



Voting Rights Vote Suppression



The Right to Vote

- US Constitution contains no absolute right to vote
- So who decides who has the right to vote?

US Constitution – Article I §*4 Elections' Clause



§ 4 The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

* § symbol indicates “section”

States' Rights (Federalism) in the US Constitution



- **Article 1:** The Senate of the United States shall be composed of two Senators from each State, **chosen by the Legislature thereof, for six Years**
- **Article 4:** Right of Self-Government to each State
- **10th Amendment:** Reserves all rights not granted to the federal government to the individual states.



The Right to Vote – 19th c

- 18thc: White male property owners or tax-payers
- 1790: Naturalization Act creates citizenship but not always right to vote
- 1828: Universal white male suffrage plus eliminating requirement to be Christian (Maryland finally allows Jews to vote)
- 1840: Some blacks, some women allowed to vote in some state elections
- 1843: Any free man could vote in RI, removing property ownership
- 1848: Mexicans in US declared citizens but not encouraged to vote
- 1856: North CA is last state to abolish property requirement
- 1869, 1870 Wyoming, Utah women right to vote



14TH Amendment (1868)

Citizenship, Equal Protection

§ 1 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2 Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed.

§ 5 The Congress shall have the power to enforce this article by appropriate legislation.



15th Amendment

- **15th Amendment (1870) Race - Color**
 - **§ 1** The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State **on account of race, color, or previous condition of servitude.**



Voting Rights given and taken away

- 1875: US Supreme Court: Voting is not a right of Citizenship
- 1876: Native Americans non citizens;
- 1876: Virginia adds poll tax to right to vote
- 1882: Chinese-Americans lose right to vote and become citizens
- 1887: Male Native Americans if denounce tribe can vote
- 1887 -1919: many states pass some women's right to vote
- 1901: Alabama cumulative poll tax; all taxes must be paid to vote
- 1924 Native American citizenship but until 1948 many western states bar voting



17th Amendment

- **17th Amendment (1913) Popular Vote of Senators**
 - **§ 1** The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

19th, 23rd 24th and 26th Amendments



- **19th Amendment (1920) Sex**
 - The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of **sex**.
- **23rd Amendment (1961) Vote for President/VP to District of Columbia**
 - For electors similar to other states (3 electors).
- **24th Amendment (1964) Poll tax or other tax**
 - The right of citizens of the United States to vote **shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax**.
- **26th Amendment (1971) 18 years old voting age**
 - The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

US Congress: Some Key Voting Acts executed under the power of Article 1.4



- 1924 Indian Citizenship Act (though western States fight this until 1970)
- 1952 McCarran-Walter Act (Chinese-American)
- 1957 Civil Rights Act
- 1964 Civil Rights Act
- **1965 Voting Rights Act (VRA)**
- 1982 People with Disabilities Act
- 1986 Uniformed And Overseas Voter Registration Act
- 1993 National Voter Registration Act (NVRA) aka Motor Voter
- 2002 Help Americans Vote Act (HAVA)

1965: Voting Rights Act (VRA) enacted



§2 - "No voting qualification or prerequisite to voting, or standard, practice, or procedure, shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color."



President Lyndon B. Johnson signs the Voting Rights Act of 1965 in a ceremony in the President's Room near the Senate Chambers on Aug. 6 | AP Photo

<https://www.politico.com/story/2017/08/06/lbj-signs-voting-rights-act-aug-6-1965-241256>

Voting Rights Act §§ 4(b) and 5



- § 4(b) defined the **formula** to determine which States were to require **pre-clearance**.
- § 5 required certain States and other Counties with histories of discriminatory tests and devices plus low voter turnout to obtain **pre-clearance** from the federal government (either Justice Department or the District of Columbia Federal Court) before changing voting laws.

Amendments to Voting Rights Act 1965



- The Voting Rights Act 1965 has been amended many times, including amending the formula in § 4(b) in 1970 and 1975, refining the requirements for **foreign language ballots**, adding voter assistance and **voting rights for people with disabilities**.
- In 2006 The Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez and Dr. Hector P. Garcia Voting Rights Act Reauthorization extended the VRA for 25 years sections that had sunset provisions and thus were not permanent such as Section 4(b).



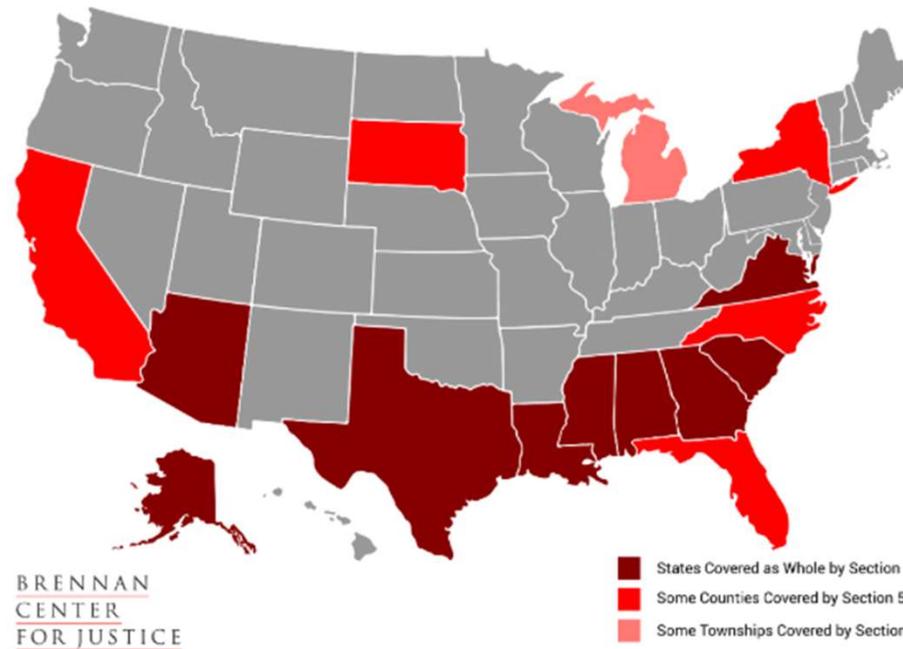
Importance of § 5 to Voting Rights

“Section 5’s prophylactic power came from its recognition that the “harms” of voting discrimination can never be truly redressed. **Once an election is held, there is no do-over.**”

<http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

p. 7

States and counties requiring pre-clearance under VRA § 5 in 2013





Alabama challenges parts of the Voting Rights Act : Shelby County v Holder

Shelby v Holder 2013

- **In a 5 to 4 decision the Supreme Court held:**
 - Section 4(b) of the Voting Rights Act of 1965 unconstitutional.
- **Result:**
 - Without Section 4(b), Section 5 (pre-clearance) was neutralized.



Reasoning in Shelby

Majority Opinion:

- Chief Justice John Roberts - Coverage formula is based on data over 40 years old, making it no longer responsive to current needs and therefore an impermissible burden on the constitutional principles of **federalism and equal sovereignty** of the states.
- Justice Thomas - concurring opinion- thought **§ 5** also unconstitutional.

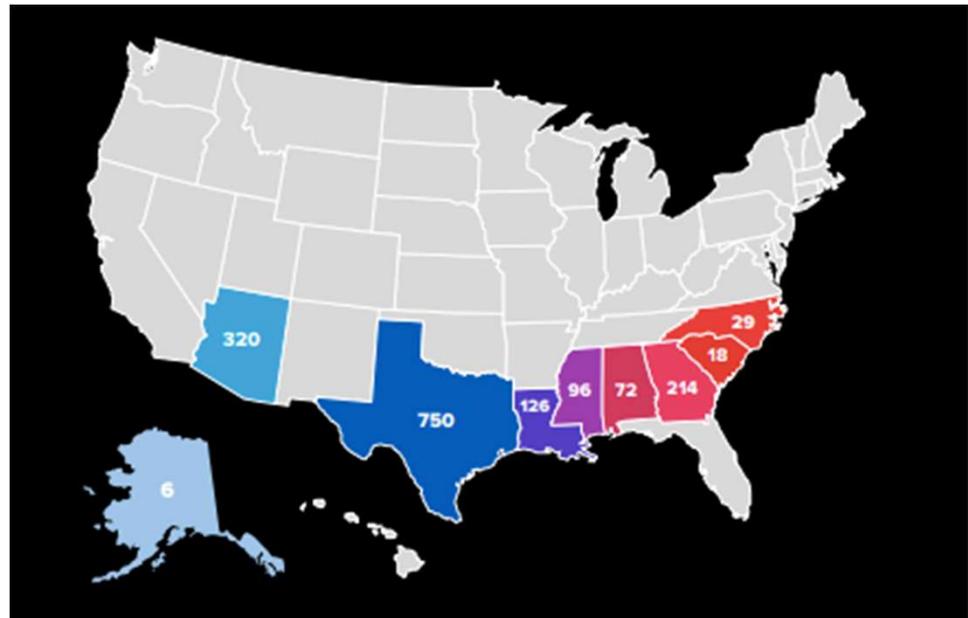
Minority Opinion:

- Justice Ginsburg argued that evidence gathered by Congress supports continuing the law which enforces the 14th and 15th Amendments.
- **"Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."**

1688 polling places closed since 2013 in counties previously covered by preclearance.



Under Voting Rights Act
§ 4(b) preclearance
would have been
required before these
precincts were closed.



<http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

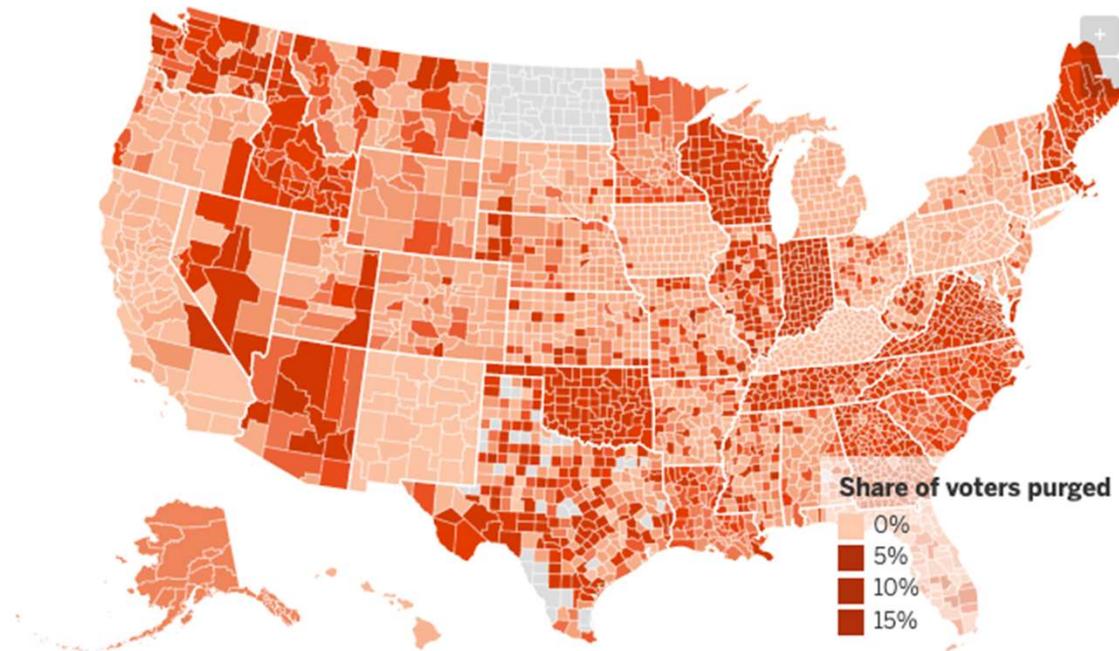
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Voter Purging 17 million since 2016

Brennan Center
reports

Purge Rate, 2016-2018

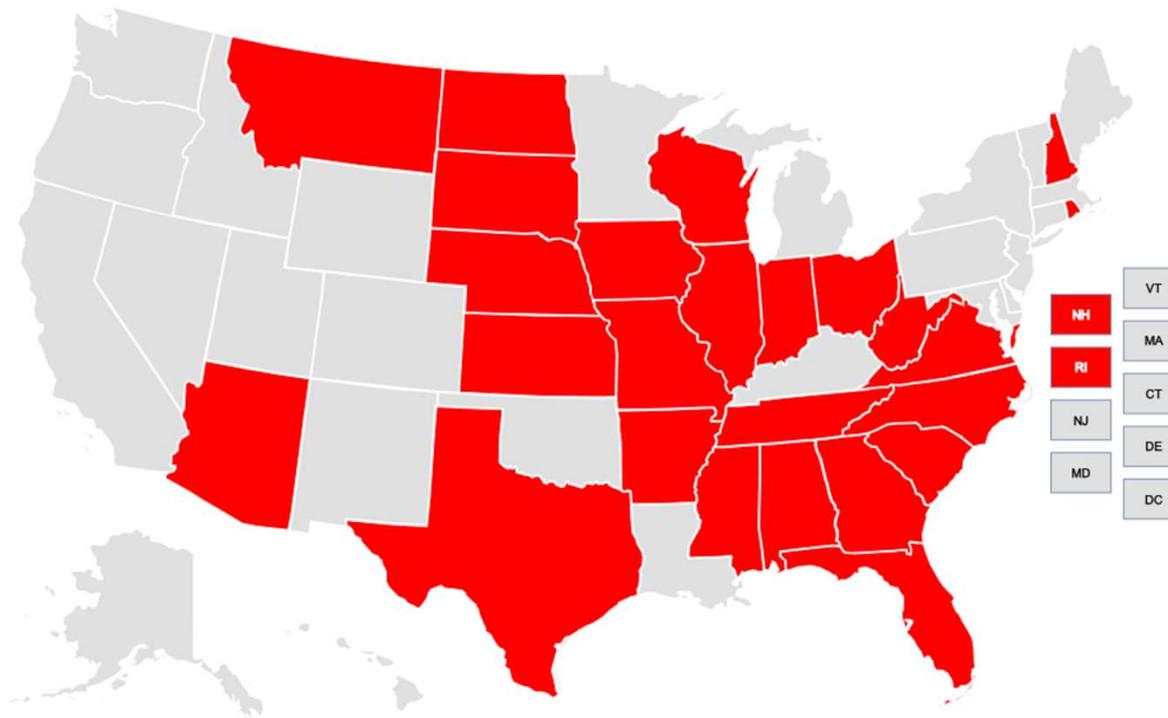


Notes:
Data in the following states are aggregated here
to the county-level but are reported at the
sub-county level: CT, MA, ME, NH, RI, VT, and WI
North Dakota does not have voter registration.

Significant Voting Restrictions post 2010



Significant Voting Restrictions in America Since 2010 Election

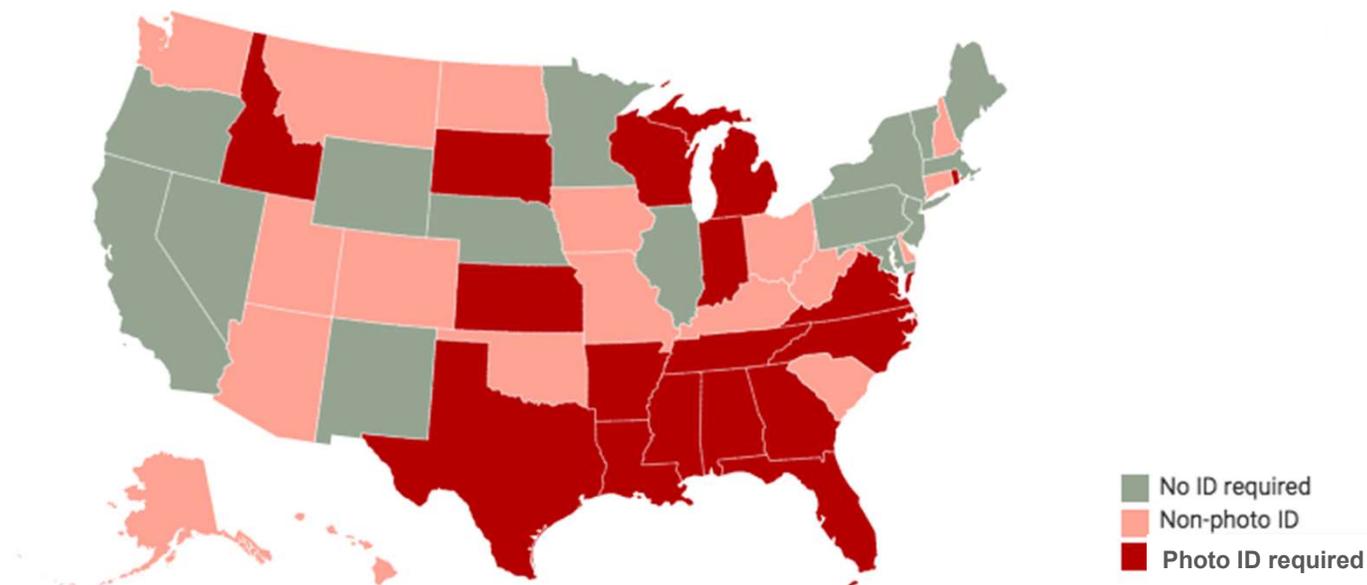


Source: Brennan Center

2019 Voter Identification Requirements by 35 States



35 States require an approved ID, 17 require photo IDs



December 2020: North Carolina's Voter ID Law

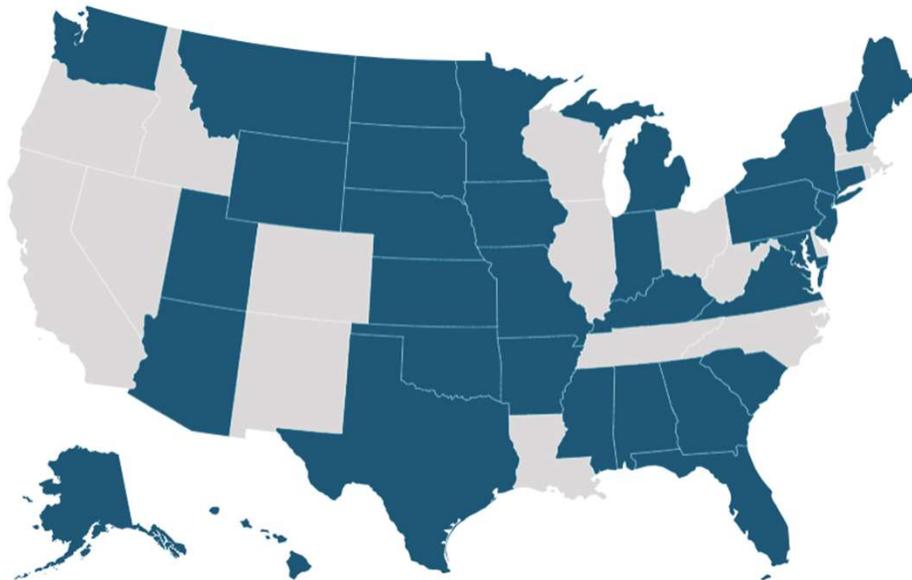


- In 2016, Federal judges struck down a 2013 state law that included photo ID and other voting restrictions.
 - The judges said in the ruling that the law was approved with **intentional racial discrimination** in mind and that it **"targeted African-Americans with almost surgical precision."**
- 2019 Legislature passes new Voter ID law similar to 2013 law
- Democratic governor vetoes Voter ID law
- Legislature overrides veto.
- December 2020 Federal Appellate Court with 2 appointees by President Trump upheld the law but law on hold because of state litigation.

2021 New Restrictive Voting Laws Proposed



2021 Restrictive Bills



Examples of Vote Suppression laws in 2021 enacted



- **GEORGIA**

- Bars providing absentee applications by state officials to all voters
- Reduces times for obtaining absentee ballots
- Restricts location and numbers of ballot boxes
- Reduces hours for early voting
- Allows mass challenges against voters
- Prohibits giving water or snacks to people in line

- **IOWA**

- Makes voters inactive if they fail to vote in a federal election
- Requires IA to use change of address data for list maintenance and makes a crime if election officials don't purge rolls
- Reduces amount of paid time off to vote,
- Closes polls an hour earlier and reduces early voting days by 9

Examples of Vote Suppression 2021 cont'd



- **ARKANSAS**

- Removes provisional voting and requires voters to show up at the county clerk's office within 5 days with qualifying ID to vote if they don't have proper ID
- Removes right of someone who objects on religious grounds to have their photo taken, and denies the right not to have a photo identification (previously able to give non photo id).

- **UTAH**

- 10 days to remove someone who is dead but doesn't require sufficient cross-checking to ensure the right voter has been purged.

- **KANSAS**

- Gov'r vetoes and legislative overrides : now a crime to collect ballots for anyone (elderly, disabled, remote areas) to turn them in or put them in a ballot or mail box.

Other Restrictive Voting Provisions introduced and making their way in States



- “As of March 24, legislators had introduced **361 bills** with **restrictive provisions** in **47 states**. That’s 108 *more* than the 253 restrictive bills tallied as of February 19, 2021 — a 43 percent increase in little more than a month.
- At least **55 restrictive bills** in **24 states** are moving through legislatures: **29 have passed at least one chamber**, while another 26 have had some sort of committee action (e.g., a hearing, an amendment, or a committee vote).”
- Source: Brennan Center for Justice



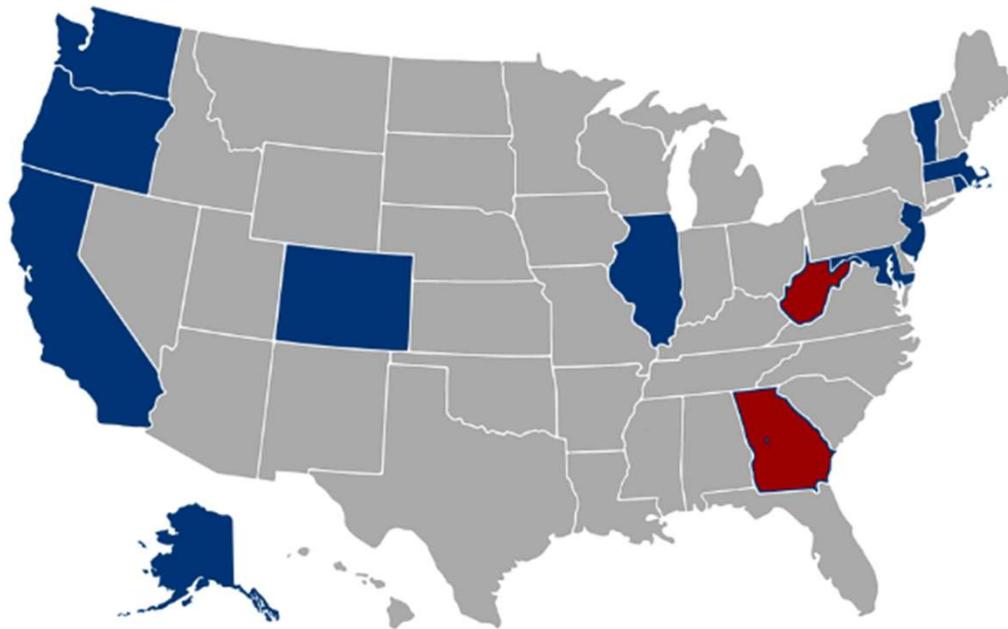
Expansive Voting Rights in 2021

- **WA:** Restore Voting Rights to people with prior convictions
- **VA:** Enacting Senate Bill 4 (the John Lewis Act)
- **CT:** Putting forth a constitutional amendment to allow absentee ballots as a matter of right and other reforms
- **NY:** Many improvements to help voters to vote.

Automatic Voter Registration



States That Have Approved Automatic Voter Registration



BRENNAN
CENTER
FOR JUSTICE



Expansion of Felons' Voting Rights

“A man without a vote is a man without protection.”

[Lyndon B. Johnson](#)





GERRYMANDERING

The Original Gerrymander



- In 1812, Massachusetts Governor Elbridge Gerry redrew the state senatorial districts to favor his party.
- The Boston Gazette published the cartoon which merged “Gerry” and “salamander” to describe the result.



Source: Wikipedia



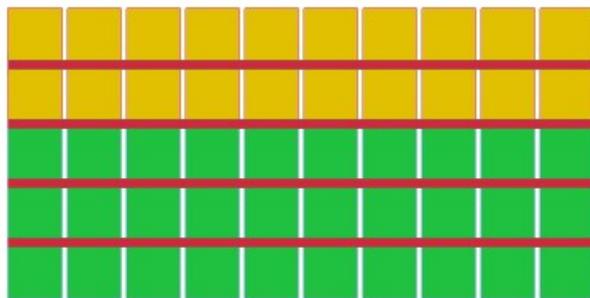
How Political Districts Are Drawn

- **Every 10 years US Census** identifies where people live and the number of Congressional Districts that are allocated to states according to population. Then redistricting allocates voters to the districts.
- **When State Legislatures control redistricting** their political interests often lead to:
 - **Partisan** Gerrymandering
 - **Racial** Gerrymandering
- **States which have Independent Commissions:**
 - Tend to create more balanced districts when specific and fair criteria guide composition of the commission and their mission

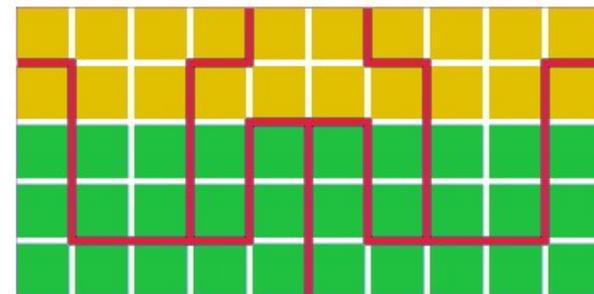


How to Gerrymander – 'Packing' and 'Cracking'

- Packing – put as many of the same political party into a district as possible
- Cracking – put as few people as possible from the party out of power in a district so that their vote will have no influence



- Fair districts, green party wins 3 seats, gold wins 2



- Gerrymandered districts, gold wins 3 seats, green 2

How to Gerrymander



- **Packed District:**
 - “When a voter resides in a packed district, her preferred candidate will win no matter what”.
- **Cracked District:**
 - “When a voter lives in a cracked district, her chosen candidate stands no chance of prevailing.”

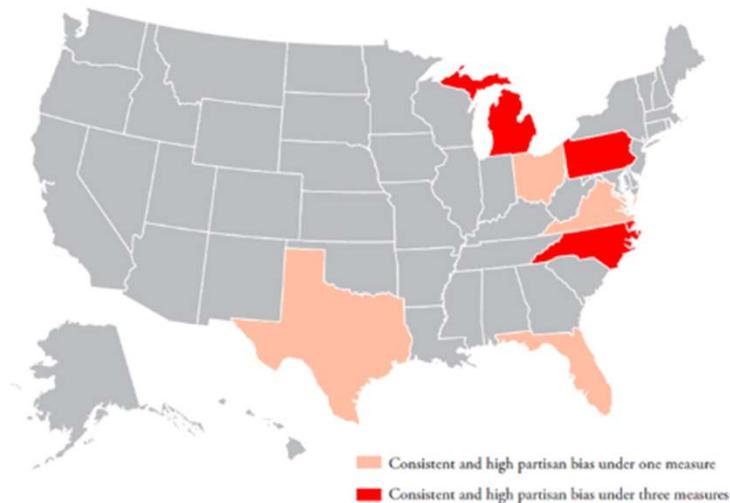
“But either way, such a citizen’s vote carries less weight—has less consequence—than it would under a neutrally drawn map.”

Justice Kagan’s concurring opinion in *Gill v Whitford* 2018

Gerrymandered: Democratic and Republican Congressional Seats



Congressional Maps with High Partisan Bias



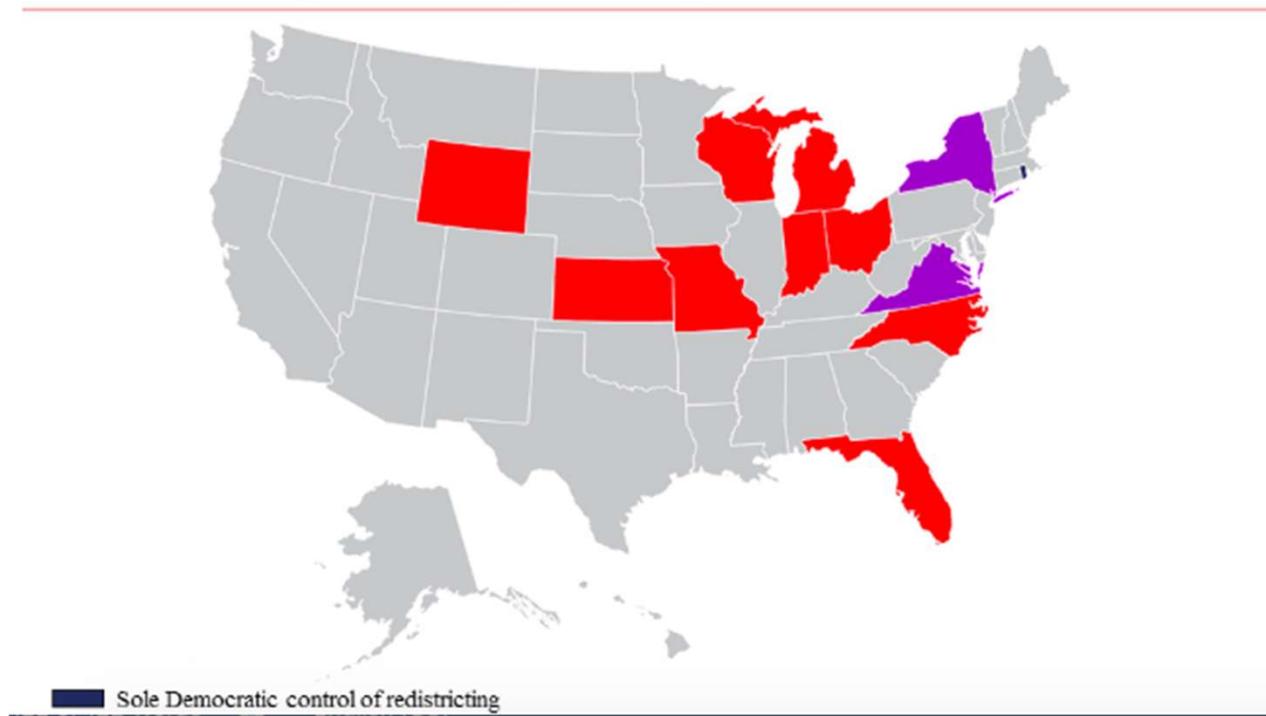
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TWENTY YEARS

Note: Data based on 2012, 2014, and 2016 elections. Maps in Florida were redrawn for the 2016 elections.

Gerrymandered: State Legislatures



Legislative Maps with High Partisan Bias

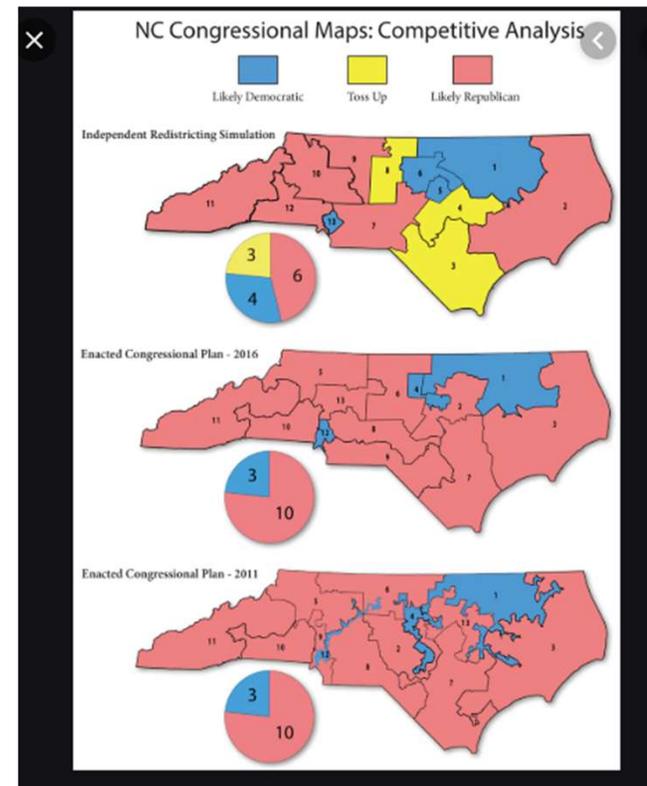


Source: Brennan Center

N. Carolina Partisan Gerrymandering and Impartial Solution



- 2016 impartial proposal
 - **Judge-drawn and Unpacked**
- 2016 actual
 - **Gerrymandered**
- 2011 actual
 - **Gerrymandered**





SUPREME COURT DECISION ON PARTISAN GERRYMANDERING 6/27/2019

Supreme Court 5:4 : Roberts writes the Majority Opinion



- Partisan gerrymandering claims ...**political questions beyond the reach of the federal courts. “A jurisdiction may engage in constitutional political gerrymandering.”**
- Standard to adjudicate partisan gerrymandering must be **clear, manageable and politically neutral.**
- The Constitution does not require proportional representation.
- “Courts may not apportion political power on the basis of fairness: **Vote dilution** in the one-vote cases refers to the idea that each vote must carry equal weight. That requirement does not mean that each party must be influential in proportion to the numbers of their supporters!”



Majority Opinion (continued)

“Excessive partisanship in districting leads to results that reasonably seem unjust. But the fact that such gerrymandering is ‘incompatible with democratic principles’ does not mean that the solution lies with the federal judiciary. **We conclude that partisan gerrymandering claims present political questions beyond the reach of the federal courts. Federal judges have no license to reallocate political power between the two major political parties with no plausible grant of authority in the Constitution,** and no legal standard to limit and direct their decisions.”

Supreme Court Slip Decision Rucho et al. v. Common Cause et al. 6/27/2019 emphasis added



Minority Opinion – Justice Kagan

- Deprives citizens of the right to participate equally in the political process
- Politicians allowed to entrench themselves in office against voters' preferences.
- Core principle is that the **“voters should chose their representatives, not the other way around.”**
- Vote dilution implicates the 14th Amendment: equality participation of voters in the election
- First Amendment rights of association and political effectiveness diluted by political gerrymandering, degrading a voter's influence on the political process
- Specific and predominant intent to entrench themselves in power by manipulating district lines.

Advocates supporting Partisan Gerrymandering



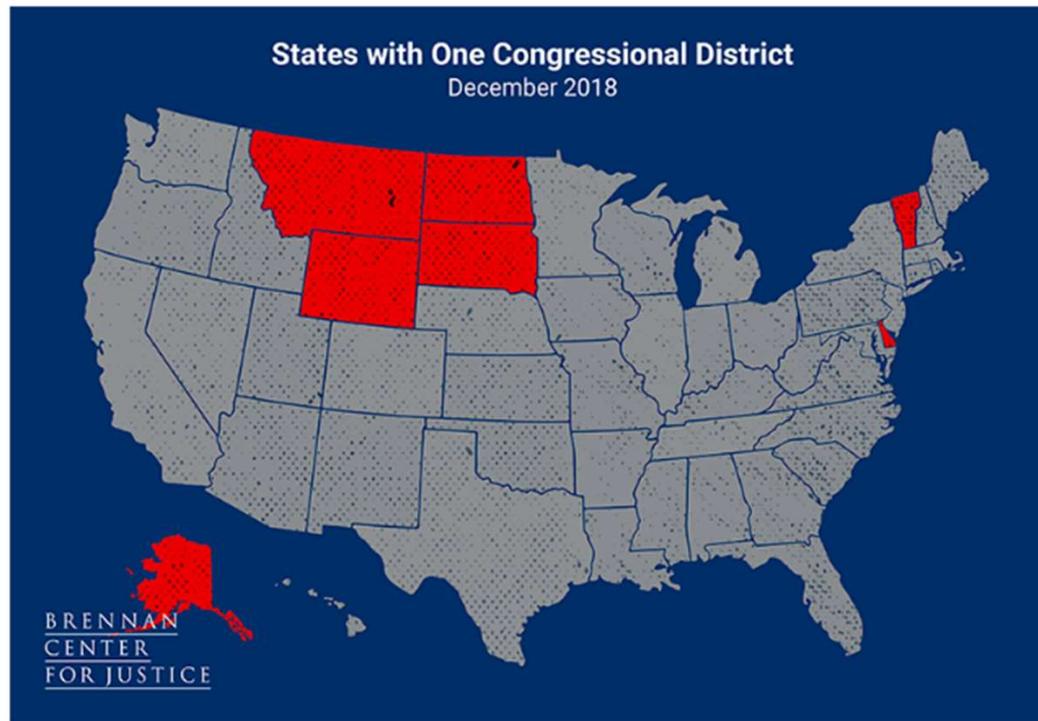
- States: **Texas, Alabama, Arkansas, Georgia, Indiana, Louisiana, Ohio, Oklahoma, South Carolina and Utah**
- Speaker of the Pennsylvania House of Representatives
- American Civil Rights Union (**Not** the ACLU)
- Southeastern Legal Foundation
- National Republican Redistricting Trust: Court should allow state legislatures to continue to apply the traditional, community-based districting standards that have prevailed since the Founding.
- The Republican National Committee
- The National Republican Congressional Committee.

N. Carolina's State Courts rule maps unconstitutional under NC law!

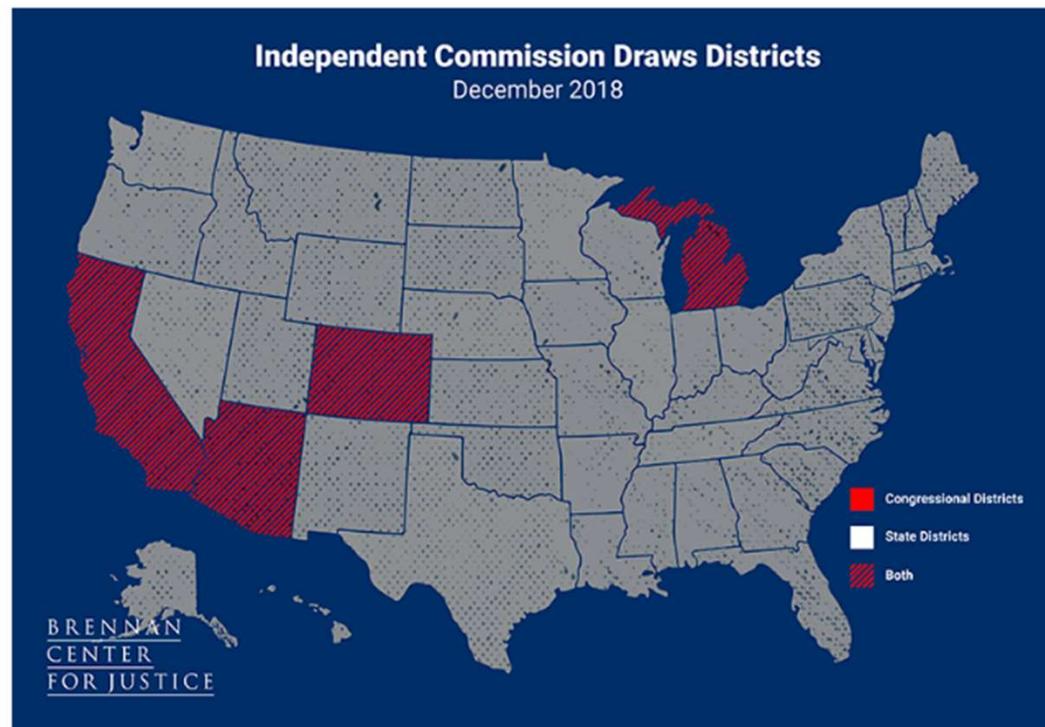


- **9/2/2019** Unanimous decision by a 3 judge panel “The North Carolina court in Wake County said the Republican maps **violated the State Constitution’s clauses guaranteeing free elections, equal protection under the law and freedom of speech and assembly.**” NY Times 9/3/2019
- 10/28/2019 North Carolina Supreme Court rules Congressional districts unconstitutionally drawn and must be redrawn before 2020 election.
- Defendants **cannot** appeal to US Supreme Court; there is no federal issue : Pennsylvania ruled unconstitutional under PA laws.
- **NC unconstitutional mapping issues were the same that the USSC declined to act upon in the Rucho v Common Cause case 6/28/2019**

Single Congressional District States



Independent Commissions Redistrict



2015: US Supreme Court 5:4 AZ State Legislature v AZ Independent Redistricting Commission



GINSBURG MAJORITY

“The people of Arizona turned to the initiative to curb the practice of gerrymanderingArizona voters sought to restore “the core principle of republican government,” namely, **“that the voters should choose their representatives, not the other way around.”** The Elections Clause does not hinder that endeavor.”

ROBERTS DISSENT

“The people of Arizona have concerns about the process of congressional redistricting in their State. **For better or worse, the Elections Clause of the Constitution does not allow them to address those concerns by displacing their legislature.** But it does allow them to seek relief from Congress, which can make or alter the regulations prescribed by the legislature.”



Money in Politics

- Supreme Court decision of **Citizens United v FEC (2010)** unleashed the right for Corporations and Unions to use corporate money in politics.
- Minorities have been disproportionately impacted in the exercise of their vote because of the huge amounts of money used to support candidates who openly vote for Vote Suppression legislation at both the State and Federal Level.
- Tied together with Shelby County's decision and the Rucho decision, the rights of minority voters have been impaired in the last decade.



VOTE SECURITY FOR VOTE INTEGRITY

Georgia 2018 Election Security Failures

- Computer Security and Vote Tabulation Problems
 - Lt. Governor's race - 127,000 "missing" votes (under-votes)
 - Disproportionate **under-votes** in African American neighborhoods
- Computer-processed ballots irretrievable
- Absentee ballots, which had a paper trail, had no significant under-votes
- Decision 8/15/2019: Federal District Court: Georgia may not use its GEMS/DRE voting machines in 2020 because they are unconstitutional and must have a paper trail. Georgia must correct its voting registration system also deemed unconstitutional.



KEY 2021 CONGRESSIONAL ACTIONS

Key Features of H.R. 1 regarding Election Access passed 3/2021 now S.1



- Voter ID rules
- Automatic Voter Registration
- Same Day Registration
- Rules For Automatic Removal/Crosschecks
- Access For Individuals With Disabilities
- Prohibits Deceptive Practices And Prevents Intimidation
- Democracy Restoration (Rights Of Felons)
- Promoting Accuracy, Integrity And Security: Voter-verified Paper Ballot
- Rules On Provisional Ballots
- Early Voting
- Vote By Mail
- Absent Uniformed Services And Overseas Voters
- Poll Worker Enforcement
- Federal Election Integrity And Enforcement
- Money in Politics

Vote Suppression on Film



To understand the what and how of vote suppression:

[SUPPRESSED: the Right to Vote](#)

a 2019 film by Brave New Films

[RIGGED: The Vote Suppression Playbook](#)

a 2018 film by American Issues Initiative

[DARK MONEY](#)

a 2018 film by Big Sky Film Productions

Wed. May 12th, 2021 – 5:00 to 6:30 PT Roundtable on Vote Suppression



- Santa Clara County Supervisor **JOE SIMITIAN** (moderator)
- Former FEC & Fair Political Practices Commission member **ANN RAVEL** (keynote)
- Reclaim Our Vote Executive Director **ANDREA MILLER**
- Mi Familia Vota Executive Director **HECTOR SANCHEZ BARBA**
- VoteRiders Executive Director **DAVE GRIGGS**
- Four Directions Founder **O.J. SEMANS**
- Students Learn, Students Vote Special Projects Director **EDDY ZERBE**

<https://us02web.zoom.us/j/82779466629?pwd=ZVQ4RHpYLzZGZ3JwN0NTbTd5bmUrdz09>

Meeting ID: 827 7946 6629 Passcode: 398421

One tap mobile +16468769923



About National Voter Corps

- Our Mission is to work towards the goal of Let Every Citizen Vote by:
 - Encouraging volunteers nationwide to join non-partisan voting right groups nationally and by state via our 50 State Map on our website.
 - Providing information on our website about voter suppression and how to get help to vote
 - Educating citizens about Voting Rights through presentations,
 - Registering voters
- Formed in November 2016 in Palo Alto, California
- Unincorporated - Non-Partisan - Non-Profit
 - [Tax-deductible Donations](#) are managed for NVC via The Social Good Fund, a 501(c)(3)
- Our website is <https://nationalvotercorps.org/>

