

THE STATE OF STATE ELECTION LAW

2022 Mid-Year Review

**VOTING
RIGHTS
LAB**

July 2022

A Letter from Our Executive Director

Dear friends,

These six months of 2022 have been immensely challenging. We've faced grave attacks on our civil liberties and witnessed tragic acts of violence. And every year, we also face an ever-evolving landscape for election policy – with new, sometimes daunting, obstacles for voters and increasingly worrisome threats to our democracy.

But with every year, I am also floored by the creativity, hope, ingenuity, and determination of our movement – and the progress large and small that we are making together toward building a stronger, more inclusive America. It is the work that so many of you do day in and day out to realize this vision that gives me hope in this difficult time.

We see this steady progress, for example, with early voting. Before the 2020 election, seven states did not offer any in-person early voting – an option that is critical to a more inclusive democracy. This year, [we expect](#) that number to drop to just three states – an incredible development in only two legislative sessions.

That's not to say there aren't serious challenges ahead. Efforts by state legislatures to interfere with the democratic process are on the rise. Certain lawmakers are exploiting a historic distrust in our elections systems to change the rules for their political gain, compromising our country's most fundamental ideals to increase their own power. At the same time, new restrictive election laws have created serious obstacles for voters trying to make their voices heard. As we saw in the [Texas primaries](#) this year, those who suffer from burdensome and carelessly-implemented election laws are often those already historically disenfranchised – such as Black and brown voters, low-income voters, and voters with disabilities.

I have faith that together we can, and we *will*, tackle these challenges head on. It will take all of us – all of our hard work, resolve, and vigilance – to ensure the freedom to vote, the key to all other freedoms, is not only upheld and protected, but *expanded* and *strengthened*.

With hope,

A handwritten signature in black ink, appearing to read 'Megan Lewis', with a stylized, cursive script.

Megan Lewis
Executive Director and Co-founder, Voting Rights Lab

Table of Contents

A Letter from our Executive Director	2
2022 Election Legislation: A Mid-Year Review	4
Good Trends: Early Voting and Voting Restoration	7
Early Voting	7
Voting Rights Restoration	9
Mixed Trends: Mail Voting, Voter Registration, and Voter List Purges	10
Mail Voting	10
Voter Registration	14
Voter List Purges and Maintenance	15
Bad Trends: Election Interference	18
Criminalization of Elections	19
Increased Investigation and Prosecution of Alleged Election Crimes	19
Limits on Emergency Powers	21
Restrictions on Funding and Donations	21
Increased Partisanship in Appointment of Election Officials	21
Implementation Repercussions: New Laws and Their Impact on Voters	22
2022 Forecast: What Lies Ahead	28
Open Legislative Sessions	28
Ballot Initiatives	29

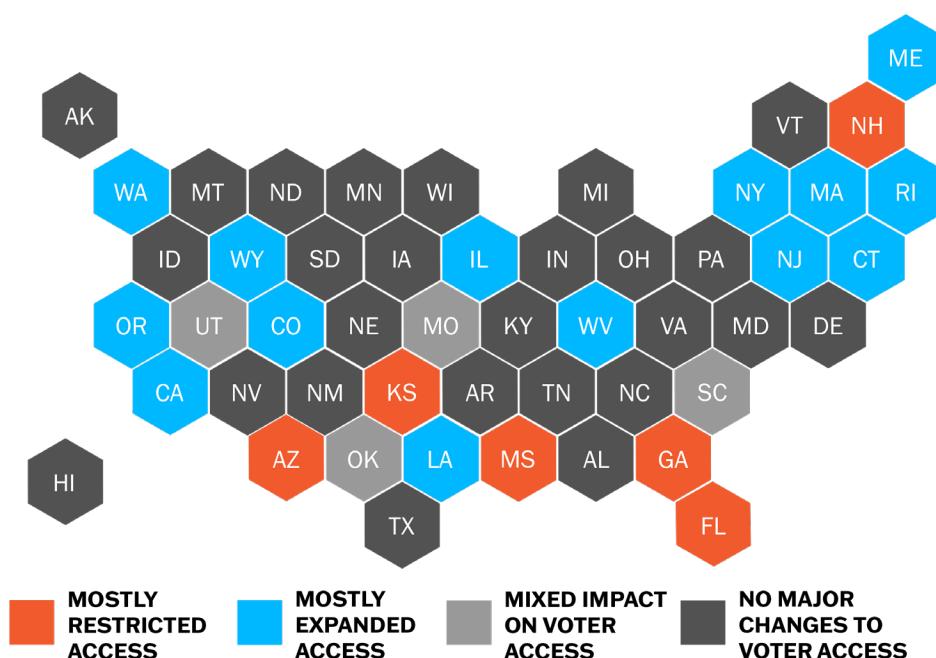
2022 Election Legislation: A Mid-Year Review

2021 was a historic year for election legislation. Our team at the Voting Rights Lab tracked [nearly 2,500 election-related bills](#) introduced in all 50 states: a powerful reminder that state legislatures possess both the power and the political will to shape our election policies.

In recent years, we've witnessed an onslaught of election-related legislation pulling the nation in two directions. On the one hand, many states have taken steps to erode participation in our democracy, creating hurdles to casting a ballot and interfering with fair and transparent election administration. Meanwhile, other states have made tremendous progress in expanding participation in our democracy, giving voters more options to make their voices heard and strengthening our election infrastructure.

2022 has been no different. States remain divided on issues like mail voting, with many states limiting what was a widely popular vote method during the global pandemic. Conversely, when it comes to policies like early voting and rights restoration for those with past convictions, we've seen extraordinary strides made to improve voter access.

MID-YEAR SNAPSHOT: VOTER ACCESS LEGISLATION IN 2022



Significantly fewer bills that impact voter access have been enacted in 2022 so far compared to 2021. As of closing this report for publication on June 22, we are tracking [117 election-related bills that have been enacted](#) so far this year, compared to 159 bills enacted by this same time last year. This decline is expected in an election year: legislatures tend to make fewer changes to election law in election years because it is difficult to implement such changes. Further, as we saw in the Texas primaries, the poor implementation of election laws can have serious repercussions for voters. Later in this report, we examine what happened in Texas and take a look at other states where voters may face election changes and challenges this year. Throughout the report, we also spotlight some states where significant legislative changes occurred.

STATE SPOTLIGHT

Arizona

- *New proof of citizenship requirement sets up constitutional challenge*
- *Strict voter ID will appear on the ballot this November*

Arizona lawmakers continued their vigorous efforts to change Arizona election law in 2022 by filing [more than 100 election-related bills](#). Some of the most aggressive proposals included bills that would completely eliminate or severely limit [in-person early voting](#) and [mail voting](#), two methods which accounted for roughly 89% of all ballots cast in Arizona in 2020. Other proposals would restrict the use of [secure drop boxes](#), [give partisan actors greater control over the vote counting and certification process](#), [publish images of ballots online](#), and [authorize ill-defined “forensic audits,”](#) similar to the error-laden review of the 2020 election conducted by the Cyber Ninjas firm.

While those proposals failed to garner sufficient support to pass, the legislature did pass several measures likely to have a substantial impact on future elections. Both chambers passed [S.C.R. 1012](#), placing a ballot proposition before voters this November that would make the state’s voter ID law far more restrictive. If ratified by voters, the new law will require all voters to show a valid, unexpired photo ID to receive a ballot. Existing law allows voters to show two forms of non-photo ID as an alternative to photo ID.

Legislators also passed [H.B. 2492](#), which creates a documentary proof of citizenship requirement, similar to ones ruled unconstitutional in other states, for individuals attempting to register. It also requires local election officials and the attorney general to conduct additional investigations into the citizenship status of new applicants and existing registered voters. Governor Ducey signed H.B. 2492 into law, and it now faces several legal challenges.

In 2021, state lawmakers around the country began introducing hundreds of bills interjecting partisanship where it never belongs: in our elections. These alarming bills include provisions to strip experienced local election professionals of their authority and hand that power to state legislatures or other partisan actors, or to threaten election officials with felony prosecution for simply carrying out their jobs.

[illegible]

6

As of June 22, with half of the year complete and many state legislative sessions coming to a close:

117 TOTAL BILLS ENACTED

20 STATES HAVE ENACTED 49 BILLS

that will improve voter access or election administration.

17 STATES HAVE ENACTED 25 BILLS

that will restrict access or interfere with election administration.

22 STATES HAVE ENACTED 43 BILLS

that will have a mixed impact, or their implications for voting and election administration are not yet clear.

Good Trends: Early Voting and Voting Restoration

So far this year, we have seen two major bright spots when it comes to expanding access to the ballot: expansion of the availability of in-person early voting and increased access for citizens with past felony convictions.

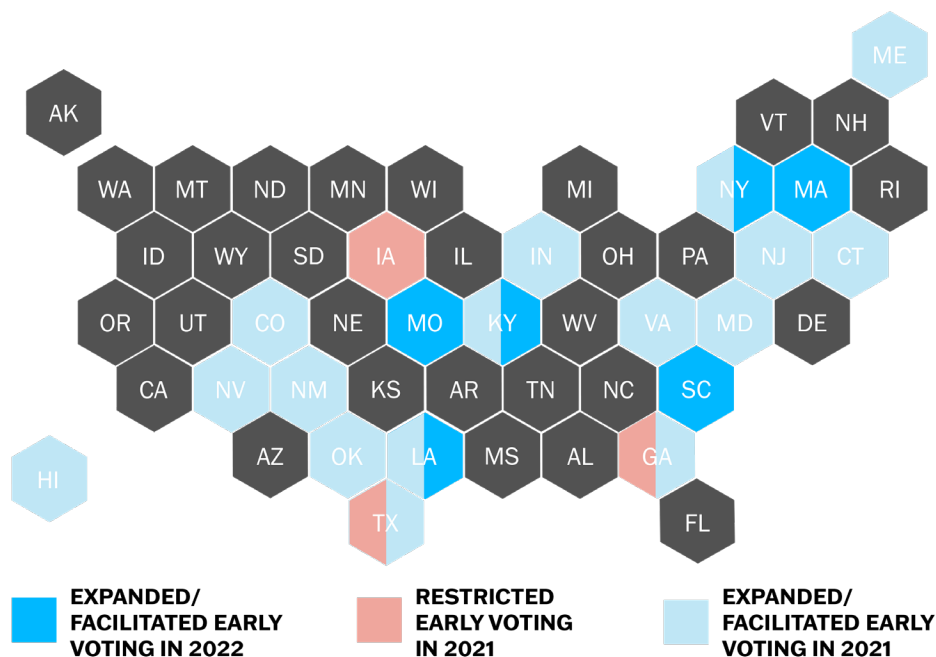
EARLY VOTING

As state election policies increasingly diverge, there are few issues on which a vast majority of states are headed in a positive direction. One of them is in-person early voting. Before the 2020 election, seven states did not offer any in-person early voting. We are now poised to see that number drop down to only three states in 2022² – remarkable progress over just two legislative sessions.

Not all early voting is created equal, meaning many states have room to improve and expand their existing early voting systems. Since the 2020 election, we have seen [17 states](#) improve access to early voting.

2 This figure presumes that Connecticut voters approve the early voting ballot initiative this November.

EARLY VOTING GAINS GROUND AFTER 2020 ELECTIONS



Last year, [16 states](#) took action to expand or facilitate early voting. This trend continues in 2022, with [six states](#) enacting laws that expand or facilitate early voting so far.

- [South Carolina](#) and [Missouri](#)³, two of the few states with no early voting opportunities before 2020, each passed legislation creating two weeks of early voting.
- [Massachusetts](#) enacted a bill that expanded early voting to all elections, extended the early voting period, and ensured voters have access to weekend early voting. Under previous law, early voting was only available for biennial November general elections.
- The [Louisiana](#) legislature adopted a resolution creating a task force to study the expansion of early voting in the state.
- [Kentucky](#) increased the minimum number of early voting hours after [creating early voting](#) last year.

In [Connecticut](#), voters will decide whether to adopt early voting this November, after the legislature passed a resolution to place the issue on the ballot.

³ Because of its significance, this law is the only new legislation signed after June 22 that we have included in this report. It was signed on June 29, 2022.

VOTING RIGHTS RESTORATION

[Two states](#) have improved voter access for citizens with past felony convictions so far in 2022, building upon the [eight states](#)⁴ that made progress on this issue last year. Notably, one of the two states is Arizona – a state that typically makes headlines for efforts to restrict voter access.

A new [Arizona law](#) allows citizens who are not eligible for automatic restoration to apply for their voting rights to be restored immediately upon discharge from prison or probation instead of having to wait two years, as they did under past law. It also makes the application process less onerous and ensures that citizens facing or convicted of felony charges are informed of how their voting rights may be restored.

[California](#) passed a law this year that will require the Department of Corrections to inform election officials when citizens' voting eligibility is restored. It also requires county election officials to notify those individuals of their eligibility and to provide information on how to register.

STATE SPOTLIGHT

Missouri

State creates in-person early voting and makes voter ID more restrictive

Heading into the 2022 session, Missouri leaders, including Secretary of State Ashcroft and leadership in both legislative chambers, named election reform as a primary priority for the session. Two core areas of focus were to make Missouri's voter ID requirements more restrictive and to increase barriers related to citizen-initiated ballot measures, which Missouri voters have used in recent years to enact policies like Medicaid expansion and medical marijuana.

Several iterations of omnibus election legislation made progress through the legislature, though they faced a number of delays – especially in the Senate – due to disagreements among the members on other issues. Eventually, members from both parties reached a compromise and passed [H.B. 1878](#). The final version of the bill restricted voter access by eliminating non-photo ID options for voters casting ballots in person, but it also expanded voter access by creating a two-week period of early voting for the first time in the state in the form of no-excuse, in-person absentee voting. The governor signed the bill at the end of June.

As in prior sessions, efforts to restrict the citizen initiative process proved unsuccessful.

4 Our State Voting Rights Tracker shows 9 states enacted voting restoration bills because the search includes CA S.B. 504, which was introduced in 2021 but passed in 2022. Only 8 states enacted voting restoration legislation in 2021.

Mixed Trends: Mail Voting, Voter Registration, and Voter List Purges

As we saw in 2021, when it comes to expanding or restricting access, many states are moving in opposite directions. A few policies that exemplify that divide are mail voting, voter registration, and voter list purges.

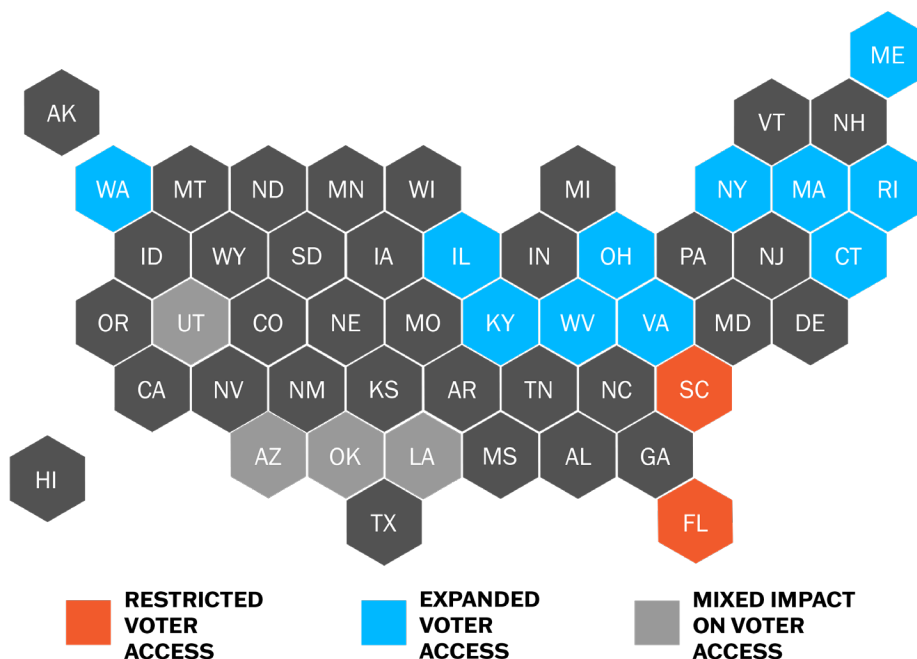
MAIL VOTING

In 2021, [29 states](#) expanded or improved access to mail voting, while [13 states](#) passed legislation to restrict mail voting access.

The diverging treatment of mail voting continues this year. So far in 2022:

- [Fifteen states have enacted 28 laws](#) expanding access to mail voting.
- [Six states have enacted eight laws](#) restricting access to mail voting.

STATES DIVERGE ON MAIL VOTING IN 2022



Some issues showcase the growing divide between states on mail voting options, such as drop boxes.

Drop Boxes

In 2021, [13 states](#) expanded access to mail ballot drop-off locations, while [five states](#) restricted such access. This year, states remained split on this issue. Three states – [Utah](#), [Rhode Island](#), and [Massachusetts](#) – enacted legislation improving access to drop boxes, either by setting

minimum requirements for the number of drop boxes that election officials must provide, or in the case of Massachusetts, authorizing them for the first time. [Four states](#) restricted access to drop boxes. [Missouri](#), [South Carolina](#), and [Louisiana](#) passed laws effectively prohibiting drop boxes altogether, while [Florida](#) limited which election branch offices are required to provide them.

Although states are generally headed in different directions on mail voting, there are some aspects where progress is mostly positive:

Expanded Eligibility

While most states allow voters to vote by mail with no special reason required, [17 states](#) still require that voters provide a specific “excuse” in order to vote with a mail ballot. [Four of these states](#) expanded mail voting eligibility this year, and [another](#) got rid of the excuse requirement entirely. [Only South Carolina](#) restricted eligibility for mail ballots.

- [Rhode Island](#) enacted a new law ending its excuse requirement, allowing all qualified voters to vote by mail.
- [Louisiana](#) made it easier for voters with disabilities to qualify for mail voting.
- A new [Kentucky](#) law added election administration responsibilities to the list of qualifying excuses to vote by absentee ballot.
- [New York](#) will allow voters to vote by absentee ballot through the end of 2022 because of the risks posed by COVID-19.
- [Connecticut](#) expanded eligible reasons to vote by mail to cover concerns over “general sickness” and physical disability, including considerations for caretakers. It also struck a requirement that voters must be absent from the jurisdiction during all hours of voting in order to vote by mail, likely facilitating access to absentee voting for residents who [commute out of town](#) for work. Meanwhile, [a resolution](#) to eliminate the excuse requirement is making its way through the legislature and will likely appear on the ballot in 2023.

Disability Access

[Eight states](#) with varying partisan control of legislative bodies expanded mail voting access for voters with disabilities. For example:

- [Arizona](#), [Oklahoma](#), and [Illinois](#) all passed legislation to provide remote or electronic mail ballot access to voters with visual and other print disabilities.
- [Louisiana](#) made it easier for voters with disabilities to qualify for mail voting.

- [Nebraska](#) law now requires that drop boxes comply with the Americans with Disabilities Act.
- [Rhode Island](#) moved the deadline to request an accessible ballot from 45 days to 21 days before an election.

More Time to Process and/or Count Ballots

In 2021, we saw [15 states](#) with varying partisan control of legislative bodies enact legislation increasing the amount of time election officials have to count and/or process mail ballots. That trend continues in 2022, with another [three states](#) – [Wyoming](#), [Rhode Island](#), and [Massachusetts](#) – enacting new laws that give election officials more time to process or tabulate mail ballots.

STATE SPOTLIGHT

South Carolina

A microcosm of national trends on early voting, mail voting, and election interference

This spring, South Carolina legislators reached a [unanimous compromise on one bill](#) that illustrates three national trends: (1) bipartisan support for early voting; (2) changes to mail ballot access; and (3) election interference.

The bill, [S.B. 108](#), significantly increases voter access by establishing two weeks of in-person, Election Day-style early voting for the first time in the state, while also restricting mail voting and interfering with election administration. Notably, the new early voting system includes Saturday voting, but prohibits Sunday voting, thus preemptively blocking the development of [“Souls to the Polls”](#) programs that Black communities in other states have used to bring Black voters to vote after Sunday worship services.

Among its mail voting restrictions, the bill prohibits drop boxes, creates new ID restrictions for mail ballots, and moves the mail ballot application deadline earlier. It is worth noting that South Carolina is one of [16 states](#) that still requires a special reason (or “excuse”) to vote absentee, so mail voting is not particularly widespread in the state.

Additional provisions of the bill interfere with the administration of elections in the state. These provisions require state Senate confirmation of the election commission’s choice to serve as its executive director; allow the governor and legislative leadership to initiate the removal of any election commissioner or the executive director due to criticism of the state’s election laws; prohibit emergency regulations by the election commission; grant legislative leadership the authority to intervene in litigation; and prohibit the state election commission and county boards of election from accepting private contributions, whether monetary or in-kind.

Meanwhile, there are some mail ballot issues on which we are only seeing restrictive legislation pass:

Identification Requirements

In 2021, [four states](#) created or expanded requirements for voters to provide a specific ID number in order to vote by mail, while no state eliminated or relaxed such requirements. This trend continues in 2022.

- [Oklahoma](#) and [South Carolina](#) both enacted laws requiring voters to provide specific ID numbers with their absentee ballot applications. The South Carolina bill also requires that voters show ID when returning their mail ballots in person.
- [Arizona](#) lawmakers created a ballot proposition that, if ratified by voters, will require mail voters to include a specific ID number on their ballot certificate.
- In [Florida](#), the legislature ordered a feasibility study on requiring specific ID numbers on mail ballots. The state began requiring such numbers on mail ballot applications last year.

Community Ballot Return and Voter Assistance

In 2021, [nine states](#) restricted the rules around who may return a ballot on behalf of a voter – sometimes called community ballot return – and another [two](#) did so this year. No state has expanded community ballot return options this year.

- [Florida](#) elevated the criminal charge for collecting more than two mail ballots other than one's own or that of an immediate family member to a felony offense.
- A [South Carolina](#) law created a felony penalty for returning more than five ballots other than one's own. The law also prohibits distribution of unsolicited ballot applications and creates additional restrictions on authorized representatives requesting an absentee ballot on a voter's behalf.

VOTER REGISTRATION

Voter registration is another issue seeing divided results this year. So far in 2022, [eleven states](#) have enacted legislation to make it easier to register to vote or protect voter registration information, while [four states](#) have passed restrictive legislation.

Improving Voter Registration

Here are some examples of ways states have improved voter registration this year.

- [Arizona](#) passed a new law requiring the Department of Game and Fish to provide voter registration services to people applying for hunting, fishing, or trapping licenses.
- [California](#) improved its voter registration list maintenance process for people with disqualifying felony convictions.
- [Colorado](#) passed a law enabling voters to maintain their voter registration after their homes have been destroyed by a natural disaster or other reason, if the voters intend to return to their homes after rehabilitating or reconstructing them.
- [Maine](#) added identification cards issued by federally recognized Indian tribes to the list of IDs that may be considered by registrars as part of the registration process.
- [Oregon](#) expanded access to its online voter registration system by giving individuals additional options to verify their identity. Whereas it was previously required to provide a driver's license or state ID number, individuals now have the additional option of providing the last four digits of their Social Security number.
- [Washington](#) will now require one additional location for in-person voter registration in certain jurisdictions, which has the effect of expanding the availability of same day registration.
- [Utah](#), [Oregon](#), [Colorado](#), and [Arizona](#) improved their address confidentiality programs.

Restricting Voter Registration: Proof of Citizenship

Despite some positive movement on voter registration, a related restrictive trend has reemerged in recent months: proof of citizenship requirements. This issue saw no real action in state sessions last year, but so far in 2022, both [Mississippi](#) and [Arizona](#) passed bills imposing such requirements.

- A new law in [Arizona](#) prohibits registered voters from voting in presidential elections, and from voting by mail in any election, if they registered without providing documentary proof of citizenship. The new law also requires the attorney general and county recorders to investigate certain applicants' citizenship status.
- A new [Mississippi](#) law requires confirmation of citizenship before any applicant may be registered to vote. If an applicant's citizenship cannot be verified through the Department of Public Safety or federal databases,

the voter must provide proof, such as a birth certificate, passport, or naturalization documents.

The Arizona law is currently [being litigated](#). It is perceived as a challenge to a [2013 U.S. Supreme Court decision](#) that ruled states could not add registration requirements for voters in federal elections that go beyond what the federal registration form requires. If the Supreme Court ultimately reverses this 2013 decision, many more states are likely to advance documentary proof of citizenship bills.

Arizona also enacted bills prohibiting [automatic voter registration](#) and [same day registration](#) this year, but since Arizona did not previously offer either type of registration, these bills have no impact on voter access.

VOTER LIST PURGES AND MAINTENANCE

Though most efforts in this category this year restrict voter access, legislative approaches to voter list purge policies have also been mixed. Efforts to comb existing voter lists in search of non-citizens have resurfaced. Some states have turned their attention to removing voters whose mail is returned as undeliverable or who have not voted in recent elections. Meanwhile, some states have taken steps to improve their processes for gathering data or notifying voters of changes to their eligibility or registration status.

Searching for Non-Citizens

- A [bill in Arizona](#) requires the attorney general to investigate the citizenship of all people who are registered to vote who have not provided documentary proof of their citizenship, to prosecute any non-citizens discovered, and to report to the legislature. In addition, it puts substantial, open-ended duties on county recorders to investigate the citizenship of anyone attempting to register to vote with a federal form without providing documentary proof of their citizenship, creating criminal penalties for recorders who register voters who later prove to have been non-citizens.
- A South Carolina [bill](#) adds citizenship status as basis for removal from the voter list and requires transmission of data on non-citizen applicants from the DMV to the state election commission. With no specifications on what constitutes a match between a DMV record and a voter record, this bill risks false matches and improper removal of eligible voters. Additionally, individuals who become citizens after a DMV interaction as a non-citizen could be improperly flagged and removed.
- In Tennessee, [one bill](#) expressly prohibits non-citizens from voting in elections. It also requires federal courts to transmit data regarding prospective jurors who are disqualified from service due to their citizenship. Finally, it authorizes the state coordinator to review the voter

database for non-citizens by cross-referencing it against state and federal databases containing citizenship information.

- [A bill passed](#) in Florida will require the state DMV to provide information to election officials regarding any person who presents evidence that they are a non-citizen as part of being issued a new or renewed driver's license or state ID. In addition to the risk of mismatching a non-citizen with a registered voter, there is evidence other states [that have used DMV non-citizenship data](#) for list maintenance, like Texas, ended up wrongly canceling eligible voters' registrations based on stale data – for example, if a person becomes a citizen after a DMV interaction as a non-citizen. The Florida law has no safeguards in place to prevent the use of stale data.

Non-Voting as New Grounds Triggering Removal Processes

A growing number of states require voters to confirm their address or risk removal from the rolls simply because they did not vote in a recent election.

- [Kansas](#) will now begin an address confirmation process that ends in removal if a person doesn't vote for four years.
- [Florida](#) will increase the frequency of its list maintenance process and require targeting of voters who have not voted in the last two years, with two possible list maintenance procedures now available to election supervisors.

STATE SPOTLIGHT

Wisconsin

Governor vetoes nearly a dozen bills that would restrict voter access and interfere with election administration

Governor Evers, who is up for re-election this November, vetoed every election bill that came across his desk this year – [11 in total](#). Some of the vetoed bills [would have restricted voter access](#), for example by making the state voter ID law more restrictive or limiting a voter's ability to have a friend return their mail ballot. Other bills would have interfered with election administration by targeting state and local election officials with new administrative burdens, external oversight, and even criminal charges. For example, one bill would have criminalized election officials who cured ballots using a process that is currently legal. The Wisconsin Election Commission was also a popular target, with proposals to [strip it of funding](#). With Governor Evers up for re-election in November, and Republicans expected to retain control of the legislature, next year's legislative session could bear very different results.

New Grounds for Triggering Removal: Large Households

[Oklahoma](#) will now require that an address confirmation notice be sent to anyone registered to vote at the same residence address as five or more other voters, a move that could disproportionately impact members of lower income or multigenerational households.

Targeting Voters Whose Mail is Returned

- [Oklahoma](#) will now require that voter identification cards be sent to a voter's physical address, instead of their mailing address on file, as long as the address is valid to receive mail delivery. If the card or any other election mail is returned as undeliverable, that information will be added to the publicly available voter registration list.
- [Idaho](#) will require an investigation into the validity of an absentee voter's registration if the voter's ballot is returned to the county clerk as undeliverable.
- In [Florida](#), one of two permissible list maintenance procedures requires officials to send election mail to a voter's address of residence, even if they have designated a different mailing address, and initiates a removal process for voters whose mail is returned as undeliverable.

Improved Reporting and Notification

One positive development in voter list maintenance practices is states improving their processes for reporting and notifying voters of changes to voter registration status. For example:

- [Virginia](#) will now require registrars to notify voters of a canceled registration via email, if available, in addition to mail.
- A [California bill](#) will require regular, detailed reporting from the Department of Corrections to election officials regarding individuals who have recently lost or regained their voting eligibility. It also requires county election officials to notify individuals when their eligibility is restored and provide registration information.
- An [Idaho bill](#) requires the state Board of Health and Welfare to include in its monthly report to the secretary of state the date of birth, instead of the age, of each Idaho resident who died within the previous month.

Bad Trends: Election Interference

While fewer bills impacting voter access were enacted this session compared to 2021, the number of election interference bills has increased.

In the wake of the 2020 election, a disturbing trend emerged as legislators around the country began introducing bills that would interfere with and inject partisanship into election administration, often based on unfounded allegations of voter fraud. These include bills to shift election oversight authority – including the certification of election results – to partisan actors; legislation threatening election officials with felony-level crimes; and politically-motivated, standardless reviews of past or future election results.

This year, the trend continues unabated – and in fact appears to be gaining momentum.

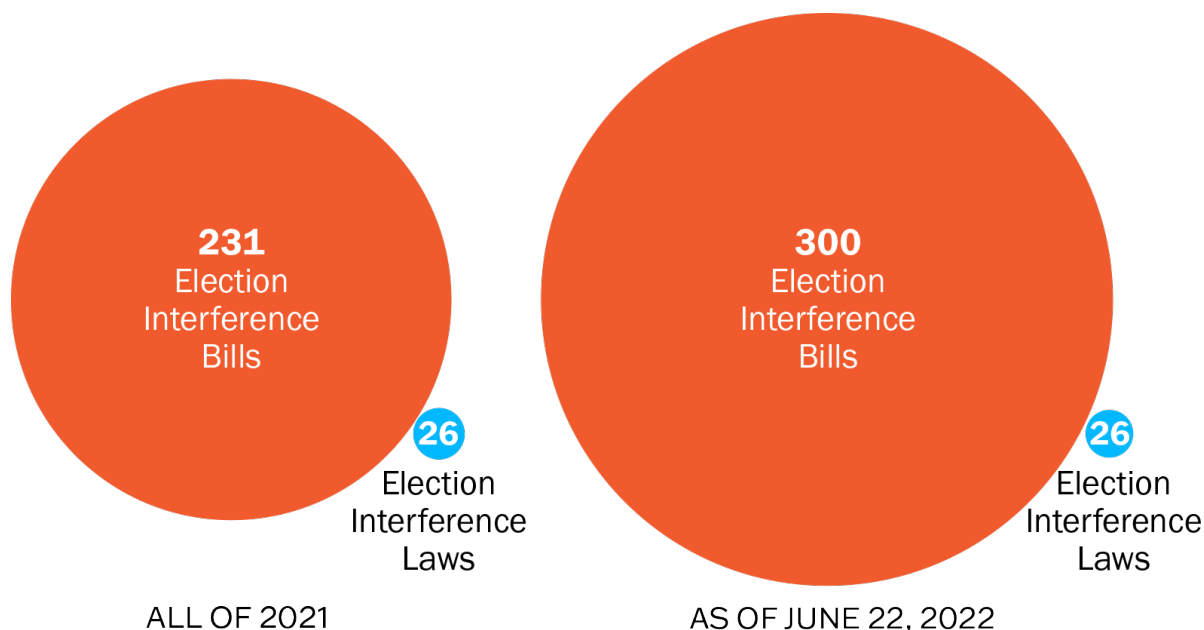
In 2021:

- [37 states introduced 231 election interference bills.](#)
- [18 states enacted 26 new election interference laws.](#)

In 2022, as of June 22:

- [35 states have introduced over 300 election interference bills.](#)
- [20 states have enacted 26 new election interference laws.](#)

ELECTION INTERFERENCE LEGISLATION: 2021 VS. 2022



CRIMINALIZATION OF ELECTIONS

The increased presence of law enforcement in the election process represents just one part of a broader trend: legislators around the country are erecting a robust criminal infrastructure around voting.

The year to date has produced [18 new laws in 13 states](#) that subject voters, voter assistants, and election officials to increased criminal penalties. In some cases, these penalties target those providing voter assistance, while other efforts have potential to criminalize inadvertent mistakes. For example:

- An [Arizona bill](#) makes it a felony for an election official to register a voter on Election Day and allow them to participate in the election.
- [Legislation enacted](#) in Florida imposes felony penalties for collecting more than two mail ballots other than the person's own ballot or those of immediate family members. This conduct was a misdemeanor under previous law.
- Similarly, [legislation enacted](#) in South Carolina imposes up to five years imprisonment for returning more than five completed ballots in addition to one's own.
- A [new Oklahoma law](#) creates a felony offense for applying to receive an electronic ballot due to a visual impairment if the voter does not meet the state's statutory definition for blindness.
- [Alabama](#), [Kentucky](#), and [Oklahoma](#) will enforce their bans on the use of private funds in election administration with criminal penalties.

INCREASED INVESTIGATION AND PROSECUTION OF ALLEGED ELECTION CRIMES

To date, [six states](#) have enacted laws to escalate the investigation and prosecution of purported election crimes, at times by stripping law enforcement of investigative and prosecutorial discretion, or by creating dedicated law enforcement units tasked with rooting out so-called fraud.

Arizona's [H.B. 2492](#), for example, requires the attorney general and county recorders to investigate certain applicants' citizenship status. The attorney general is required to prosecute non-citizen registered voters, and county recorders may be subject to criminal penalties if they fail to investigate as required. In [Oklahoma](#), any time 10 or more people are registered at an address other than a property that could be expected to have multiple registered voters – such as nursing homes, apartment buildings, and military bases – the State Board of Elections must refer the registrants to the relevant county board of elections. The county board must then refer the registered voters to law enforcement for investigation and potential prosecution.

Perhaps the best-known effort to expand the investigation of elections involves Florida's newly-created "[Office of Election Crimes and Security](#)." The new office consists of 15 non-sworn investigators who will oversee the state's voter fraud hotline, conduct investigations, and refer matters to prosecutors. The office will report to the governor and legislative leadership on its investigations. The law also requires the governor to appoint at least seven special law enforcement officers with general law enforcement powers who will be assigned to districts throughout the state.

Similarly, Georgia's [S.B. 441](#) charges the Georgia Bureau of Investigations with identifying and investigating potential election law violations. It grants the Bureau authority to issue subpoenas for election materials and to audit materials produced in response to such subpoenas.

STATE SPOTLIGHT

Florida

- *Election crimes unit proposal is pared down but ultimately successful*
- *Effort to create new voter ID requirements fails*

Florida's 2022 legislative session saw lawmakers continue to focus on election issues, seeking additional changes to election administration on top of those passed in 2021's [S.B. 90](#). Prior to the session, [Governor DeSantis announced a proposal for an "Office of Election Crimes and Security"](#) that would employ 45 full-time investigators to probe potential election law violations. The Governor's proposal carried a price tag of nearly \$6 million.

In early February, legislators introduced companion bills ([S.B. 524](#) and [H.B. 7061](#)) that would have required voters to provide a specific ID number when returning mail ballots – a proposal that bore significant resemblance to the new requirement that wreaked havoc on Texas primaries this year. Following [negative feedback from the public and local election administrators](#), legislators replaced the ID number requirements with a feasibility study concerning the implementation of such an ID requirement.

Ultimately, the legislature passed [S.B. 524](#), which created a new Office of Election Crimes and Security, but one that was dramatically scaled down from Governor DeSantis' initial proposal. The new law also upped the frequency of voter list maintenance (with a focus on suspected non-citizens); created higher penalties for election offenses related to ballot return and third-party voter registration; and increased restrictions on private funding of election administration from those enacted by S.B. 90 in 2021. Governor DeSantis signed the bill on April 25.

LIMITS ON EMERGENCY POWERS

2021 saw at least [nine bills enacted in eight states](#) that expressly limited the power of state or local officials to suspend or modify election rules in an emergency. So far this year:

- Oklahoma enacted [legislation](#) that restricts executive and state court emergency authority to alter election law in the event of an emergency.
- A [South Carolina law](#) prohibits the state election commission from issuing emergency regulations.

RESTRICTIONS ON FUNDING AND DONATIONS

Between [2021](#) and [2022](#), nearly half of all states implemented or expanded upon existing restrictions on funding and donations from private and federal sources. This year alone, [more than a dozen states](#) have enacted such restrictions.

Some states, such as [Kentucky](#), [Oklahoma](#), and [Alabama](#), will enforce the prohibition with criminal penalties. Several bans, such as [South Carolina's](#), do not include carve-outs for in-kind donations, including donations of building space for voting locations. [Florida](#) specifically prohibits the use of private funds to cover the costs of any litigation relating to election administration, and [Indiana](#) expanded on an existing ban by specifically prohibiting the acceptance of private monetary donations for employing temporary election workers.

INCREASED PARTISANSHIP IN APPOINTMENT OF ELECTION OFFICIALS

Last year, all eyes were on Georgia with the passage of [S.B. 202](#), the elections omnibus bill that restricted ballot access and made sweeping changes to the administration of elections in the state. As part of a package of provisions reducing the authority and independence of election officials in the state, legislators stripped the secretary of state of his role as chairperson of the state election board and gave themselves the power to choose his successor.

Now, in 2022, a similar sentiment can be observed in South Carolina's [S.B. 108](#). Leading up to and after the 2020 election, [many legislators objected](#) to the then-executive director of the State Election Commission's public support for measures to expand voter access. The new law requires that the State Election Commission's selection for executive director be confirmed by the state Senate, and it establishes a process for removal of the executive director and other commission members by the governor or legislative leadership if they engage in prohibited conduct, including speaking negatively about state election law.

Implementation Repercussions: New Laws and Their Impact on Voters

New laws that restrict access are not without serious consequences – unnecessary burdens and barriers at the ballot box prevent voters from participating in our democracy. Beyond the policy impact of any given legislation, it's critical that states take time to get the implementation of any new election policy right. Effective implementation can be the difference between a voter's ballot being counted or tossed out.

Here's how we are seeing recent changes in election laws implemented in states around the country with early primaries, as well as some implementation issues to watch in the coming weeks. The full scope of implementation challenges and successes will come into greater focus as the remaining primaries and November elections unfold.

TEXAS: MARCH 1

This year, Texas served as the chief cautionary tale not only concerning the impact of restrictive policies on voters, but on the manner in which new voting legislation can disrupt elections when poorly written and hastily implemented.

After passing [S.B. 1](#) last year, Texas was the first state to conduct statewide primaries this year on March 1, with runoffs following on May 24. The most significant change from S.B. 1 was the requirement for mail ballot voters to provide a specific number – either their driver's license, state ID, or Social Security number – with their ballot application and their ballot carrier envelope when returning their ballot.

The new requirements saw implementation challenges throughout the spring election cycle. Early reports around the state indicated that [roughly 40% of all mail ballot applications](#) were being rejected. While those application rejection rates seemed to improve closer to Election Day, ballot rejection rates nonetheless soared during the March primary. [Over 12% of all mail ballots cast \(roughly 24,000 votes\) were thrown out](#), largely due to issues with new ID requirements. This ballot rejection rate vastly exceeded the previous rate of roughly 1% in 2020. [Anecdotal data from counties for the May 24 runoff](#) suggest the ID requirement continues to lead to high rates of rejection.

Heading into the November 2022 general election, we will monitor the impact of several other S.B. 1 provisions. The new law greatly reduced checks on poll watchers and could lead to unruly watchers disrupting election procedures in the fall. It also increased restrictions on the types of assistance individuals can give voters casting ballots in person or by mail and added criminal penalties to enforce those restrictions. The possible vote

deterrent effect of these provisions will be more apparent with increased general election turnout. Officials also will have to continue ironing out issues related to the new statewide online ballot tracking system and mail ballot cure processes.

PENNSYLVANIA: MAY 17

Pennsylvania has not enacted a new election law since the 2020 election. As a result, major election implementation issues that emerged in 2020 spilled over into the May 2022 primaries – and are likely to impact the general election as well.

Most problematic is the absence of pre-processing legislation that would allow election officials to count ballots before Election Day. After the May 2022 primaries, the secretary of state ordered a ballot recount, triggered by a thin margin between the two Republican candidates for U.S. Senate. Election officials had to wait several days for results to be finalized before they could initiate the recount, which could have been avoided had they been permitted to pre-process ballots before Election Day.

Another major implementation issue was the rejection of mail ballots that were returned on time and otherwise valid, but did not include a handwritten date on their outer envelope to document when the voter signed the ballot certificate. Election officials initially rejected these ballots in a 2021 election, resulting in litigation. In June 2022, a Pennsylvania court issued a temporary injunction requiring officials to count such undated mail ballots. After temporarily pausing the order, the U.S. Supreme Court let that decision stand. Nonetheless, the decision was limited to the 2021 election, and the issue resurfaced in the 2022 primary. Litigation [resulted in](#) ballots with missing dates being counted. Those ballots changed the outcome of the race.

NEVADA: JUNE 14

Nevada's legislature was not in session this year. Last year, however, the state [overhauled its election system](#) to send all registered voters a ballot unless they opt out. The June primary was the first statewide election shaped by this change, and Nevada voters took advantage of the option to vote by mail. In 2018, 56% of voters cast their ballots before Election Day, and most of those were cast in-person (48% in-person vs. 8% by mail). In 2022, 75% of voters cast their ballots before Election Day, and most of those were cast by mail (25% in-person vs. 49% by mail).²

SOUTH CAROLINA: JUNE 14 AND JUNE 28

[S.B. 108](#), signed into law on May 13, established an in-person early voting period for the first time in South Carolina, while also further restricting the state's already limited mail voting options.

2 The numbers do not add to 75% due to rounding.

For the June 14 primary election, there were 10 days of early voting, offered from Tuesday to Friday during the two weeks leading up to Election Day. South Carolina voters took advantage of this new option to vote early: 21% of all ballots were cast prior to Election Day, compared to only 9% of ballots cast early in the June 2018 primary.

However, the new law also made changes that make it more likely for absentee ballot applications to be rejected – and it appears these changes also had an impact. For the

STATE SPOTLIGHT

Georgia

An effort to turn Georgia voting booths into crime scenes fails

The Georgia House introduced and passed a committee substitute to [H.B. 1464](#) on March 10, turning it into an omnibus elections bill that would have imposed onerous chain of custody requirements on local elections officials; allowed for public inspection of voted ballots and related documents prior to state certification of elections; decreased the minimum number of voting machines required on Election Day; imposed new restrictions on private funding for election administration; and given the Georgia Bureau of Investigation independent jurisdiction to investigate election crimes, including subpoena power.

After seeing an outpouring of complaints from local administrators and growth of media coverage regarding H.B. 1464, the Senate Ethics Committee voted unanimously to strip the bill of all its problematic provisions.

On the final day of session, the House held two last-minute committee hearings to amend election provisions into [S.B. 441](#) and [S.B. 89](#), each of which contained stripped out amendments of H.B. 1464. Each bill passed the House floor; however, only S.B. 441, which granted the Georgia Bureau of Investigations authority to investigate election crimes, was signed.

Ultimately, the stripped down version of H.B. 1464 was adopted and signed. This version of the bill modifies when employers may give employees time off to vote to include the early voting period, not just Election Day.

The dramatic turn of H.B. 1464 towards the end of the legislative session was a high point this year – the bill went from being a restrictive one that would have limited voting sites and set new, onerous requirements for election officials, to one that creates more time for certain voters to cast a ballot.

June 14 primary election, absentee ballot applications were rejected at nearly four times the rate as they were in the June 2018 primary. This higher rejection rate was likely due to two changes. First, the law requires voters to provide the last four digits of their Social Security number on their request for an absentee ballot application. Second, it moved the application deadline from four days before Election Day to 11 days before.

S.B. 108 also makes it more difficult for a voter to return their completed mail ballot. In addition to severely limiting where a voter may return their mail ballot, a voter must provide a physical ID to return their ballot in person. For the June 2022 election, 14% of mailed ballots were not returned, compared to only 4% of mailed ballots for the June 2018 primary.

Looking forward to November, issues to monitor will be the number and equitable placement of early voting centers; the percentage of absentee ballot applications that are rejected; the percentage of absentee ballots that go unreturned; and whether any members of the state election commission or its executive director are removed from their positions.

ARIZONA: AUGUST 2

When they head to the polls for statewide primaries on August 2, Arizona voters will experience several election changes prompted by legislation passed in 2021. [H.B. 2569](#) banned the use of private contributions for election administration. [S.B. 1485](#) changed the previous “permanent early voter list” to an “active early voter list” – voters who fail to cast ballots in each election for two consecutive election cycles now face removal from the list. Additionally, [H.B. 2905](#) banned county recorders from sending mail ballots to voters who do not first request them, unless the voter is on the active early voter list.

Most bills enacted in 2022 so far will not be in effect for the August primary but will take effect in time for the November general election. One bill will [make it easier for some individuals convicted of felonies to restore their eligibility to vote](#). Another will [create access to mail ballots that visually-impaired voters have the option to cast remotely](#). Implementation of the new requirements for proof of citizenship and residency for voter registration under [H.B. 2492](#) were delayed until December 31 by [subsequent legislation](#).

MICHIGAN: AUGUST 2

Though Michigan’s Republican-controlled legislature advanced several bills related to elections in 2021 and 2022, Governor Whitmer has vetoed any that have reached her desk to date. Legislative efforts to allow for pre-processing of mail ballots are expected to continue up to and likely past the August 2 statewide primary. The expansion of mail ballot eligibility to all voters with passage of Proposition 3 in 2018 led to a massive increase in the use of mail ballots in 2020, with over 3.1 million Michigan voters casting absentee ballots in the November election. Existing Michigan law does not allow election officials to

begin processing those ballots in preparation for tabulation until the morning of Election Day. This late start to processing relative to other states will likely lead to reporting delays this year similar to those experienced in 2020.

The secretary of state's office has issued guidance to local election officials concerning drop boxes, signature verification, and ballot envelope cure. Attempts to formalize this guidance through the administrative rules process have stalled in the legislature and are not expected to advance prior to the November general election. Local officials will likely have to deal with uncertainty concerning the effect of the secretary of state's guidance as partisans continue to dispute the provisions.

MISSOURI: AUGUST 2

The new photo ID and early voting provisions in elections omnibus [H.B. 1878](#) will not be effective during the August 2 statewide primaries, but they will be in effect for voters in the November general election. For the first time, all registered voters will have an opportunity to cast their ballot in person in the last two weeks before Election Day. However, those voters will be subject to new, stricter requirements concerning voter ID than in recent elections, as non-photo options will no longer be acceptable. Voters without photo ID will be required to cast a provisional ballot and will need to return to the polling place with valid photo ID before polls close or have their ballot validated by signature comparison.

Beginning with 2022 elections and heading into 2024, Missouri voters will also notice that all jurisdictions will use paper ballots (except for voters needing assistive equipment to complete their ballots) and will benefit from the additional confidence provided by new requirements for mandatory cybersecurity testing of election equipment.

WISCONSIN: AUGUST 9

This year, Wisconsin faces critical questions around the use of drop boxes for absentee voting and the ability of voters to have someone else return their completed, sealed absentee ballot. Currently, drop boxes and third party return are prohibited by court order. The Wisconsin Supreme Court is considering whether to uphold, modify, or reverse these prohibitions, and a decision could be issued at any time.

Drop boxes had been used by some Wisconsin localities for many years, but they saw widespread use in 2020 as voters sought safe ways to vote during the COVID-19 pandemic, with many voters opting to vote by mail. Some Wisconsin localities had spring elections without drop boxes because of the court order. If the Court ultimately upholds the ban on drop boxes and third party return, it may have a significant impact on the August 9 primaries.

FLORIDA: AUGUST 23

Florida's August 23 primary will be the first statewide election affected by the implementation of 2021's [S.B. 90](#) and 2022's [S.B. 524](#). Voters applying for a mail ballot – as nearly 5 million Florida voters did in 2020 – will now be required to provide their Florida driver's license number, state ID number, or the last four digits of their Social Security number for the application to be accepted. Implementation of similar requirements in Texas earlier this year led to a major surge in rejected applications. Florida voters will also need to complete an application twice as often as before to continue to receive mail ballots for each election.

Mail ballot return will also face new restrictions. Drop boxes must be staffed by an employee of a county's election supervisor's office, and drop boxes at early voting locations will only be available during the early voting period. Limitations on the number of ballots a person may return on behalf of others created by last year's S.B. 90 were enhanced this year by S.B. 524, which adds felony penalties for violations of these limitations.

Voters casting ballots in person are also likely to face changes. County election supervisors are now prohibited from accepting private monetary donations to assist election administration, which may increase administrative challenges at polling locations. Also, S.B. 90 contains vague language to prohibit "influencing" voters, which many interpret as a ban on certain forms of assistance, including the provision of food or water to voters waiting in line on Election Day.

S.B. 524's newly-created Office of Election Crimes and Security could exert a major impact on Florida elections moving forward, depending on its implementation. Governor DeSantis recently appointed a new secretary of state, Cord Byrd, who is known to have previously cast doubts on the legitimacy of the 2020 election. Many observers have concerns that the office could be used to harass or intimidate voters or election officials.

Provisions in both S.B. 90 and S.B. 524 currently face legal challenges. A federal district court judge issued a ruling enjoining the enforcement of S.B. 90's provisions that restrict drop boxes, limit third party voter registration, and prohibit "influencing" voters at polling places. The 11th Circuit Court of Appeals has stayed the effect of that ruling pending appeal, leaving the challenged provisions in effect at the publication of this report.

2022 Forecast: What Lies Ahead

Open Legislative Sessions

ARIZONA

Arizona's legislative session is expected to continue at least through June as both chambers continue to negotiate the state budget. Several bills remain pending and eligible for passage, including [H.B. 2289](#), an omnibus bill that would radically change the way elections are conducted in Arizona by eliminating early in-person voting and restricting eligibility for mail voting to voters with one of a limited number of excuses. Leadership in both chambers have resisted bringing this bill – and similar ones – to a vote on the chamber floors.

After vetoing [H.B. 2617](#) in May, Governor Ducey stated that he would be more receptive to a voter list maintenance bill with clearer safeguards to protect against wrongful cancellation of voter registrations. Arizona parliamentary procedure allows legislators to strike the existing language of bills that have progressed through the chambers and replace it with new language or recycled language from previously failed bills. So it's possible that bills like H.B. 2617, and other Arizona bills described in this report, could return at any point before the legislature adjourns.

CALIFORNIA

California's legislative session is scheduled to run through the end of August. Even though California has made major changes to its election code in the past few years, it is still considering further changes. The [one law enacted so far in 2022](#) improves voter list maintenance relating to people disqualified by felony conviction. Notably, most of the work on that bill was completed in 2021.

Of the 12 election bills that could still pass, four have already passed at least one chamber and have moved in 2022. These include a [bill](#) that would create confidentiality protections for election workers; a bill that [facilitates voting](#) by certain disabled voters; a bill that would [require drop boxes on certain college campuses](#) during statewide elections; and a bill that would [improve voter registration list maintenance](#).

MICHIGAN

Michigan's legislature remains in session year-round, so the potential remains for election legislation to advance in the remainder of 2022. Michigan's mixed-party government has prevented the passage of noteworthy legislation to date. However, in February, the clerks'

associations in Michigan sent an [open letter](#) to lawmakers requesting specific changes to election administration, including allowing pre-processing of absentee ballots and increasing options for Election Day-style early voting. Current Michigan law prevents clerks from beginning to process absentee ballots until the morning of Election Day, which can lead to delays in reporting results and leave close races in doubt for days after Election Day. It's possible that lawmakers will work to achieve a bipartisan compromise to enact some of the changes requested by clerks ahead of November.

Ballot Initiatives

ARIZONA

Arizona voters will likely face at least two somewhat contradictory election-related ballot initiatives when they head to the polls in November.

Arizonans for Free and Fair Elections is currently gathering signatures to place a [statutory initiative](#) on the ballot containing a number of proposals to increase ballot access for Arizona voters. If passed, the initiative will create automatic voter registration for eligible voters completing driver's license transactions; create same day registration during the early voting period and on Election Day; improve the cure process for ballots cast during early voting; and modernize voter registration processes while restricting voter purges based on unreliable information. The initiative also contains specific provisions expanding access for voters with disabilities and Native American voters, while prohibiting actions by state lawmakers and presidential electors that would contradict certified election results. Sponsors have until July 7

STATE SPOTLIGHT

New York

Lawmakers pass legislation to help prevent race- and language-based discrimination in voting

On June 2, the New York legislature passed the [New York John R. Lewis Voting Rights Act](#) and less than 24 hours later, adjourned for the year. This landmark legislation creates legal voter protections to prevent race- and language-based discriminatory election laws, rules, and practices. In certain instances, it requires changes to election rules be pre-approved – or precleared – before going into effect, to ensure they will not have a discriminatory impact. The bill also creates private rights of action to facilitate injunctive relief when a law is discriminatory, as well as require all key voting materials to be provided in various languages. Governor Hochul signed the bill into law on June 20.

to submit signatures in order to get the initiative on the ballot in November.

On the other hand, the state legislature passed [S.C.R. 1012](#) to refer a statutory initiative to voters that would eliminate current non-photo voter ID options for in-person voting. The initiative would also require voters casting mail ballots to include a driver's license number, state ID number, or the last four digits of their Social Security number, as well as their date of birth, on their ballot certificate. This newly required information would be subject to the same verification requirements that voter signatures must currently undergo. The initiative will appear on the ballot in November.

CONNECTICUT

When Connecticut voters go to the polls this November, they will decide whether to eliminate the state's constitutional ban on early voting. In 2021, the state legislature passed [H.J.R. 59](#), a resolution the legislature adopted in 2019 with a less-than-three-quarters majority, therefore requiring an additional majority vote by the subsequent legislature to place the resolution before voters in 2022. If Connecticut voters ratify this constitutional amendment in November, the legislature will have a path to establish in-person early voting in future legislative sessions.

MICHIGAN

Two Michigan ballot measures with opposing takes on ballot access may advance this year.

The [Promote the Vote 2022 petition](#) would refer state constitutional amendments to Michigan voters that would guarantee nine days of in-person early voting; consider mail ballots timely if postmarked by Election Day (existing law requires ballots to be received by Election Day); guarantee the option for a voter to join a permanent absentee voter list; provide return postage for absentee ballot applications and return envelopes; guarantee the availability of secure ballot drop boxes; and require local boards of canvassers to certify election results based solely on reported vote counts. Promote the Vote successfully campaigned for the passage of Prop 3 in 2018, which amended Michigan's constitution to create no-excuse absentee voting, automatic voter registration, and same day voter registration. They have until July 11 to gather signatures.

[Secure MI Vote's petition](#) would change statutory voter ID requirements for those casting ballots in person or by mail. In-person voters would lose the existing option that allows voters who forget to bring ID to the polls to complete a statement affirming their identity to cast their ballot. If the petition passes, those voters would have to cast a provisional ballot and would need to return to their local clerk's office within six days after Election Day with valid ID to have that provisional ballot counted. Mail ballot voters would need to include a driver's license or state ID number along with the last four digits of their Social Security numbers when applying for their ballot. Currently, mail ballot applications are subject to signature verification but not ID comparison.

The deadline for Secure MI Vote to submit signatures was June 1. Organizers did not submit signatures by that date, stating that they will spend a few more weeks gathering signatures to create a cushion in case some of their signatures are deemed invalid by the Bureau of Elections. This means voters will not see this petition on their ballot in 2022.

However, Michigan law allows the legislature to pass a law proposed by initiative within 40 days of its approval for the ballot. This process allows the legislature to pass a law without requiring the governor's approval. This was likely the intended game plan all along, as the petition's provisions closely mirror [S.B. 303](#) – a bill that Governor Whitmer vetoed last October.

**VOTING
RIGHTS
LAB**