

SHOWDOWN 2022

The State of State Election Law – and the Fights Ahead

**VOTING
RIGHTS
LAB**

February 2022

A Letter from our Executive Director

As we step back to take stock of the elections policies that advanced in the 2021 legislative sessions – and gear up for another history-making year ahead – I am awestruck by the power of the broad-based coalition of organizations and individuals working to ensure all Americans can wield the power of their vote to build a government that truly represents the people.

Though voters suffered some significant setbacks last year, it is worth noting that advocates and organizers successfully stopped many of the most restrictive policies introduced in 2021 from enactment. Efforts in Georgia and Texas to restrict Sunday early voting – a popular time for “Souls to the Polls” events, in which congregants at predominantly Black churches go vote after services – were defeated last year. Bills to ban drop boxes – which became so popular, after years of use, that fully [one in five mail ballots](#) in 2020 were returned in a drop box – were defeated in Florida, Wisconsin, and Pennsylvania. And bills to limit absentee ballot return were defeated in Michigan, North Carolina, Pennsylvania, and Wisconsin.

But more than that, voting rights advocates advanced policies across the country that expanded voter access in red and blue states alike. Whether these were policies related to early voting, mail voting, restoring the rights of the previously disenfranchised, or strengthening our system to ensure it is more modern, transparent, and trustworthy, much more progress was made on our elections than the dominant headlines may convey.

In the following pages, we take a closer, comprehensive look at where states landed on elections-related policy by the end of 2021 – and forecast some of the issues we’re already encountering in 2022. Of gravest concern are the continued steps some legislators are taking to try to enshrine policies allowing partisans to subvert the will of the voters in state law. This is [a new threat](#) that emerged in 2021 and one that continues – alarmingly – this year. In many cases, the trend is concentrated in the states anticipated to be election battlegrounds in 2024. While this has me, and so many, deeply concerned about the direction of our democracy, the strength of the movement for freer, fairer elections in this country gives me so much hope for what’s in store.

Thank you for your work – and for your commitment to American democracy.



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

Table of Contents

A Letter from our Executive Director	2
The Good News: Early Voting, Ballot Cure, Automatic Voter Registration, Rights Restoration, Transparency	4
Expanded Early Voting: Fifteen States Take Action	4
Ballot Cure: Thirteen States Take Action	5
Automatic Voter Registration: Nine States Take Action	6
Restoration of Voting Rights for Citizens with Previous Felony Convictions: Eight States Take Action	7
Ballot Tracking: Seven States Take Action	8
Vote By Mail	9
Mixed Results: Vote By Mail, Same-Day Registration, Voter ID	9
Same-Day Registration	11
Voter ID	11
Partisan Election Reviews	13
Red Alert: Multiple States Move to Subvert the Will of Voters	13
Handing Power to Oversee Elections to Partisans	14
Criminalizing Election Officials and Voters	14
Final Marks: Ranking State-By-State Movement in 2021	16
Looking Ahead to 2022	19

The Good News: Early Voting, Ballot Cure, Automatic Voter Registration, Rights Restoration, Transparency

Expanded Early Voting: Fifteen States Take Action

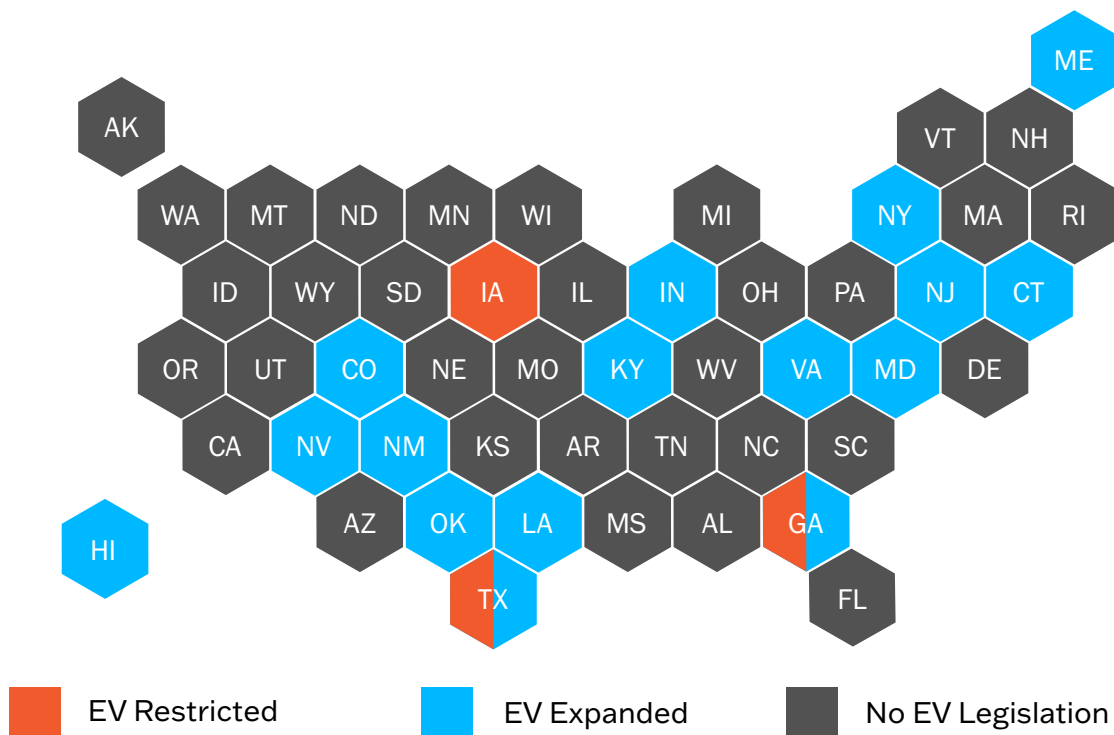
2020 saw a record number of voters take advantage of early, in-person voting – [30.6 percent](#) of the total ballots cast were done so in person before Election Day. Many states expanded early voting temporarily in 2020 to facilitate safer voting options during the pandemic and reduce the pressure on Election Day voting – and voters across party lines took advantage of these expanded options. Many states responded in the 2021 session by making permanent expansions to early voting availability, with states across the political spectrum creating, expanding, or improving in-person early voting. For example:

- Kentucky, one of the few states with no early voting opportunities before 2020, passed [H.B. 574](#), creating three days of early voting throughout the Bluegrass State.
- Texas expanded mandatory weekend early voting hours in [S.B. 1](#). Now, counties with a population of at least 55,000 – lowered from a previous cutoff of 100,000 – are required to have 12 hours of Saturday voting and six hours of Sunday voting, and are required to offer at least 12 hours on the last five weekdays of early voting. (Nonetheless, by imposing start and stop limits, this expansion also prevents counties from offering *more* hours, which at least Harris County did in 2020.)
- Virginia [expanded early voting](#) to include Sundays.
- [Oklahoma](#), [Louisiana](#), [New York](#), and [Maryland](#) all expanded the number of days or hours of early voting.
- Connecticut got one big step closer to offering early voting: Its legislature passed a [resolution](#) proposing a constitutional amendment that would abolish the constitutional prohibition on in-person early voting. This constitutional amendment will be put to the voters in November 2022.
- Georgia now [requires](#) counties to offer weekend early voting on both the second and third Saturday before Election Day, with optional early voting on the second and/or third Sunday before. Previously, counties were

required to hold early weekend voting only on the second Saturday before Election Day, with limited hours.

Only one state – [Iowa](#) – shortened its early voting period for general elections, moving the start of early voting from 29 days before an election to 20 days before. In addition to expanding early voting access as described above, Georgia and Texas also restricted early voting in some ways. [Georgia](#) shortened the early voting period for federal runoff elections by two weeks, potentially eliminating weekend voting in federal runoff elections altogether. And in both [Georgia](#) and [Texas](#), the state restricted counties' discretion to offer additional early voting time.

EXPANDING EARLY VOTING IN 2021



Ballot Cure: Thirteen States Take Action

Despite all the rhetorical and legislative attacks on mail voting in 2021, [13 states](#) across the political spectrum enacted legislation that created or improved voters' ability to correct errors on their absentee ballot envelopes. In addition, Maryland created this type of ballot cure process by regulation. A strong cure process notifies voters of errors that may prevent their ballots from being counted and provides them with meaningful options to fix these errors. Examples of new laws that create or expand ballot cure include:

- Texas passed a law requiring that election officials provide voters [notice](#)

- [and an opportunity to cure](#) small errors and add missing information to their ballot envelope.
- Maine created a [cure process](#) which requires that voters be notified of a defect within one business day of the defect's detection.
 - Kentucky passed legislation ensuring [notice and opportunity to cure](#) for voters whose signatures are flagged as mismatches.
 - Iowa [extended the time period](#) in which a voter can complete an affidavit to cure a missing signature on their ballot envelope, allowing voters until the close of polls on Election Day – rather than cutting off cure time the day before Election Day.
 - [Indiana](#) codified a court-ordered process requiring that voters be notified of, and given a chance to correct, errors on their absentee ballot envelopes.

Automatic Voter Registration: Nine States Take Action

Federal law requires state DMVs to facilitate voter registration, but some states go further and automatically register people to vote during certain agency transactions, such as

FOLLOW ALONG

Tracking Election Law by Issue

Our legislative tracker provides information about bills on the move in the current legislative session because we know the importance of following every threat and opportunity. But we also know that new legislation alone doesn't tell the whole story. Voting Rights Lab tracks the state of voting and elections nationwide on the State Voting Rights Tracker's [issues pages](#), which give a snapshot of current law pertaining to each issue. You can use these pages to contextualize changes in particular states and to see where a state lags behind the rest of the nation on a voter access issue – or where it leads the pack.

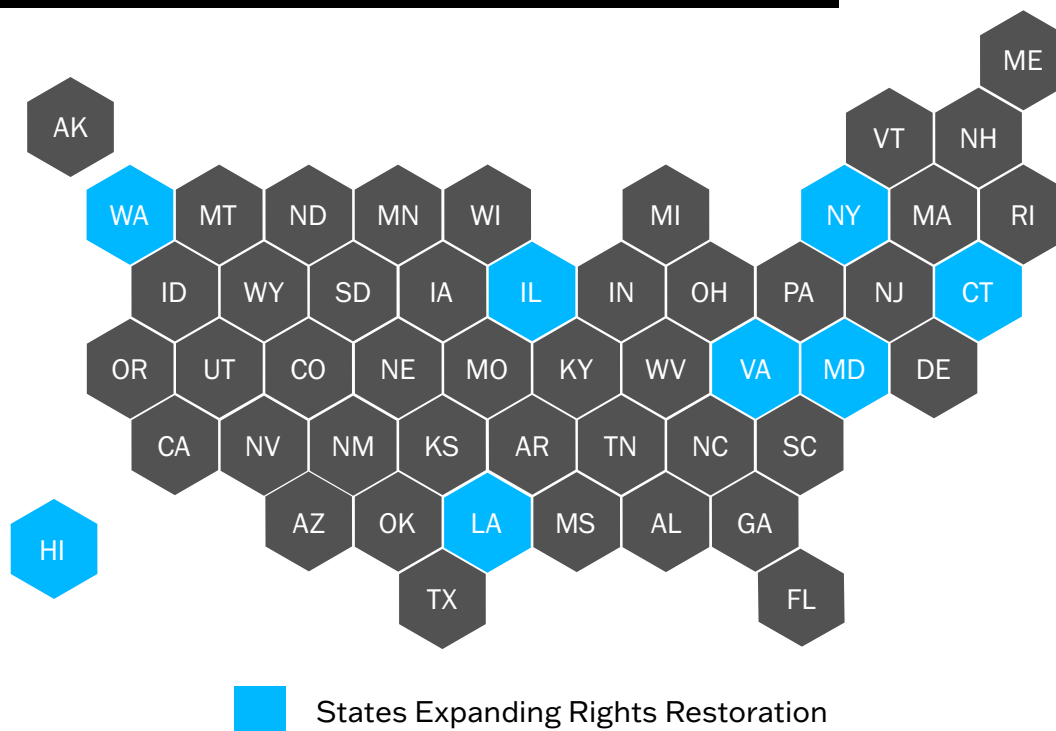
Our issue pages are intended to show the baseline in current law, so that we know how far each state has to go to expand voting access or improve election administration. You can see issue-by-issue how many states allow – for example – [early voting](#), [mail voting](#), or [same-day registration](#). In this report, we look under the hood to see how these issues have changed over the past year.

applying for a driver’s license at the DMV or for other state services, unless those voters decide to opt out. This is efficient – voters can register to vote at the same time as applying for their driver’s license – and it minimizes the potential for inadvertent discrepancies between identification and registration, such as variations in name spelling.

Last year, three states – [Connecticut](#), [Delaware](#), and [Hawaii](#) – created automatic voter registration (AVR). New York, which passed legislation to create AVR in December 2020 (to take effect in 2023), enacted a [bill](#) that adds the State University of New York as one of the AVR agencies. Other states, including [Nevada](#) and [California](#), improved or expanded existing AVR processes. No states rolled back this process, and in fact, the one concrete recommendation coming out of the problematic election review in Arizona was an endorsement of AVR.

Restoration of Voting Rights for Citizens with Previous Felony Convictions: Eight States Take Action

STATES ON VOTING RIGHTS RESTORATION IN 2021



2021 was a big year for progress in the voting rights restoration space, with [eight states](#) restoring eligibility, or otherwise expanding voting access, for people with past felony convictions. For example:

- In [Connecticut](#), [New York](#), and [Washington](#) individuals are now eligible to register to vote immediately upon release from incarceration. Previously, all three states required returning citizens to complete probation or parole before they could vote.
- [Hawaii](#) and [Maryland](#) passed new laws to ensure that returning citizens receive information on how to register to vote after incarceration.
- Louisiana [cleaned up its list maintenance practices](#), so voters who are convicted of felonies, but not sentenced to prison time – and who are therefore eligible to vote – are no longer removed from the voter registration list.
- [Virginia](#), one of just three states with no automatic rights restoration, passed a resolution proposing a constitutional amendment to restore voting rights upon release from incarceration. Final adoption of the proposed amendment requires approval by a simple majority of the 2022-2023 General Assembly, and subsequent approval by a simple majority of voters.

Notably, there were no states in 2021 that delayed or made it more difficult for returning citizens to register to vote.

Ballot Tracking: Seven States Take Action

Ballot tracking promotes voter confidence. Voters can check to see that their ballot has been received and are also often notified of any errors with their ballot envelope through the same system.

In 2021, we saw positive movement across the political spectrum on ballot tracking, with [nine states](#) passing legislation to facilitate it and none doing the reverse. For example:

- States as varied as [California](#), [Iowa](#), [Maine](#), [New York](#), [Texas](#), and [Utah](#) all converted optional mail ballot tracking processes to become mandatory and state-wide.
- [Kentucky](#) passed legislation allowing the use of ballot tracking.
- [Louisiana's](#) legislature urged the secretary of state to create a ballot tracking system.

Mixed Results: Vote By Mail, Same-Day Registration, Voter ID

Vote By Mail

In 2020, we saw states across the country adjust their election policies to allow people to vote safely during a global pandemic, including by making mail voting options more accessible. The result was record-breaking turnout, with voters across the political spectrum choosing to cast their ballot by mail. During the 2021 legislative session, more than half of the states in the country changed their laws to make this increased accessibility of mail voting permanent, while more than a dozen rolled back their laws to make it harder to vote by mail.

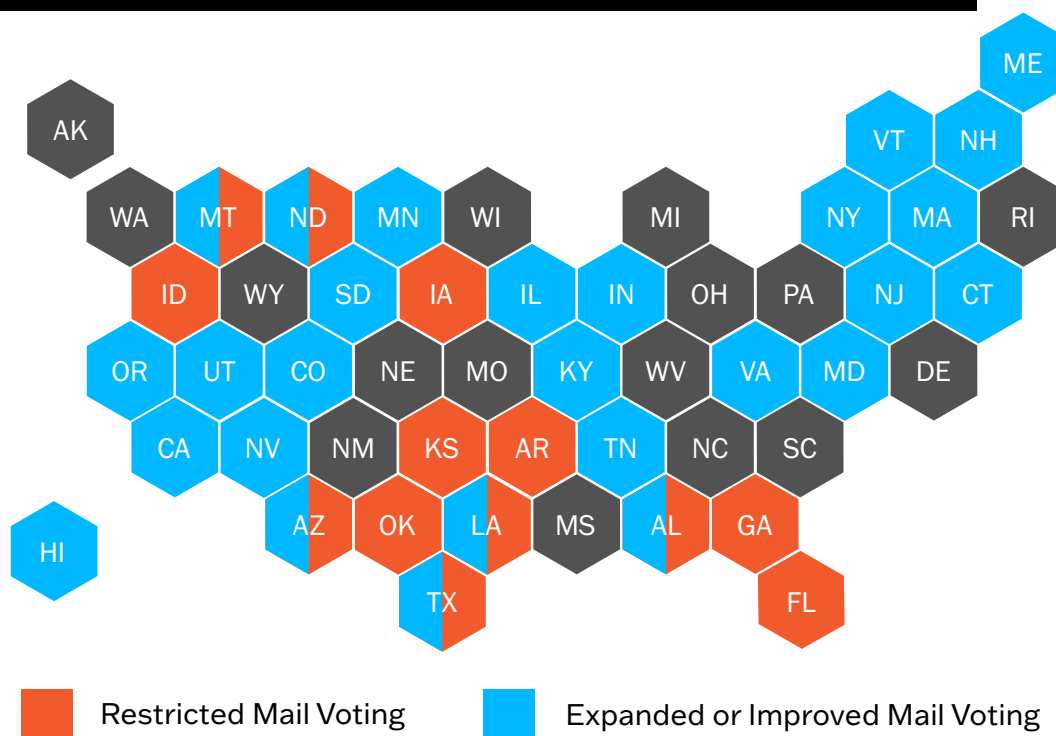
[Twenty-seven states](#) expanded or improved mail voting in 2021. As mentioned, [thirteen states](#) enacted legislation that created or improved ballot cure processes, and [nine states](#) passed legislation creating or improving electronic ballot tracking systems, so voters can ensure their mail ballot was received and counted.

In 2021, more than half of states in the country expanded or improved mail voting.

In addition, [California](#) joined Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, and Washington as the seventh state to automatically send mail ballots to all eligible voters for each election. Voters can fill out and return that ballot, or they can choose to vote in person.

Thirteen states, on the other hand, passed legislation restricting mail voting. Notably, four states – Arkansas, Florida, Georgia, and Texas – enacted legislation requiring additional information to request or return an absentee ballot. Texas’s omnibus S.B. 1, for example, requires a Texas driver’s license, state identification, or election identification certificate number (if they have one) when applying for a mail ballot, and again when returning that mail ballot. We’ve already seen this play out in ways that hurt voters. The clerk from Travis County, Texas stated that 50 percent of absentee ballot applications for the March primary have been rejected under the new law. Similar rejection rates have been reported in Houston.

STATES MOVE IN OPPOSITE DIRECTIONS ON MAIL VOTING



For many vote-by-mail policies, we saw states move in opposite directions in 2021. For example:

- **Mail ballot return deadline:** Five states made this deadline later, giving voters more time to return their completed absentee ballots, while three states moved it earlier.
- **Options to drop off mail ballots:** 13 states expanded mail ballot return options, such as drop boxes, while five states restricted drop-off options, taking away methods of securely returning ballots that were widely used previously.

- **Community ballot return:** Many voters choose to entrust delivery of their sealed and completed ballots to a family member, neighbor, or community leader. This is particularly important in places where mail service is less reliable, or for rural areas where voters live far away from the closest clerk's office or polling place. In 2021, [four states](#) expanded community ballot return, while [nine states](#) restricted it.
- **Permanent mail voter lists:** Permanent mail voter lists allow voters to elect to receive a mail ballot automatically each election, rather than having to request one each time. In 2021, [four states](#) expanded access to these lists, while one state – Arizona – moved in the opposite direction. Arizona's [S.B. 1485](#) removed the word “permanent” from their popular Permanent Early Voting List, and created a mechanism to automatically purge voters from the list if they choose not to vote by mail in two consecutive election cycles.

Same-Day Registration

We also saw states move in opposite directions on same-day registration. [Hawaii](#) expanded same-day registration to include online registration, while [New Hampshire](#) restricted same-day registration by adding a photo requirement. Most notably, [Montana](#) eliminated same-day registration on Election Day, though the state still allows same-day registration during the early voting period.

Over half the country offers some form of [same-day registration](#), but 23 states still do not. Of the states that do offer same-day registration, 18 offer it on Election Day and during early voting (if they have it), and six states offer it during early voting only. Additionally, Alaska and Rhode Island offer same-day registration for the federal presidential election only.

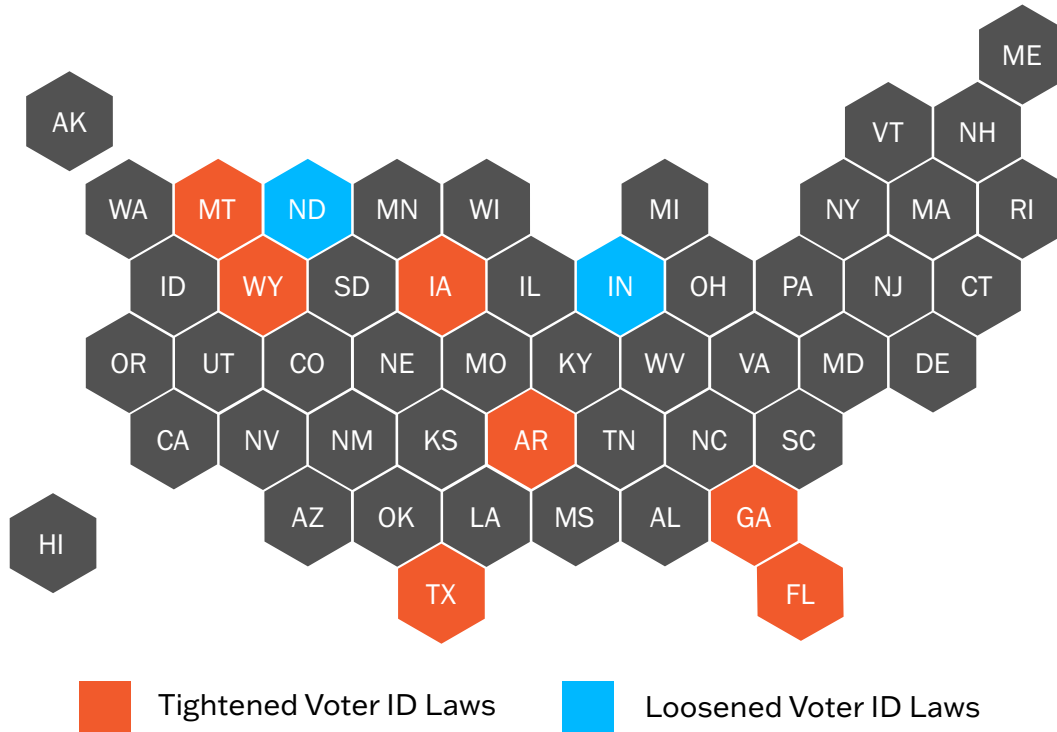
Voter ID

Practices across the country vary greatly when it comes to voter ID. [Sixteen states](#) require identification to vote in person, with the rest of the country either not requesting an ID at all, or else offering alternatives for voters who do not have an ID with them at the polls. For example, some states allow voters to provide their social security number or sign an affidavit affirming their identity. Even among those states that require ID, there is significant variation in what types of ID they accept. Some require photo ID, while others give voters a broad range of types of identification that they can provide, such as utility bills.

In 2021, [four states](#) made their voter ID laws more restrictive for in-person voting, either by eliminating or restricting alternatives for voters who show up to the polls without ID, or by restricting the types of ID that they accept.

Meanwhile, [two states](#) increased voter access by expanding the types of ID that are acceptable. [North Dakota](#) now accepts certain student IDs at the polls, and [Indiana](#) now accepts tribal IDs.

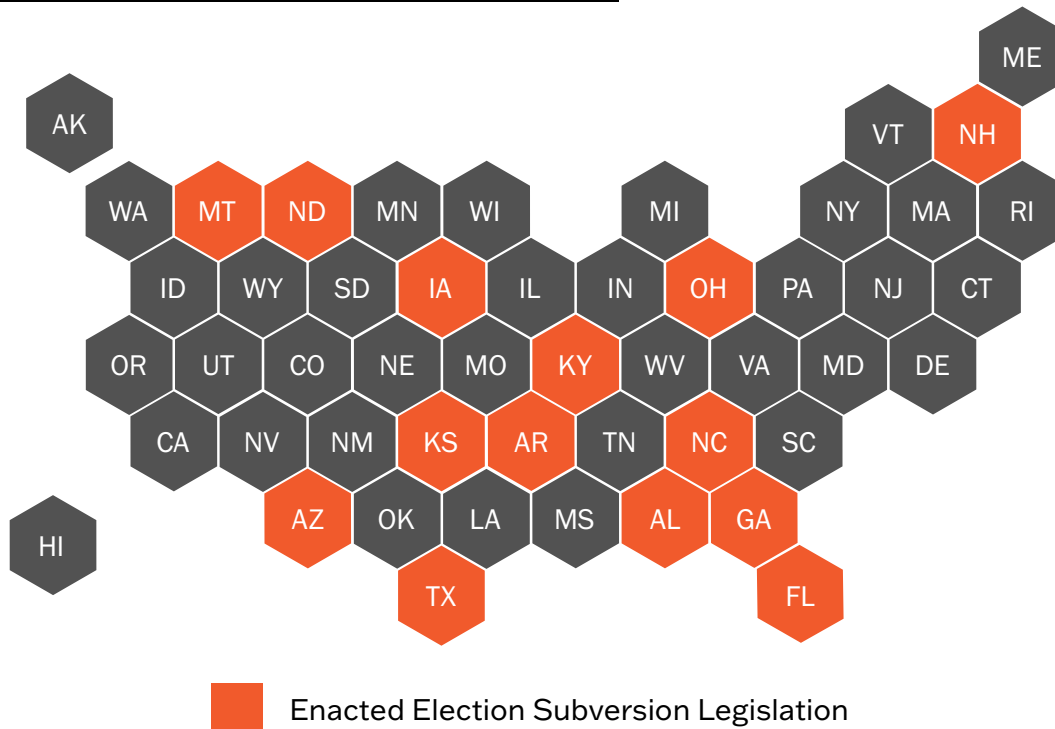
VOTER ID IN 2021



Red Alert: Multiple States Move to Subvert the Will of Voters

In 2021, a quiet but deeply disturbing legislative trend emerged: interference with election administration itself, often injecting partisanship into the process. [Thirty-three states introduced over 200 individual bills](#) to undermine the administration of elections. [Fourteen states](#) enacted this type of legislation. Among these attacks on election administration were bills that shifted the power to oversee elections to partisan actors, legislation threatening election officials with felony-level crimes, and partisan-motivated, standardless reviews of certified election results.

ELECTION SUBVERSION BILLS IN 2021



Partisan Election Reviews

[Eight states](#) introduced legislation in 2021 to review the certified election results from 2020, and others initiated these reviews extra-legislatively. A long and costly review in [Maricopa County, Arizona](#) found no evidence of fraud. A review in [Wisconsin](#) is still underway, despite the fact that [two other Wisconsin reviews](#) that have already concluded

confirmed no fraud. [Texas](#) has completed “Phase 1” of a review in four counties, uncovering no evidence of fraud. Several states, including [Florida](#), [South Carolina](#), and [Tennessee](#) will consider bills to review the 2020 election in their 2022 session. Most states already have a process to confirm election results, including risk-limiting and probabilistic audits, and the push for costly, standardless “audits,” often conducted by people with no expertise in election monitoring, only serves to undermine the integrity of our elections.

This trend toward costly, unnecessary review of election results is not limited to the 2020 election. [Twelve states](#) introduced bills in 2021 to authorize review processes for election results in one or more future elections. A bill that passed the Senate in two separate sessions in [Texas](#) would have given partisan officials and losing candidates the power to require review of future election results across the state. Several bills introduced in Pennsylvania would have vested post-election review authority in [newly-created bodies](#) or [existing authorities with no experience in elections](#). Bills to require unsubstantiated review of future elections were also considered in [Alabama](#), [Oklahoma](#), and [Washington](#).

Handing Power to Oversee Elections to Partisans

Even more concerning is legislation that gives partisan-motivated bodies direct control over election conduct and certification. Election processes and vote counting should accurately reflect the preferences of voters – not serve a partisan agenda. In 2021, [21 states](#) introduced bills that would give the state legislature or another partisan body more direct control over local election conduct, vote counting, or certification. The [Georgia election omnibus](#) included provisions that allow the state elections board, composed of partisan appointees, to investigate local election superintendents and replace them if they so choose. This process is already underway in [Fulton County](#).

Perhaps no state has attempted to assert greater legislative control over election results than Arizona. Several bills in 2021 would have given the [legislature](#) or [other partisan officials](#) the authority to require recounts in one or more voting locations without any showing of fraud or irregularity. [Another bill](#) would have placed sensitive election data, including vote totals, in the hands of the legislature prior to the completion of county canvasses. The most extreme proposals would have given the legislature the ability to simply [change](#) or [ignore](#) reported vote totals and name the winner of its choice.

Criminalizing Election Officials and Voters

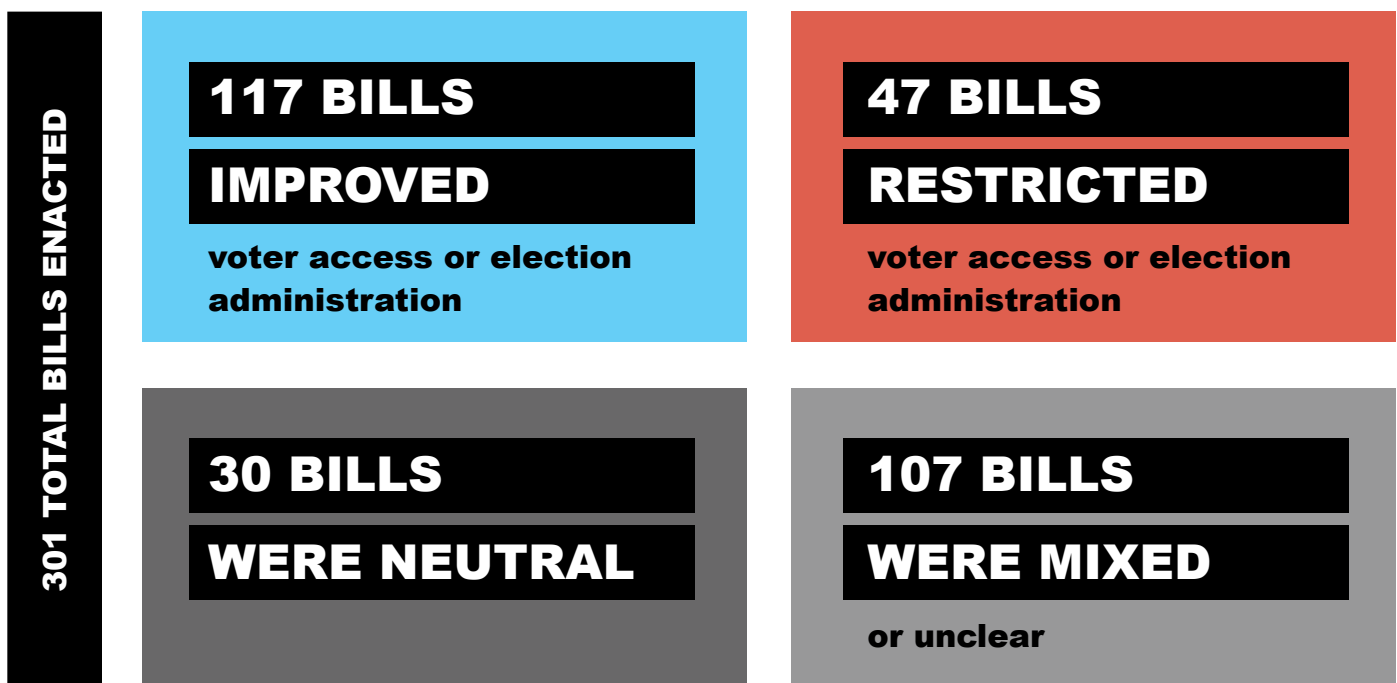
Legislators also threaten to subvert the will of voters by imposing new or enhanced criminal penalties on election officials and individuals providing needed voter assistance. In 2021,

[21 states](#) enacted legislation authorizing new or increased criminal penalties against election officials or third parties assisting voters. [Iowa's election omnibus](#) included a new felony directed at election officials who “fail to perform official duties.” A poorly defined [Kansas law](#) enacted in 2021 that creates a felony for falsely representing oneself as an election official forced civic groups to [stop conducting voter registration drives](#). A notorious provision in the [Georgia election omnibus](#) criminalizes providing food or beverage to voters waiting in line. The [Texas omnibus](#) criminalizes several aspects of voter assistance for mail voting and in-person voting without requiring any proof of actual fraud.

In addition to creating new criminal penalties, several states enacted or advanced laws increasing the role of state investigative agencies (often partisan in nature) and prosecutors in the election process. [Arkansas](#) passed legislation requiring county boards of election to report suspected violations of election laws to the State Board of Elections rather than local prosecutors. A [bill that passed the Texas Senate](#) would have created a dedicated investigative unit focusing on election crimes. Leaders in [Florida](#) and [Georgia](#) have called for their legislatures to consider the creation of similar dedicated election law enforcement units in 2022.

Final Marks: Ranking State-By-State Movement in 2021

In total, policy experts at Voting Rights Lab tracked [2,854 elections-related bills](#) in the 2021 legislative session. [301](#) of those bills are now law in a total of 46 states and the District of Columbia. Of those bills enacted, [117](#) improve voter access or election administration, [47](#) restrict voter access or election administration, [30](#) are neutral, and [107](#) are mixed or unclear. More than [1,360 bills](#) carried over from the 2021 session into the 2022 session.



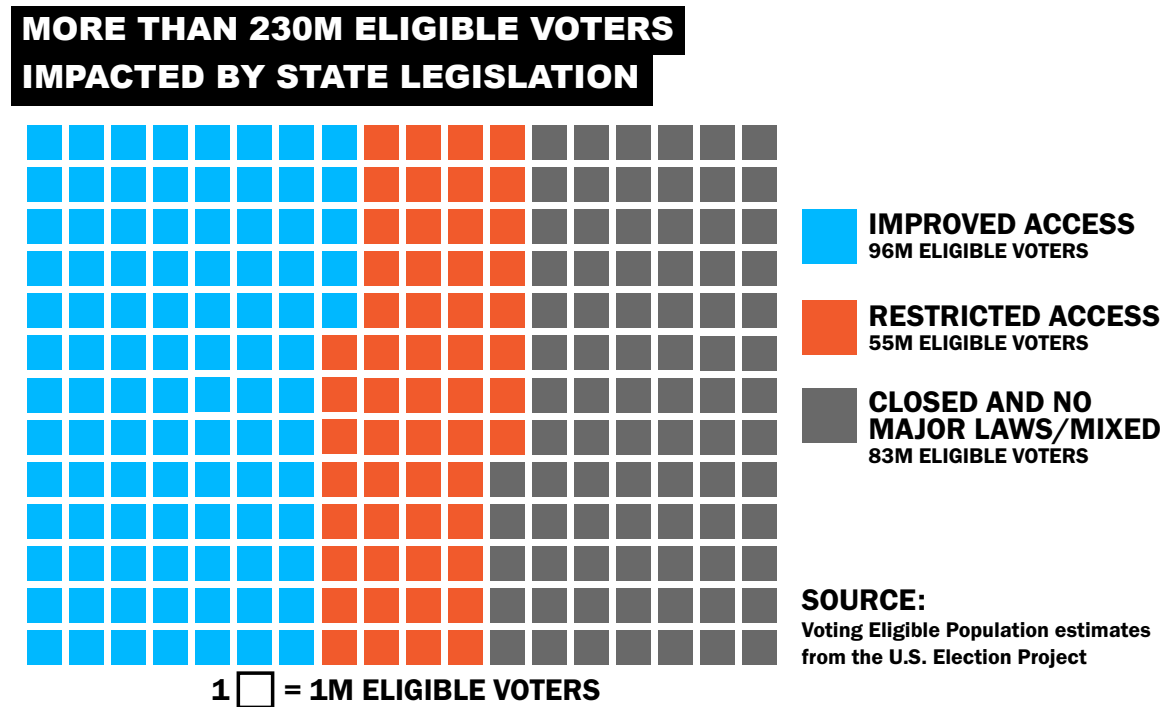
[By our counts](#), in 2021:

- [Twenty-seven states](#) enacted legislation to expand and improve mail voting, while [13 states](#) have enacted legislation restricting it;
- [Twenty states](#) enacted legislation improving voter registration, while [five states](#) imposed new registration barriers;
- [Sixteen states](#) enacted legislation shifting election authority, which in many cases could make [the administration of elections more partisan](#);
- [Fifteen states](#) created, expanded, or improved in-person early voting, while [one state](#) restricted it;

only calcified as we enter a new year.

States in blue have enacted significant legislation improving voter access and/or election administration this session. Orange indicates states that have enacted significant legislation restricting access or election administration this session. States in dark gray either enacted no major election legislation this session, or the legislation they enacted was mixed in impact or not clearly categorizable as improving access or administration or restricting it on balance.

Importantly, millions of Americans are affected by these changes in state law. More than 41% of eligible voters (96 million) live in states that improved their laws last year, while more than 23% (55 million) live in states that enacted restrictive laws.



Looking Ahead to 2022

The Voting Rights Lab team has been hard at work categorizing and summarizing new and prefiled bills for the 2022 session, which can be viewed in our [State Voting Rights Tracker](#). As of February 10, 2022, there are more than [2,000 active election-related bills](#) in 43 states and the District of Columbia. While [950](#) of them would improve voter access or election administration, [480](#) would restrict it. These numbers will continue to grow as the legislative season progresses.

In 2022, we are seeing renewed efforts by some state legislators to interfere with election administration in a number of ways, with over [200 such bills active in 31 states](#).

Problematic reviews of election results. There are currently [62 bills active in 22 states](#) that would require unnecessary, costly, often partisan reviews of election results. Some of these bills [bring in people with no expertise in elections](#) to lead these reviews, while others [target only specific jurisdictions](#), but what they share in common is that they are unnecessary and typically partisan-motivated. By contrast, post-election audits – such as statistical audits (where a small sampling is reviewed to ensure overall accuracy of voting procedures) and automatic audits in the case of a close election – are a sound practice, and one that most states already have in place.

Criminalization of election officials. There are currently [50 bills in 18 states](#) that penalize election administrators in problematic ways. Some of these bills penalize [good faith job performance](#), while others specifically penalize election officials for acting to [improve voter access](#) in ways currently allowed under existing law. Threatening election workers with criminal and civil penalties makes it difficult to retain and recruit experienced staff. A concerning new trend is emerging that will facilitate the prosecution of these crimes. At a time when elections are chronically underfunded, Florida Governor Ron DeSantis' budget proposal includes [\\$5.7 million](#) to create an Office of Election Crimes and Security in the Department of State. He proposes hiring 52 new positions, including 20 sworn law-enforcement officers and 25 non-sworn investigators, to review complaints filed by individuals and initiate investigations into election law violations and irregularities. His proposal would statutorily require the statewide prosecutor to investigate any complaint referred by this new State Department office promptly and thoroughly.

Partisan power grabs. [Thirty-five bills in 14 states](#) are legislative power grabs – efforts by state legislatures to give themselves a role in running elections and counting votes. For example, [a bill in Arizona](#) would give the state legislature the ability to choose whether to accept or reject election results.

Bans on electronic tabulators. A new proposal this year is legislation prohibiting election officials from using electronic tabulators, instead forcing them to count all ballots by hand. It has been introduced in [five states](#) so far. Forcing election administrators to count all ballots by hand would be cripplingly expensive for populous jurisdictions and delay the reporting of election results. It is yet to be seen whether this is a trend that will gain traction or not – but it is a new trend worth paying attention to.

We will continue to track bills that would interfere with election administration in our 50-state chart, featuring new and improved categorization for 2022.

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