Since 2017 several pieces of legislation have been introduced to the House of Representatives to strengthen voting protections, notably the Voting Rights Advancement Act and the For the People Act. The legislation has repeatedly failed to garner support in the Senate. In 2023 lawmakers reintroduced the legislation, renamed the John Lewis Voting Rights Advancement Act and Freedom to Vote Act. As of December 2023, neither bill had received a vote in the Senate.

## Voter Registration and Turnout

According to the US Census Bureau, 68.8 percent of the voting-eligible population cast ballots during the 2020 presidential election, an increase from 61.4 percent during the 2016 presidential election. Between these presidential elections, activists from across the political spectrum sought to increase voter registrations. Exit polls in 2020 indicated that about 13 percent of voters were doing so for the first time. Increased voter participation also occurred in midterm elections with 53.4 percent of voters participating in 2018 and 52.2 percent in 2022, compared to 41.9 percent in 2014. Each state decides its own laws about who can vote and how and when they may register and vote. Rates of registration and voting are directly correlated. Some states have sought to make registration easier, while others have maintained barriers that can deter registration.

To encourage voter registration in federal elections, Congress enacted the National Voter Registration Act (NVRA) of 1993. Commonly referred to as the "Motor Voter Act," the NVRA requires states to give residents the opportunity to register to vote in federal elections when they apply for their drivers' licenses or renewal. The act mandates states to offer voter registration at offices that provide public assistance and programs for people with disabilities and enables citizens to mail in their voter registration at least thirty days before an election. Six states were exempt from the NVRA because they offered Election Day registration for federal elections or did not have a voter registration requirement at the time the NVRA was enacted.

Some states have sought to remove barriers to registering and voting. Same-day voter registration was available in twenty-two states and the District of Columbia (DC) as of December 2023. The National Conference of State Legislators (NCSL) reports that same-day registration can result in a 3 to 7 percent increase in voter turnout. NCSL also reports that absentee ballots are available in all states to certain voters by request, such as people with disabilities or illnesses, people serving in the military, college students who attend schools outside of their home county, and those who cannot vote without assistance at the polls. Twenty-seven states, along with DC, allow voters to request an absentee ballot without providing a reason, referred to as a "no-excuse" absentee ballot. As of 2023, eight states and DC conduct elections using all-mail voting systems in which all voters automatically receive mail-in ballots.

## Polling Sites and Voter Rolls

Though some states have sought to increase voter registration and voter turnout, others have increased barriers to voting by reducing the number of polling sites and purging voting rolls. The civil rights organization Leadership Conference Education Fund noted that thirteen states closed 1,688 polling sites between 2012 to 2018, with the highest closure rates in Texas, Georgia, and Arizona. State governments characterize these closures as necessary consolidations resulting from decreases in funding, lack of volunteer poll workers, changes in population, or increased use of absentee ballots and mail-in voting options.

The consolidation of polling sites has continued, especially in rural areas. Voting rights advocates note that these closures can cause hardship for voters who have to travel farther and wait longer to vote. They assert that the closures disproportionately affect communities that have faced historic voter discrimination, including voters of color and those with disabilities.

States are required under NVRA to keep their voter registration rolls current by removing people who have died, moved out of state, or become ineligible to vote. States may deactivate voter registration if a voter skipped several elections and did not respond to a letter requesting confirmation of address. The American Bar Association has expressed concern that election officials in several states use the "use it or lose it" practice to unfairly purge voting rolls to gain a political advantage.

Removing voters from rolls for inactivity renders them ineligible if they attempt to cast their ballots. The Brennan Center for Justice tallied the removal of nearly seventeen million registered voters from state rolls between 2016 and 2018, often using processes it characterized as flawed. The US Supreme Court upheld Ohio's voter-roll purging practice in 2018. The state controversially removed more than twenty-six thousand voters in 2023 less than two weeks before holding contentious referenda on abortion rights and recreational cannabis. The NVRA prohibits the purging of voters within ninety days of a federal election but does not extend the same restriction on state elections.

## Voter Identification

Many efforts to tighten voting laws are motivated by concerns over alleged voter fraud. Voter fraud can include impersonating another voter, casting a vote under the name of a deceased person, voting when ineligible, or voting multiple times in the same election. Trump signed an executive order in May 2017 to create the Presidential Advisory Commission on Election Integrity, alleging massive voter fraud in the 2016 elections. Trump dissolved the commission in January 2018, and a subsequent analysis found that the

commission failed to produce evidence to back up its claims. Despite the lack of evidence, Trump has continued to allege widespread voter fraud after leaving office.

Proposed and existing state voter identification (ID) requirements have also stirred controversy. Alabama passed a law in 2011 requiring voters to produce ID to cast a ballot in person or by mail. The law recognizes several types of IDs as valid, and the state offered free IDs for voters. The law went into effect in 2014, and state officials asserted it would prevent voter fraud in the state. Civil rights groups, however, claimed that the law suppressed the rights of voters of color and discriminated based on race. A federal judge ruled in 2018 that the law was not discriminatory, and the ruling was affirmed by a federal appeals court in July 2020.

Thirty-five states have laws requiring identification at the polls as of December 2023. Nineteen states require photo ID. Critics allege that these laws result in racial disparity in voting, suggesting that registered Black voters are less likely to carry the required IDs. However, the National Bureau of Economic Research published a working paper on a decade-long, nationwide study in 2019 (and revised in 2021) that concluded strict voter ID laws "have no effect on fraud—actual or perceived" but also do not reduce voter registrations or election turnout.

#### Critical Thinking Questions

- In what ways do voting laws protect the integrity of elections? Which laws do you think are most necessary?
- What changes to voting laws, if any, do you think would help reduce racial inequality? Explain your reasoning.
- In your opinion, what type of voting laws, if any, can result in increased voter turnout? Explain your answer.

## Efforts to Advance and Restrict Voting Rights

Activists and policy makers have launched efforts at the national, state, and local levels to advance voting rights. The John Lewis Voting Rights Advancement Act would amend the criteria deemed outdated by the Supreme Court in *Shelby County v. Holder* (2013). The John Lewis Voting Rights Act and companion legislation, such as the For the People Act (later reframed as the Freedom to Vote Act), have failed to advance as of December 2023, despite repeated introduction and passage in the House of Representatives.

If adopted into law, the act would expand voting rights by reasserting federal oversight of and authority over local voting laws. The act would allow the US Department of Justice (DOJ) to send election observers to jurisdictions with repeated complaints of voter suppression. The act would also enable the DOJ to address cases of racial profiling used in *gerrymandering*, the redrawing of political districts to favor one political party over another. Redistricting efforts in the years following the Supreme Court's ruling have faced challenges alleging that they violate the VRA. Such challenges have had varying levels of success. For example, the Supreme Court ruled in *Allen v. Milligan* (2023) that Alabama lawmakers reduced Black voting power when they adopted a redrawn congressional district map in 2021.

The COVID-19 pandemic created additional complications for the 2020 national elections. Public health concerns led to increased support for expanding access to early voting and mail-in absentee ballots, including drop boxes set up in public places. Many states already allowed for these practices, while other states made allowances to varying degrees. Following the election, states that adopted the practice during the pandemic debated whether to retain these voting options. Some states have sought to reverse these measures. Several laws passed preceding the 2024 elections, for example, have restricted voting by mail.

President Trump's repeated and disputed claims about election fraud and other malfeasance emboldened Republican lawmakers in several states to push for voting restrictions. Critics have characterized these restrictions as election interference as they can make voting more difficult and impede the democratic process. The Supreme Court ruled in *Brnovich v. Democratic National Committee* (2021) to uphold two Arizona laws, one limiting the collection of absentee ballots and one disqualifying ballots cast outside their assigned precinct. Critics allege the laws seek to address minimal or nonexistent threats of ineligible votes while reducing the likelihood that eligible voters can exercise their rights. As states continue to restrict voting access, critics contend, the need for Congress to pass clear and comprehensive voting rights legislation becomes increasingly apparent.

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