

THE 10 POLICY TRENDS TRANSFORMING VOTING & ELECTIONS IN AMERICA

APRIL 2022

Introduction

Most countries have a single uniform system for national elections—ensuring every citizen’s opportunity to vote and experience voting is consistent. Not so in the United States, where how a person votes, and even *if* a person is allowed to vote, varies dramatically by state. Never has this been more true than it is today, with states collectively considering thousands of election bills—bills which are often diametrically opposed. What’s behind all of this, and how is the face of American elections changing?

In 2020, America’s election system was upended in unprecedented ways. First, the presidential election was held as the COVID pandemic raged, creating widespread election challenges ranging from poll worker shortages to voters reluctant to go to polling places due to health and safety concerns. To meet these challenges, states dramatically expanded mail and absentee voting options, and more voters than ever chose to vote early or by mail, both as a means of avoiding risk of illness and out of convenience. The result was record turnout, and the unlikely success of the 2020 election would not have been possible without the extraordinary efforts of election officials across the country who implemented innovative solutions to ensure that voters would have the opportunity to cast their ballots.

This transformation in America’s voting system might have been widely celebrated and embraced if not for the second unprecedented event in the 2020 election: the extreme partisan response to the election results. Rather than accept the vote tallies, President Trump and some Republican leaders launched challenge after challenge, baselessly claiming the election results indicated widespread voter fraud, often

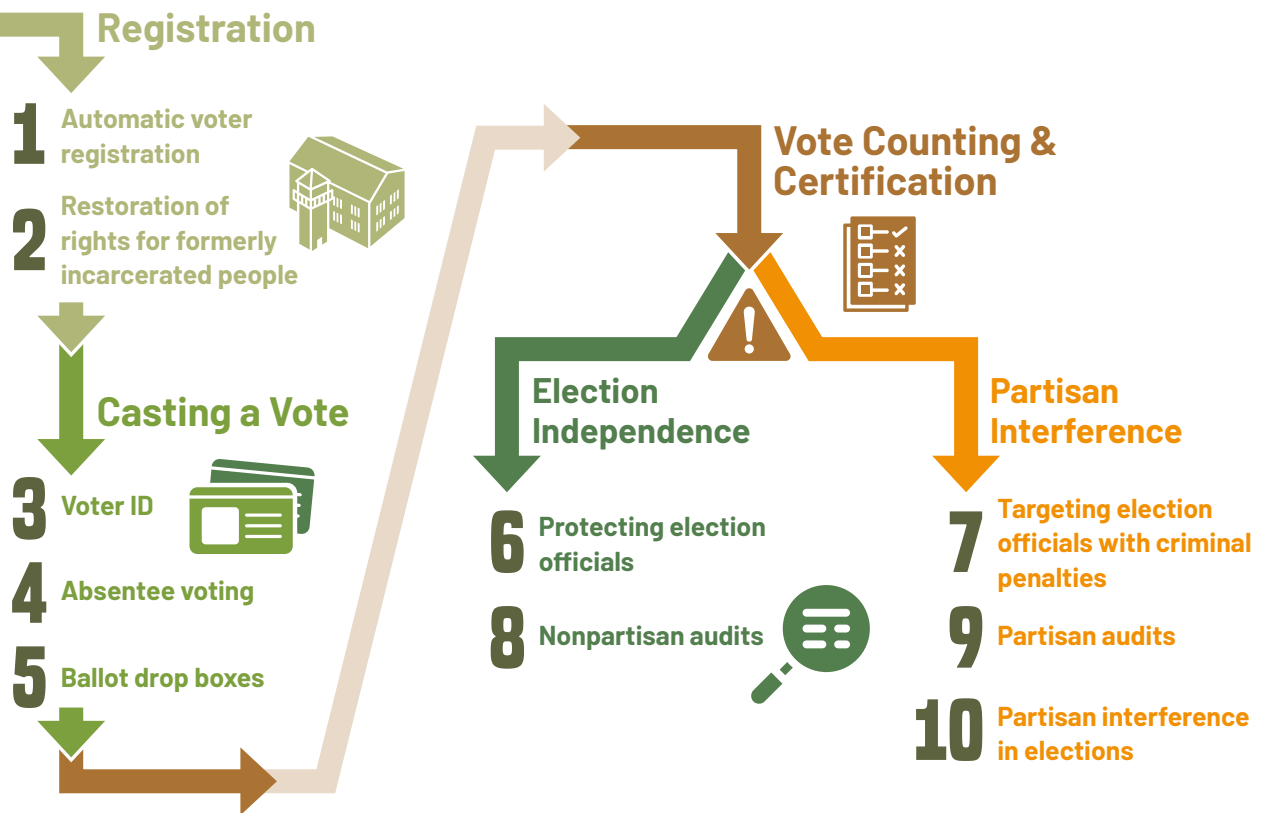
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POLLING PLACE

10 POLICY TRENDS TRANSFORMING VOTING IN AMERICA



falsely laying the blame on mail voting and other newly adopted systems. As a result, rather than states seeking the best and most independent election system, voting has become polarized along political lines, with many states seeking to restrict or repeal the same methods of voting that were utilized by millions of voters in 2020. The impetus for these restrictions is not grounded in empirical evidence, but rather fueled by the false claims of voter fraud. So, while some states are embracing the innovations from the 2020 elections, others are rolling them back. While some states are expanding voting, others are working to restrict it. While some states are seeking to increase the independence of their elections, others are seeking greater partisan control over the counting and outcomes. This report examines the 10 most significant legislative trends related to elections and voting in 2022, the incredible

discrepancy among the states, and the way these trends are transforming voting in America.

10 Trends to Watch in 2022

Registration & Eligibility

Before a citizen can vote, they must register to vote and also be eligible to vote. Two hot trends in voting legislation are automatic voter registration and voting rights restoration. While some states are working to streamline and automate their voter registration, other states are working to make voter registration more difficult. An oddity of American law is that states have the power to restrict who can vote in a federal election—with some states banning formerly incarcerated people from ever voting again, while others allow voting from prison, or upon completion of a sentence, or

VOTER REGISTRATION

1 Automatic voter registration: Is voter registration automated?

- ▶ Some are making registration harder.
- ▶ Many states are looking to automate registration.



2 Vote restoration: How can formerly incarcerated people have rights restored?

- ▶ Some states are not allowing restoration or creating obstacles.
- ▶ Some are allowing restoration or are making it easier.



restore voting rights for some felony offenses but not others. So, in a state like Colorado, a citizen who has served their time might be automatically registered to vote and sent a ballot, while in a state like Alabama, a citizen with the same record would be banned from voting for life.

Trend 1: Automatic Voter Registration

The first of the 10 policy trends transforming voting in America is automatic voter registration (AVR). High voter engagement and turnout starts with high voter registration rates. Some states make registration convenient and streamlined, whereas others have onerous requirements. AVR works to modernize and improve the voter registration process by automatically registering eligible voters when they interact with designated state agencies, such as when they get or renew a driver's license. AVR also strengthens the security and accuracy of election systems by ensuring that only eligible voters are registered.

Current Automatic Voter Registration Laws



At least 13 states are considering legislation related to AVR, with the majority of proposals seeking to newly implement such a system. Bills pending in Alabama, Florida, Iowa, Idaho, Indiana, Kentucky, Missouri, Oklahoma and Wisconsin would all newly implement AVR in those states. Rhode Island is considering legislation to improve their AVR process and voter registration rates by moving from a front-end to a back-end AVR system (see sidebar). Legislation in Hawaii would combine AVR with pre-registration, which allows eligible people as young as 16 to sign up to be registered to vote once they turn 18.

While most states are looking to pass, implement or improve AVR, two states are also considering restrictive legislation relating to AVR: an Arizona bill would effectively ban future implementation of the policy, and West Virginia is considering a proposal to repeal their current AVR system.

Trend 2: Voting Rights Restoration

The United States has one of the highest rates of criminalization in the industrialized world. Each state has laws that delineate who is eligible to vote, and almost all states restrict voting for those who are currently incarcerated for a felony offense—although a few states allow citizens to vote while incarcerated. States' policies diverge significantly on the question of when and how formerly incarcerated people can have their voting rights restored. In some states, certain felony convictions result in losing voting rights for life. Other states require steps such as full payment of fines and fees related to criminal convictions but often rely on systems that are very difficult to navigate and also prevent indigent individuals from regaining their voting rights.

Current Voting Rights Restoration Laws



HOW AVR IMPLEMENTATION IMPACTS VOTER REGISTRATION RATES

While any form of AVR results in higher voter registration rates, there are approaches states can take to make their systems more effective. The primary distinction in AVR systems concerns “front-end” vs. “back-end” registration; front-end registration asks the voter “up front” (that is, at the time of the relevant interaction) if they would like to opt-out. Back-end voter registration automatically transfers information to designated agencies and the voter is then given an opportunity to opt-out later. While the distinction may seem subtle, recent studies have shown that back-end AVR produces an 8.1% increase in registration, compared to 2.9% for front-end AVR. Back-end AVR also increases turnout among eligible voters by 3.3%, compared to 1.1% for front-end AVR (McGhee, Eric, Charlotte Hill and Mindy Romero. 2021. The Registration and Turnout Effects of Automatic Voter Registration. Technical report Public Policy Institute of California).

At least 13 states are considering legislation concerning the restoration of voting rights related to felony convictions. A proposal in New York would allow people to vote while incarcerated. A proposal in Alabama would eliminate the existing burdensome process that requires a pardon or extensive application process to restore rights. A bill in Florida would remove provisions that require full payment of fines and fees before rights are restored. Bills in Tennessee, Washington, and Wisconsin would expand the class of persons eligible for voting rights restoration. Legislation in Arizona, Kentucky, Minnesota, Missouri, and Nebraska would all require automatic restoration

of rights upon release from incarceration. Conversely, Oklahoma and Wisconsin are considering new restrictive provisions that require the payment of all fines and fees before voting rights are restored.

Casting a Vote

Once a citizen is registered and eligible to vote, the next questions are how, when and where they can cast their vote. Some states are embracing the systemic changes that supported the higher turnout in the 2020 election, while others are vigorously rolling those changes back or even adding voting restrictions. Three hot trends in voting are ID requirements, expansion and contraction of absentee/mail voting, and adding, removing, or setting new requirements for ballot drop boxes.

CASTING A VOTE



3 ID to vote: How burdensome are the ID requirements?



- ▶ Many states are tightening them and applying stricter ID standards to mail voting.



4 Absentee/mail voting:

- ▶ Some states are restricting it.
- ▶ Some states are embracing it.



5 Ballot drop boxes:



- ▶ Some states are removing them.
- ▶ Other states are adding them or changing how they work.



In terms of ID requirements, the majority of states considering legislation on the topic are seeking to make requirements stricter and limit the range of acceptable IDs. Some states are also attempting to add restrictive ID requirements into the process of absentee and mail voting as those voting methods become more popular. Legislation relating to the availability of absentee voting varies widely, with some states looking to permanently adopt policies implemented as a response to the pandemic in 2020, while other states seek to not only roll back eligibility but also to create further restrictions. In addition, ballot drop boxes, a secure method for voters to return absentee and mail ballots, have come under attack in certain states despite a complete lack of evidence that they increase voter fraud. The net result of these changes is an uneven landscape where some voters can vote conveniently and return their ballots to a drop box near their home, while other voters may be disenfranchised because the new restrictions simply make it too difficult to vote. These policy decisions will have a significant impact on voter turnout across the states, and as a result, on the health of our democracy.

Trend 3: More Restrictive Voter ID Requirements—including for Mail Voting

The third hot policy trend of 2022 is revising voter ID requirements—usually to make the requirements more restrictive. A majority of states require that voters show identification when casting their ballot in-person. States that do not require physical ID usually request other identifying information to confirm the voter's eligibility, such as a signature. Some states have unnecessarily strict identification requirements that create barriers for eligible voters who may not be able to obtain a specific form of ID. These overly strict procedures only allow very limited forms of photo ID and/or require burdensome additional steps after Election Day before a voter's

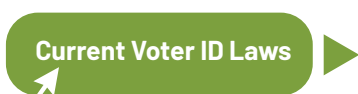
ballot is counted. For states looking to tamp down the increase in absentee and mail voting from 2020, making voting more difficult is a positive. Therefore, a number of states are now considering adding ID requirements for absentee and mail voting, citing unfounded allegations of voter fraud. This is despite [data](#) from the conservative Heritage Foundation showing no correlation between ID restrictions and voter fraud, which has been proven to be vanishingly rare.

At least 13 states are considering legislation related to identification requirements for in-person voting. Of those 13, Rhode Island is the only state debating a bill to repeal burdensome ID requirements. Bills in Alaska, Arizona, Idaho, Illinois, Maryland, Minnesota, Missouri, New York and West Virginia would all impose stricter photo identification requirements. Legislation in Kentucky would remove student identification from the list of acceptable IDs. A proposal in New Hampshire would add burdensome additional steps after Election Day for voters who do not have required ID at the polls. Legislation in New Jersey would create new ID requirements; current law only requires a voter's signature.

At least five states are considering legislation related to identification requirements for absentee and mail voting. The Arizona legislature recently approved a ballot measure that will be put to voters this November to impose additional ID requirements for early and absentee voting. Bills in Iowa, Oklahoma and South Carolina would implement new ID requirements for absentee voters.

Trend 4: Availability of Absentee Voting

The fourth significant trend in voting legislation for 2022 concerns the availability and convenience of absentee voting. Absentee and mail voting took on additional importance in the 2020 election, where a record number of voters chose to vote through these methods. This increase also arguably contributed to the record turnout in the 2020 election. During the election, these voting systems became a target of massive misinformation campaigns and



Current Absentee Voting Laws



unfounded allegations of voter fraud. In 2022, as with many policies covered in this report, some states are seeking to expand and preserve these options, while other states have moved to restrict them.

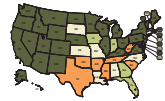
At least 13 states are considering legislation relating to the availability of absentee voting. Multiple bills in Arizona would repeal the state's current system of no-excuse absentee voting. Similar legislation to repeal no-excuse absentee voting is pending in Georgia, Oklahoma and Wisconsin. In terms of expansive legislation, a law enacted in New York temporarily extends the availability of no-excuse absentee voting through 2022. Bills being considered in Alabama, Connecticut, Indiana, Kentucky, Massachusetts, Missouri, New Hampshire, and Rhode Island would all expand no-excuse absentee voting.

Trend 5: Ballot Drop Boxes

The fifth policy trend that has gained momentum in 2022 is regulating the use of ballot drop boxes. In states that allow absentee or mail voting, ballot drop boxes provide a secure means for voters to return their ballots without relying on the postal service. Drop boxes have been utilized for over a decade in states across the political spectrum, from [Colorado](#) to [Utah](#). Drop boxes are fortified and secure receptacles, and usually bolted to the ground. In the 2020 election, [41% of voters](#) reported returning their ballot to a drop box. However, in the midst of the misinformation surrounding the 2020 election, partisan officials sought to portray drop boxes as a vector of voter fraud, leading states to adopt restrictions and bans on this secure method of returning ballots. Conversely, other states are looking to expand the availability of these secure receptacles for ballots, as well as potentially adding new security measures such as bolting the boxes to the ground and providing for frequent pickup of ballots by officials.

At least 10 states are considering legislation to either expand or restrict the use of ballot drop boxes. A bill recently passed through the Idaho House would ban the use of drop boxes. Similarly, after restricting the use of drop boxes in 2021, Georgia is now also considering legislation to ban them entirely. A proposal in Arizona would restrict drop box availability and require that they be monitored by workers and located inside election offices. Conversely, a number of states are considering expanding the use of drop boxes. A bill in Arizona would require drop boxes to be located on college campuses. Legislation in Florida would repeal restrictions on drop boxes passed in 2021. Bills in New Jersey, Rhode Island, and West Virginia would expand the current availability of drop boxes. Nebraska and Utah are considering bills to add security measures, and legislation in Maryland would prohibit the use of false drop boxes.

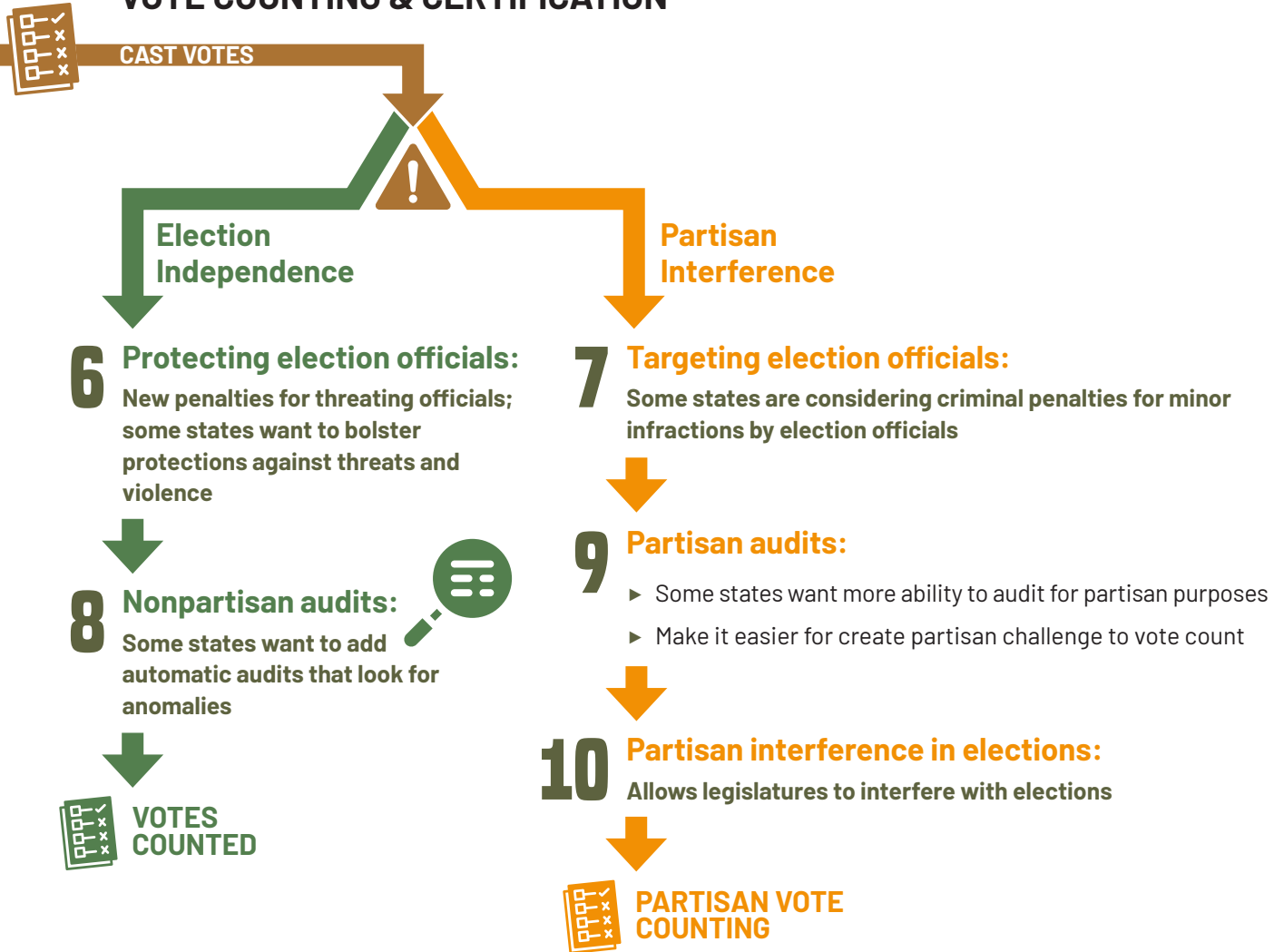
Current Ballot Drop Box Laws



Vote Counting & Certification

Once a voter is registered and is able to cast their ballot, the question still remains of whether that ballot will be accurately counted, and the election results properly confirmed. Voter confidence in our elections is crucial, yet over the past two years in particular, some partisan actors have worked to systematically undermine this confidence. Violent threats against the nonpartisan officials who run our elections across the country have increased dramatically, and now many states are considering imposing harsh criminal penalties against officials for minor technical infractions—increasing the potential for targeted intimidation and abuse. Multiple states have launched illegitimate fishing expeditions disguised as audits in an effort to sow doubt over election results that have been confirmed by legitimate processes multiple times over. And in a direct attack on democracy, some state legislatures have sought to dramatically

VOTE COUNTING & CERTIFICATION



expand their power over elections, which would allow partisan politicians to override independent officials and interfere in election certification and results.

Election Officials

Trend 6: Protecting Election Officials Against Threats

In addition to the surge of misinformation during the 2020 election, the country also witnessed a dramatic rise in violent rhetoric directed at nonpartisan election officials. Therefore, the sixth trend in election legislation in 2022 is a positive one—states seeking to protect the election

officials who do the hard work of keeping our democracy running. In a recent [survey](#) conducted by the Brennan Center, almost one fifth of these officials reported being threatened because of their job. In addition, a similar margin responded that they are likely to leave their jobs before the 2024 election. If this exodus comes to fruition, the vacuum left is likely to be filled by partisan actors, thereby undermining the independence of our elections. To help reduce violent threats and keep election officials safe, a number of states are considering new protections for election officials.

At least nine states are considering legislation to protect election officials against threats.

Colorado, Minnesota, New Hampshire, Oregon, Vermont and Washington all have pending bills that would increase penalties for threatening or harassing election officials. Legislation in Illinois, Maine and New York would increase penalties for actual physical acts of violence against these officials.

Trend 7: Targeting Election Officials with Criminal Penalties

In contrast to legislation aimed at protecting election officials, the seventh trend in election legislation concerns states imposing new criminal penalties and fines on election officials. In stark contrast to the states discussed above that are seeking to protect election officials, other states responded to the 2020 election by enacting harsh new criminal penalties that target election officials with felonies, misdemeanors, or heavy fines for minor technical infractions or mistakes. These problematic laws increase the potential for intimidation and partisan abuse as well as accelerate the growing exodus of nonpartisan officials who fear yet another form of reprisal.

At least seven states are considering legislation to impose new threats of criminal penalties on election officials. Bills in Alabama, Alaska, Arizona, Missouri, Oklahoma and Wisconsin would all create new felony offenses applying to election officials. A bill in New Hampshire would create a civil cause of action whereby any voter could sue an election official and seek to have them removed from their position.



Election Independence vs. Partisanship

Trend 8: Nonpartisan Post-Election Audits

The eighth trend in 2022 election litigation involves states seeking to increase confidence in election results through structured, legitimate audits. Post-election audits, when properly conducted, are a nonpartisan process

that allows states to verify the accuracy and performance of voting equipment and vote counting machines. While the majority of states require some form of a post-election audit, not all states have such processes in place. Risk-limiting audits are a form of post-election audits that use statistical methods to analyze random samples of ballots and verify the accuracy of election results. In a risk-limiting audit, the size of the random ballot sample is increased until there is statistical and objective confidence in the election results. For more information on best practices relating to post-election audits, please visit [Verified Voting](#).



At least eight states are considering legislation related to legitimate, nonpartisan post-election audits. A bill awaiting the governor's signature in Virginia would expand the use of risk-limiting audits. Legislation recently passed in the Idaho legislature would implement routine post-election audits for the first time in the state. Maryland, New Jersey, New York, Rhode Island and Illinois are all considering bills to newly implement or expand the use of risk-limiting audits. Legislation in Kentucky would create a task force to study the use of risk-limiting audits.

Trend 9: Partisan "Audits" & Investigations

Conversely, the ninth trend in 2022 election legislation involves states seeking to undermine confidence in elections through partisan investigations disguised as audits. Unlike the legitimate, nonpartisan audits discussed above, in 2020 and 2021 partisan officials hired unqualified individuals to conduct improper ballot reviews in states like Arizona, in an effort to undermine trust in state voting systems and election officials. These attempts, which compromised the integrity of both ballots and voting machines, should not be characterized as audits, as they were designed and undertaken for illegitimate partisan purposes rather than due to any actual evidence of voting

or vote counting anomalies. This troubling trend has continued into 2022, with at least 13 states considering bills relating to either retrospective investigations of the 2020 election, or legislation to make partisan “audits” easier in the future.

Alabama, Florida, New Hampshire, Oklahoma and Tennessee are all considering bills to conduct so called “forensic audits” of the 2020 election. These bills serve no purpose other than to spread misinformation and further erode trust in our election systems. Legislation pending in Alaska, Arizona, Iowa, Maryland, Minnesota, Missouri, South Carolina and Wisconsin would make it easier to conduct partisan “audits” and investigations in the future, rather than audits occurring independently and systemically, and then only going forward if there some actual evidence of an anomaly or error in vote count.

Trend 10: Allowing Partisan Interference in Elections

The final trend in 2022 election legislation is the most frightening: a movement by state legislatures to interfere in election administration for partisan purposes. This movement represents perhaps the most dangerous trend to democracy that has emerged in the past two years. Following the 2020 election, many partisan actors made efforts to undermine and even overturn election results, attempting to fire election officials, demanding endless recounts, and even failing to condemn the violence at the U.S. Capitol on January 6, 2021. Some state legislatures have since sought to enact laws that give themselves or other partisan actors more power over aspects of election administration, election related litigation, and executive emergency powers.

At least eight states are considering legislation that would increase partisan interference in elections. A law awaiting the governor’s signature

in Florida creates the first statewide office of election crimes intended to investigate allegations of voter fraud, no matter how absurd. Arizona is considering multiple bills related to partisan interference; the most troubling are two proposals that allow the legislature power to select presidential electors and overturn election results in some circumstances. Legislation in Georgia would give the state police subpoena and audit power to investigate voter fraud, which is currently the responsibility of the Secretary of State; like the law pending in Florida, such measures increase the potential for voter intimidation and partisan abuse. Bills in Kansas and Tennessee would allow the legislature to interfere with election related litigation. Multiple proposals pending in Missouri and Wisconsin would give the legislature more power over aspects of election administration and allow interference with the state election authorities. Legislation in Oklahoma would set up a system to bifurcate state and federal elections if federal legislation is passed that would alter state law.

Conclusion

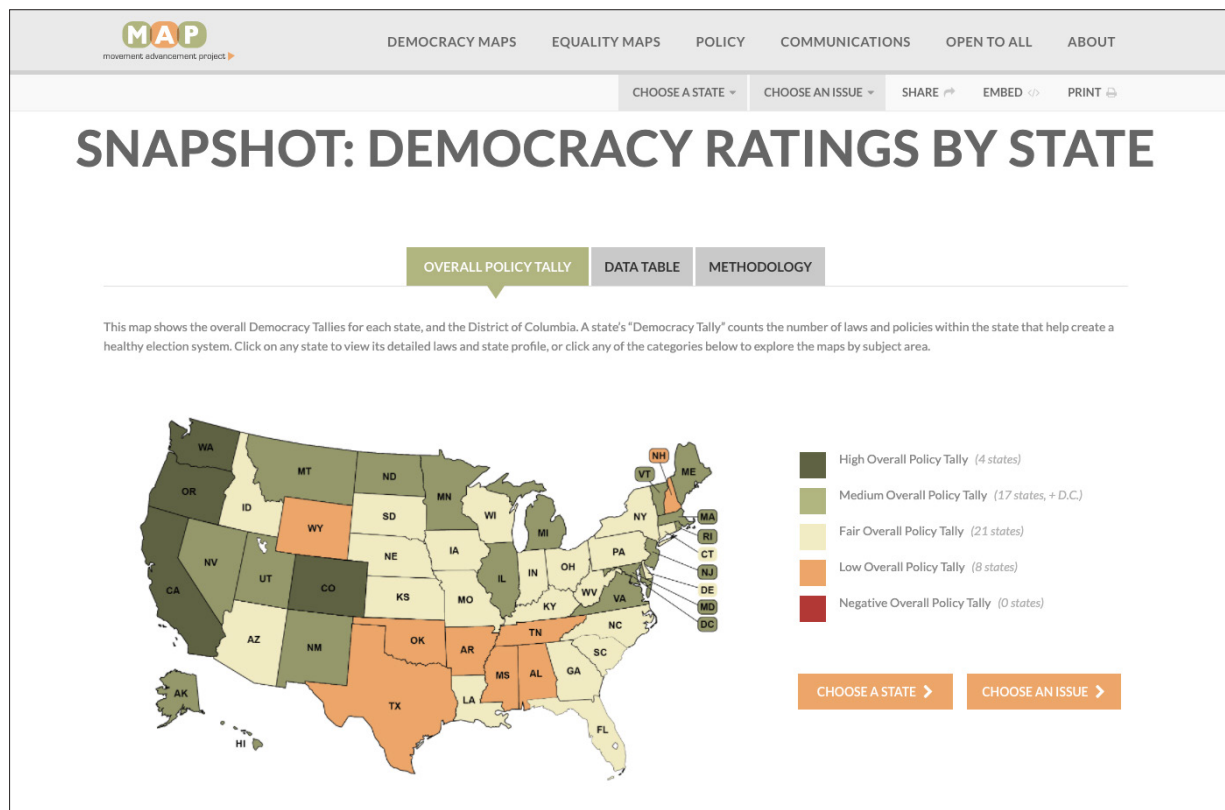
As America heads into the 2022 election cycle, we face a deeply divided nation, where who can vote, how people can vote, and even the very independence of election systems varies dramatically by state. Rather than embrace the changes from the 2020 elections that allowed a record number of citizens to have a voice in America’s government, many politicians have sought to not only fight these changes, but to pass restrictions making it harder to vote. And rather than fight back against the baseless allegations of voter fraud by bolstering our election independence, many states are considering changes that provide more partisan control over everything from audits to fraud investigations to criminal penalties against election officials to vote certification.

Battleground states where election results were close in 2020 represent many of the same states with the most dangerous legislative proposals.



While some states will encourage changes that give their citizens a voice and protect their election officials and their independency, America is also witnessing an increasing danger to democracy on many fronts. In our increasingly polarized nation, this includes the potential for states to refuse to certify elections, nonpartisan election officials being replaced with bad faith partisan actors, and a rise in candidates for office running on false narratives of voter fraud.

MAP will continue to track these developments and more in our Democracy Maps, which cover more than 40 election related laws and policies. If you would like more information on any of the legislation discussed in this report, please contact Brian Hinkle at brian@lgbtmap.org.



Visit the new [Democracy Maps](#) to learn more, check out your own state, and see issue-by-issue maps.