



Markkula Center
for Applied Ethics
at Santa Clara University

Ethical Issues in Voting Rights and Elections for 2022

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Our political process is born out
of the ethical ideal of creating an
informed electorate.

Hana Callaghan, 2016.





What happened in the 2020 Presidential Election?

FACTS:

- Joseph Biden was elected president by capturing 306 electoral college votes
- Donald Trump lost the election with 232 electoral votes
- Biden won the popular vote: 81.2 million votes to 74.2 million for Trump
- Votes were legally validated by state and territorial officials
- Many states recounted, recanvassed, and re-verified its official election outcomes
- Electoral college votes were conducted by the proper electors in the states and DC
- Congress certified the electoral outcomes on January 7, 2021
- Experts have described this as the most secure election in U.S. history





The Current Voting Rights and Elections Landscape

- *Constant promotion of the debunked theories of massive voter fraud and a stolen election in 2020.*
 - *Experts demonstrated this was the **most secure and validated election** in U.S. history.*
- *Congress' failure to adopt meaningful voting rights and election security proposals:*
 - **For the People Act** (House of Representatives – HR1- passed March 2021)
 - **Freedom to Vote Act** (U.S. Senate S2747)
 - **John Lewis Voting Rights Advancement Act** (House of Representatives – HR4 – passed August 2021)
Introduced in U.S. Senate (S4)
 - The **Deceptive Practices and Voter Intimidation Prevention Act**, (S1840) introduced Sept. 2021).
- *Legislative proposals in states based on lies that are designed to restrict and suppress voting.*





Examples of Laws that Expand Voter Access

- Same day voter registration and voting
- Absentee voting without an excuse
- Early voting
- Provisional voting
- All mail voting
- Overseas and Military Voting

Resources:



**U.S. ELECTION
ASSISTANCE
COMMISSION**





The Current Voting Rights Landscape

- **What are the Issues?**
 - *In the absence of new federal legislation being adopted, voting rights are being suppressed/restricted in states:**
 - **2021: 425 voter suppression/restriction bills in 49 states; 19 states adopted bills.**
 - **2022: 393 voter restriction bills in 39 states**
 - 2021: 1,000 election expansion bills in 49 states; 25 states adopted. *(Make it easier to register and vote, and to stay on the rolls.)*
 - 2022: Nearly 600 expansive bills in 44 states + DC; 16 state legislatures and DC have bills moving toward adoption.

**Source: Brennan Center for Justice data*





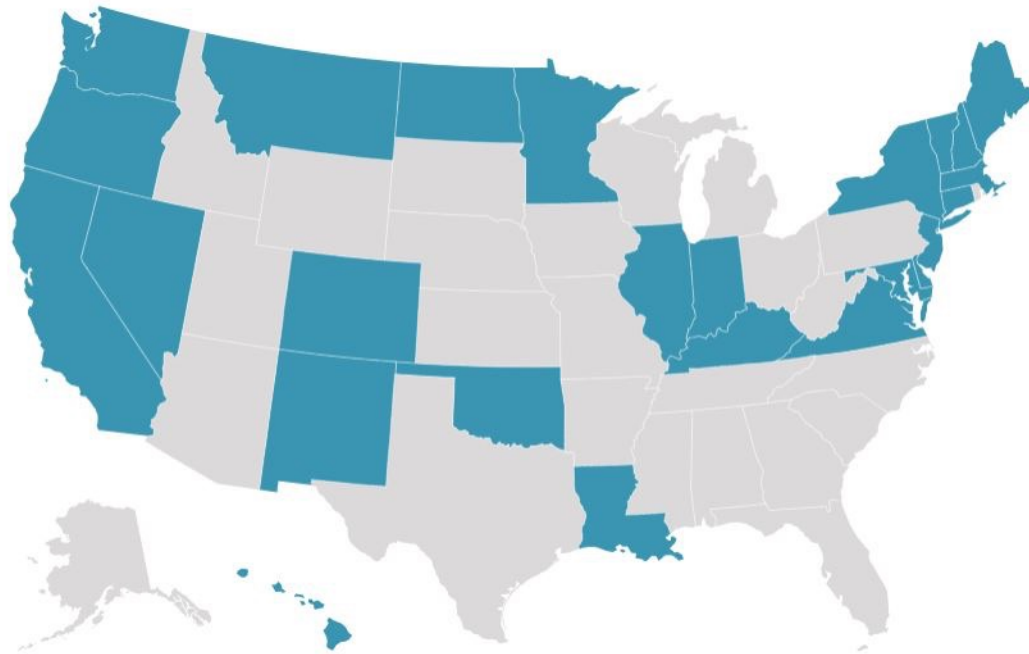
Examples of Laws that Suppress Voting

- Limit voter registration
- Impose harsher voter ID requirements
- Shorten time to request or deliver a mail ballot
- Impose stricter requirements for mail ballots
- Limit drop-off boxes for mail or absentee ballots
- Reduce polling place locations and hours
- Limit early voting days or hours
- Redistricting to racially gerrymandered new districts



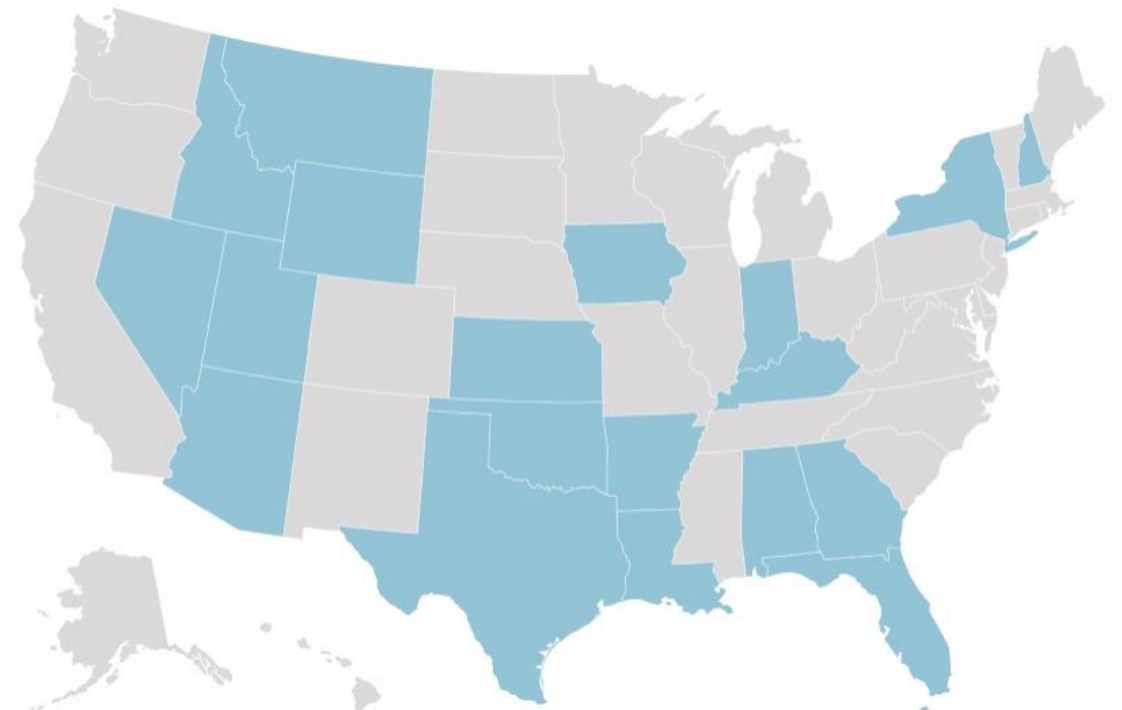
States with New Voting Laws: Expand vs. Restrict

States with New Expansive Laws



Graphic by BRENNAN CENTER FOR JUSTICE

States with New Restrictive Laws



Graphic by BRENNAN CENTER FOR JUSTICE





The Current Election Authority Landscape

- **What are the Issues?**
 - *State proposals to subvert election administration and security**
 - **2021: 180 election subversion/interference bills in 17 states; 11 states adopted a subversion/interference law**
 - **2022: Lawmakers in 27 states have proposed at least 148 election interference bills**
 - *General concerns: potential for partisan interference in the conduct and counting of elections and a possible harassment and intimidation of local election authorities and volunteers.*
 - *Voter databases and election equipment need to be updated or replaced.*
 - *Lack a national standard for election processes and funding for upgrades, equipment, security.*

**Source: Brennan Center for Justice data*





Examples of Laws that Subvert Election Administration and Outcomes

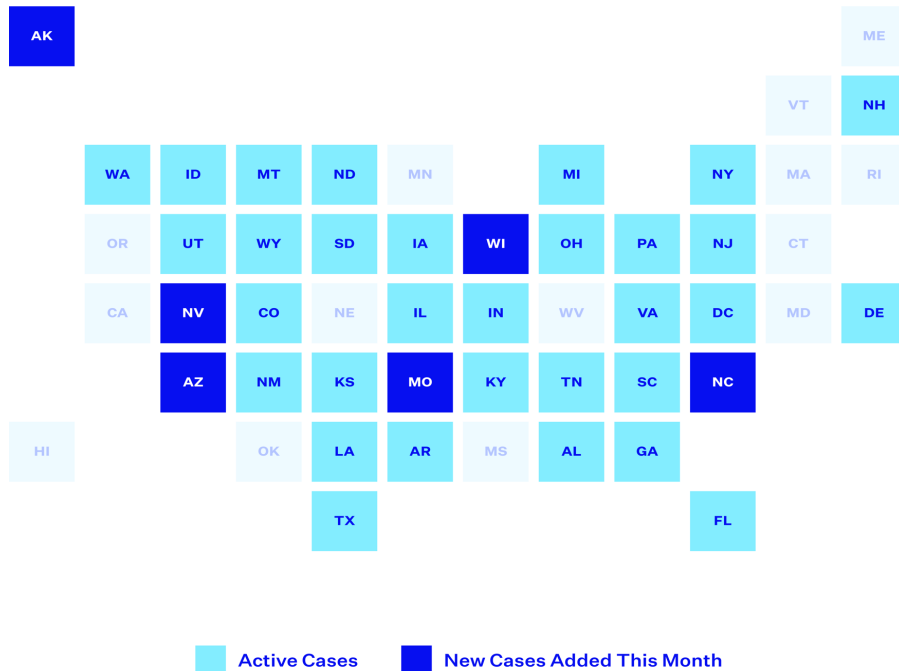
- Allow legislators to control election results
- Invalidate actions by duly-appointed election authorities
- Permit poll watchers to interfere with balloting
- Restrict assistance to voters
- Expand risky voter roll purges
- Partisan interference in election tabulation and certification
- Stifling emergency powers
- Criminal penalties for election officials
- Intimidation of and threats to election volunteers and officials



State Lawsuits

Democracy Docket is currently tracking 163 active lawsuits across 38 states. Unprecedented number of voting rights and election lawsuits.

States With Cases We're Tracking



Source: Democracydocket.com





What are the **ethical standards** for voting rights?

What are the **ethical standards** for election administration, security, and outcomes?

Let's consider 4 lenses for ethical standards



The Rights Lens

- In many ways, there can be no more essential right in a democracy than **the right to vote**.
 - Constitutional right, which has been expanded over 230 years through amendments to include blacks, women, young
 - Federal statutory enforcement of right to vote
 - Voting Rights Act of 1965 and Renewals of VRA
 - Proposed John Lewis Voting Advancement Act – would address *Shelby v. Holder* (2013)
- ~ ~ ~
- **Supports Rights Lens**: Promoting voter registration and Early voting
 - **Fails Rights Lens**: Limiting use of mail ballots or unwarranted purging of voter rolls





The Fairness and Justice Lens

- "Individuals should be treated the same, unless they differ in ways that are relevant to the situation in which they are involved."
- Voting rules have included unfair and unjust practices that inhibited voting by persons of color for much of our history.
- For example, Jim Crow laws, literacy tests, suppression of voting access

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- **Supports Fairness and Justice Lens:** Provisional ballots
- **Fails Fairness and Justice Lens:** Reducing polling locations and hours





The Virtue Lens

- Facts matter - **Truth is essential for trust**
- Nearly every state and local election official has a deep commitment to the integrity of the electoral processes that have been entrusted to their administration.
- Many electoral processes and rules are a product of fairness, honesty, and integrity
- But if a law or rule does not promote integrity in elections, it lacks virtue
- A law may be **legal**, but it **may not be ethical**

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- **Supports Virtue Lens:** Protecting Professional election authorities and Election Security
- **Fails Virtue Lens:** Suppression Laws based on lies about fraud or intimidating election workers





The Common Good Lens

- Fundamentally, the right to vote promotes the common good in a democracy
- Public officials should act to promote the public interest—not a partisan one
- Laws for elections and voting should be adopted if they will attend to the common good of society
- Election laws should promote greater benefits to the common good

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- **Supports the Common Good:** All mail voting
- **Fails the Common Good:** Subverting election administration to overturn legitimate outcomes





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Discussion

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