

# **THE STATE OF STATE ELECTION LAW**

## **A Review of 2021-22 and a First Look at 2023**

**VOTING  
RIGHTS  
LAB**

**December 2022**

# A Letter from our Executive Director

Dear friends,

Many have said that democracy was on the ballot during these 2022 midterm elections. As yet another year in this historic period for American democracy comes to a close, we know that may somehow be an understatement.

From the conspiracy theorists seeking secretary of state positions across the country to the ballot initiatives with the power to expand or curtail voting access, democracy was indeed at stake in 2022. Once again, voters had the chance to make a statement reaffirming our values as a nation – that Americans choose freedom and fairness over fear and falsehoods.

Once again, voters all across the United States did just that. While work remains to rebuild trust in our elections and strengthen access to the ballot box, democracy prevailed in ways big and small. Through countless conversations, relentless research, and yes, the actual results of this year's elections, I'm as confident as ever in the values that resonate deeply regardless of race, religion, political party, or zip code. In America today, transparency, people over politics, checks and balances, and the rejection of partisanship in our elections remain essential.

Between the expansion of early voting in Michigan and Connecticut, the rejection of restrictive voter ID rules in Arizona, and the squashing of an effort to curtail the citizen initiative process in Arkansas, voters were clear in their desire to make our democracy stronger and more accessible. Meanwhile, many of the fiercest election deniers running for key offices across the country – with campaigns geared toward undermining our democratic process – were emphatically rejected.

Next year will be a critical runway to the 2024 presidential election. In the two years since the 2020 election, the Voting Rights Lab has tracked thousands of bills introduced to change election law, for better or for worse. 2023 will likely be no different.

But after this November, elected officials in state legislatures around the country should take note: when asked, American voters continue to choose democracy – over and over again. Together, we will continue to build a democracy that is more inclusive, more expansive, and more fair. Together, we can deliver on the promise of a democracy that works for all of us.

With hope,

A handwritten signature in black ink, appearing to read "Megan Lewis". The signature is fluid and cursive, with a large initial "M" and "L".

Megan Lewis

Executive Director and Co-founder, Voting Rights Lab

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# Introduction

The years since the 2020 election have been the most prolific for election law in recent history, with legislation impacting how people vote and how our elections are run taking center stage in many states.

In this period, our team at the Voting Rights Lab has tracked more than 3,600 bills in state legislatures across the country. This includes 368 bills that were enacted or adopted, 46 that were vetoed after passing the legislature, and 276 that passed at least one legislative chamber that either failed or remain pending. In the two years since the 2020 election, nearly every voter in the country has likely experienced some kind of change in their state's election law – whether in how they register, the options they have to cast their ballot, or in how or when their ballot is counted.

In 2021, we tracked an unprecedented number of bills impacting voter access moving across the country. Access to mail voting was a particularly prevalent issue, with states working in opposite directions. Some states took steps to expand and improve mail voting processes, while other states actively worked to restrict or even eliminate this popular vote method.

We also saw a new, highly concerning legislative trend emerge: bills designed to interfere with the administration of fair, non-partisan elections. These efforts include bills that, for example, would take authority away from experienced election professionals and provide it to state legislatures or other partisan actors instead; or bills that would threaten election officials with the possibility of felony prosecution for carrying out basic functions of their jobs.

In 2022, though we saw a dip in legislation impacting voter access – as one would expect in an election year – we disturbingly saw no decline in the volume of election interference legislation aimed at election administration and election officials. This is even more alarming considering that the Texas legislature, which accounted for 20% of the total bills introduced in 2021, was not in session in 2022.

On the heels of this historic period in voting law – and as we head toward a critical presidential election – next year is shaping up to be yet another prolific year for elections legislation. The Voting Rights Lab is already tracking prefiled bills and will keep you abreast of developments in real-time next year. This report will review the major developments we've seen since 2020, and look ahead to what we anticipate in 2023. For those interested in developments since our [2022 mid-session report](#), a state-by-state guide can be found in our appendix.

# Snapshot: Changes to Election Law in 2021 - 2022

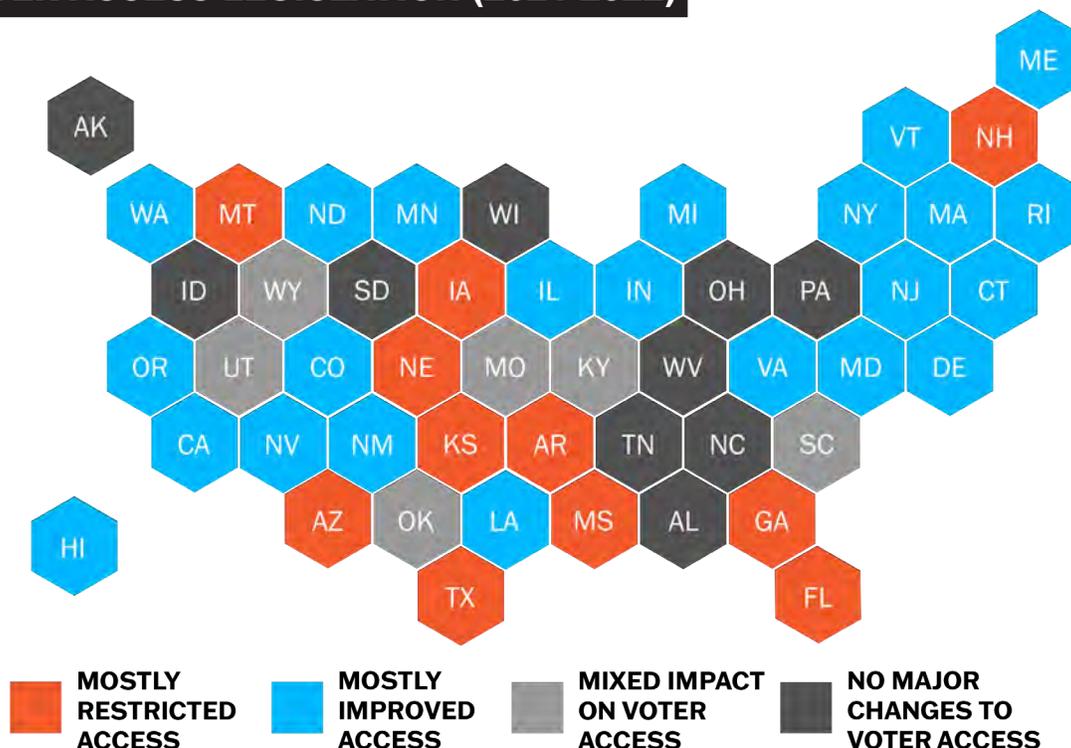
## Voting Access

As noted in previous reports, we've witnessed a widening fault line between states expanding voting access and those restricting it.

Some issues like early voting trended in a positive direction across the board, with many states, including [Kentucky](#), [Missouri](#), [South Carolina](#), and [Connecticut](#), giving voters more time to cast their ballot ahead of Election Day.

On the other hand, mail voting offers a clear example of an issue where states continue to move in starkly different directions. Since 2020, [California](#) and [Nevada](#) approved measures to send mail ballots to all active registered voters in every election, with many other states increasing access to mail voting by allowing voters to [apply for mail ballots online](#), [expanding drop box access](#), and other ways. Meanwhile, in the same bills that expanded in-person early voting, [Missouri](#) and [South Carolina](#) restricted access to mail voting. And other states like [Texas](#), [Georgia](#), and [Florida](#) increased voter ID requirements for mail ballot applications.

### VOTER ACCESS LEGISLATION (2021-2022)



Over the past two legislative sessions, a total of 23 states have generally expanded voting access, 11 states have generally restricted it, and six states have passed legislation with mixed outcomes, expanding access in some ways and restricting it in others.

## Interference with Election Administration

Over the past two legislative sessions, 28 state legislatures have passed legislation that interferes with the fair, nonpartisan administration of elections. Among these attacks are bills that shift the power to oversee elections to partisan actors; threaten election officials with felony charges; provide for partisan-motivated, standardless reviews of certified election results; escalate the investigation and prosecution of purported election crimes; and more.

### ELECTION INTERFERENCE ON THE RISE (2021-2022)



 ENACTED ELECTION INTERFERENCE LEGISLATION IN 2021-2022

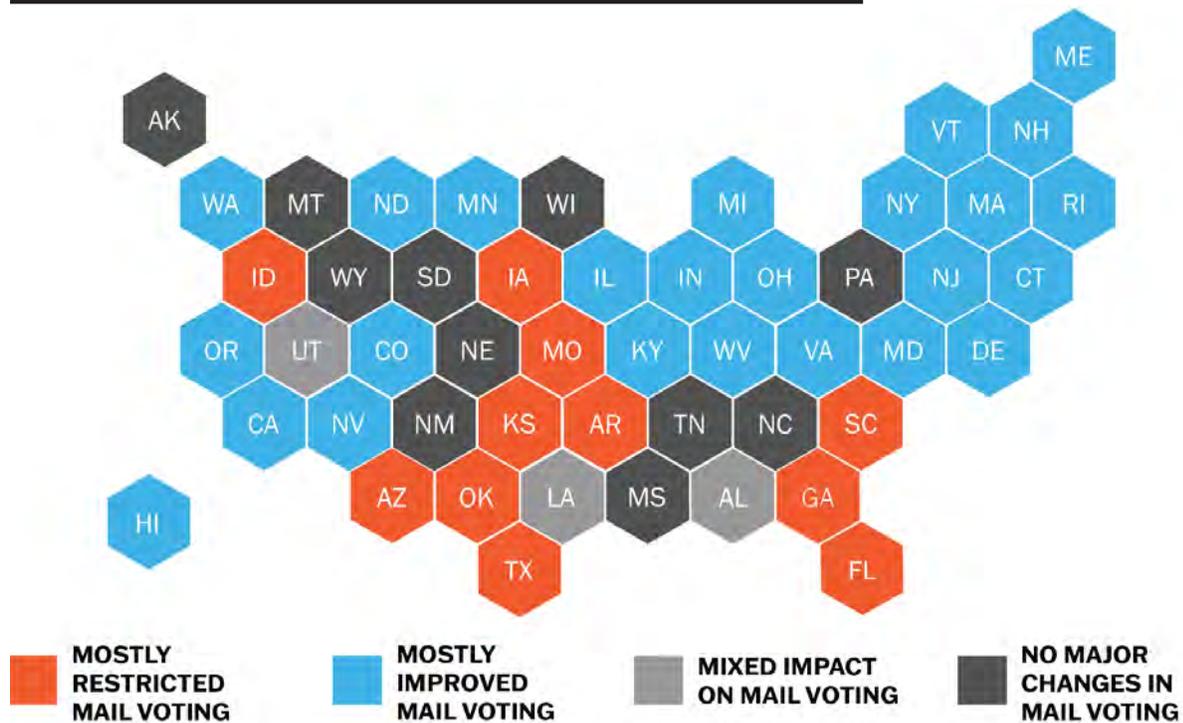
# Diving Deeper: Trends in Voting Legislation since 2020

A number of trends that have emerged and deepened over the past two years of legislative sessions. Three areas that became the subject of over a thousand election bills in states around the country are mail voting, early voting, and the criminalization of our elections.

## Mail Voting

Most states have adjusted their rules and processes dealing with mail voting since the 2020 election. Half the country – 25 states – have improved their mail voting processes. Still, a sizable number – 11 states – have restricted access to mail voting. Another three states improved access in some ways and restricted it in others.

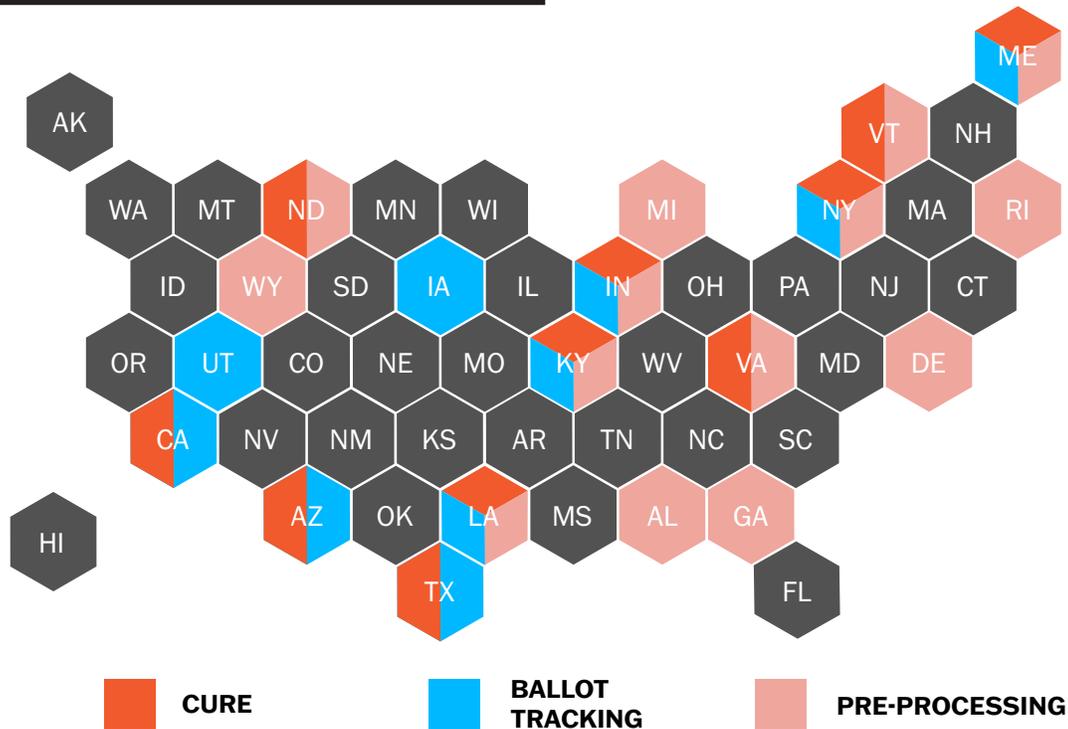
### STATES DIVERGE ON MAIL VOTING (2021-2022)



Even within the divisive topic of mail voting, there are some sub-topics on which states largely agree. Since the 2020 election, for example, 19 states have passed legislation to create or expand cure processes, require or authorize mail ballot tracking, or give election

officials more time to process mail ballots prior to Election Day. These policies are all critical to ensuring every registered voter who casts a mail ballot on time has their vote counted.

## IMPROVEMENTS TO CURE, BALLOT TRACKING, AND PRE-PROCESSING (2021-2022)



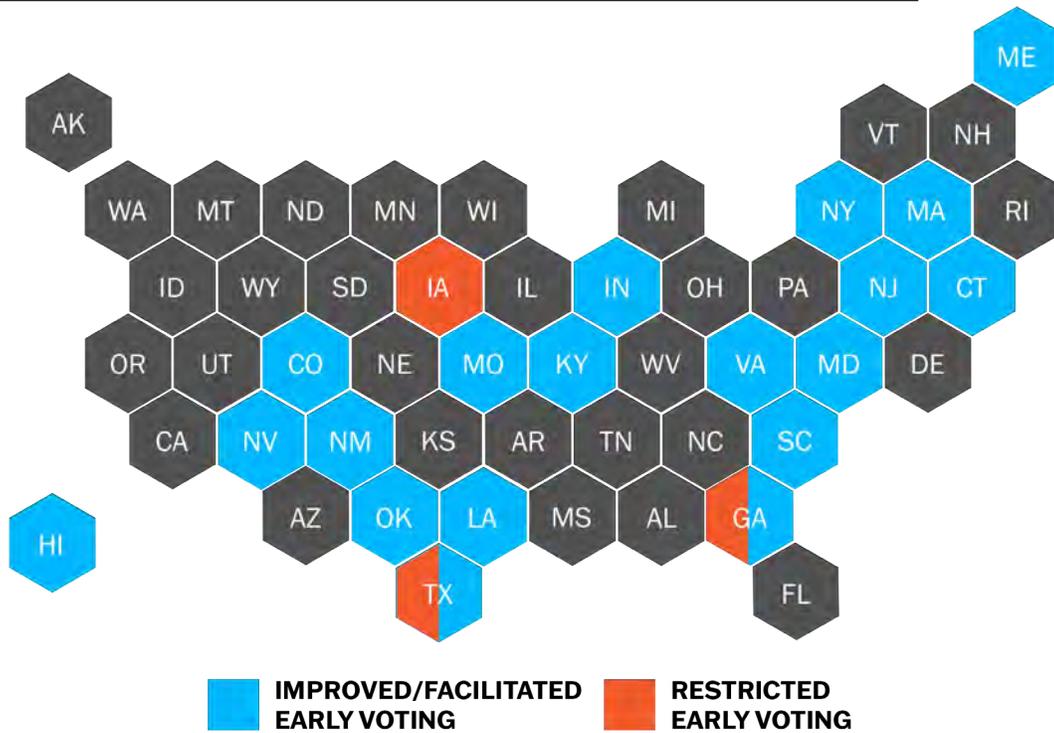
## Early Voting

While issues like mail voting remain divisive across states, early in-person voting is an issue on which states are nearly-exclusively expanding access.

Before the 2020 election, seven states did not offer any in-person early voting: Alabama, Connecticut, Kentucky, Missouri, New Hampshire, Mississippi, and South Carolina. With the Connecticut legislature expected to pass legislation codifying early voting in 2023, just three states (Alabama, New Hampshire, and Mississippi) will remain without any early voting options – remarkable progress over just two years.

Since the 2020 election, we have seen a total 17 states expand access to in-person early voting, one state restrict access, and another two states expand early voting in some ways and restrict it in others.

## EARLY VOTING GAINS GROUND AFTER 2020 ELECTIONS

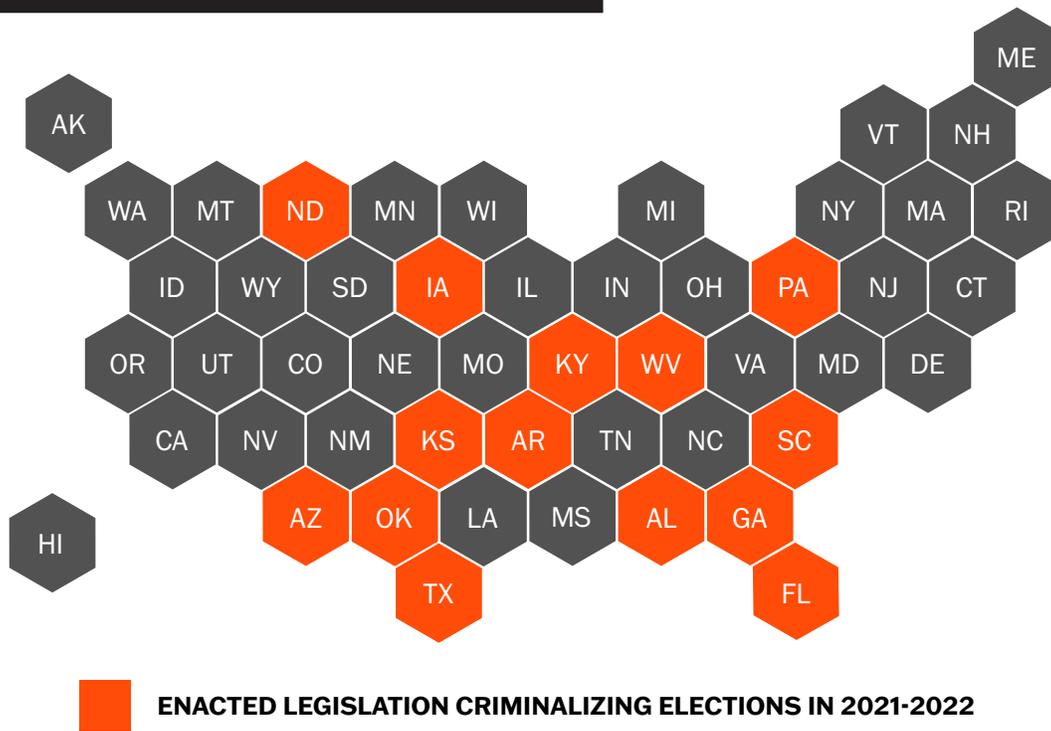


## Criminalizing Elections

Over the past two years, our team at the Voting Rights Lab has identified a disturbing trend: in the aftermath of the 2020 election – in the face of widespread falsehoods about our elections – some states began introducing, and enacting, legislation to increase the involvement of criminal law enforcement in the election process.

This new trend includes bills that increase penalties and prosecution for election professionals who are simply carrying out their jobs, voters who cast a ballot in good faith, and third parties seeking to help voters with disabilities, or for whom English is a second language.

# STATES THAT INCREASED CRIMINALIZATION OF ELECTIONS AFTER 2020 ELECTION



# Happening Now & Looking Ahead: The 2022 Lame Duck & 2023 Prefiled Legislation

The Ohio legislature is still active and may pass elections legislation before the end of the year. Meanwhile, [six states](#) have started prefiling elections bills for their 2023 legislative sessions: Texas, Missouri, Nevada, Virginia, South Carolina, and Wyoming. Here's what to watch as we head into the new year.

## Ohio

The Ohio legislature is currently considering voting legislation that it may enact before the end of year. Two pieces of legislation, H.B. 458 and H.B. 294, are receiving hearings and may be voted on shortly. These bills would, among their provisions, restrict acceptable forms of voter ID, limit secretary of state authority, prohibit prepaid postage for mail ballots, and limit the number of drop boxes.

## Texas

The vast majority of prefiled legislation comes from Texas, where legislators have already prefiled [66 elections bills](#) for the 2023 session. The Texas legislature only meets for 140 days on odd-numbered years, so its sessions tend to see considerable activity. In fact, we tracked [489 bills](#) in Texas over the course of the 2021 session (including its three special sessions)!

Republicans named elections as their top priority for 2023 at the state party convention, and we expect this session to be another busy one for voting legislation in the Lone Star State.

### **RESTRICTIVE LEGISLATION**

When it comes to attacks on voting and election administration, the [increased criminalization of Texas elections](#) is an issue that appears to be gaining traction in the state and presents as a clear trend among the prefiled bills. There are three primary types of criminalization bills we're watching in Texas:

1. Raising the penalty for "illegal voting" to a felony. Following the highly-

criticized Crystal Mason case, the Texas legislature lowered the penalty for voting while ineligible to a misdemeanor in 2021 as a part of [S.B. 1](#). [Five bills](#) to raise it back to a felony have already been prefiled, including [one](#) by the chair of the Senate State Affairs committee. The Voting Rights Lab is expecting this bill to move quickly when the legislature opens.

2. Expanding the attorney general's authority to prosecute election crimes and punish local prosecutors who do not do so. Following a court ruling that the attorney general's office does not have unilateral authority to prosecute election crimes, [multiple bills](#) seeking to empower the attorney general to appoint special prosecutors who may do so have been prefiled. [One of these](#) would also enable the attorney general to remove local prosecutors from office and levy \$25,000 fines against election officials. It is worth noting that prior to the above-referenced court ruling, the attorney general's \$2.2 million unit devoted to prosecuting election crimes only [closed a total of three cases](#).
3. Creating dedicated law enforcement officers with the investigation of election issues. Following in the footsteps of [Florida](#), Texas legislators have prefiled multiple bills to create a type of law enforcement officer entirely dedicated to investigating election crimes. Called "election marshals" in the prefiled bills, these officers would have broad subpoena powers and broad access to election information and infrastructure. [Early results](#) from Florida's newly-created Office of Election Crimes and Security indicate that these dedicated law enforcement units are unnecessary, expensive, and lead to harassment targeting primarily voters of color.

## **PRO-VOTER LEGISLATION**

It's not all bad news in Texas. In 2021, the anti-voter omnibus S.B. 1 included some positive reforms, including a provision ensuring voters have an opportunity to correct certain errors on their mail ballot envelopes. Similarly, there are a couple of pro-voter reform efforts that may advance in the upcoming legislative session.

1. Online voter registration. A [number of bills](#) have been prefiled that would create online voter registration. Although they all have Democrat sponsors, Republicans lawmakers have shown interest, and one of the sponsors – Representative John Bucy – has demonstrated an ability to move bipartisan bills in the past.
2. Increased access for voters with disabilities. There may also be an appetite for passing prefiled legislation that [improves access](#) to mail voting and in-person voting for voters with disabilities.

## Missouri

In 2022, Missouri passed [legislation](#) that created in-person early voting for the first time, but also restricted mail voting and made the state's voter ID law stricter. Among the bills prefiled for the 2023 legislative session, VRL is closely monitoring two potential positive reforms

1. Voting restoration. Missouri may follow in the footsteps of the [many states](#) that have recently improved voting access for people with past felony convictions. Under current [Missouri law](#), people with past felony convictions may not vote until they complete all relevant terms of parole and probation. [Prefiled legislation](#) in the state would restore the ability to vote immediately upon release from incarceration.
2. Notice and Cure. Missouri legislators will also consider prefiled [legislation](#) that ensures that voters are notified of errors on their mail ballots, and given an opportunity to correct those errors so their ballots may be counted.

## Conclusion

The landscape of American election law has evolved rapidly in the aftermath of the 2020 election. Hundreds of bills have been enacted impacting millions of voters. Entirely new trends in election legislation, including dangerous efforts to interfere with the nonpartisan administration of our elections, have taken hold in states around the country – with no signs of slowing down.

Now, as we head into the final year before the next presidential election, we will continue to see the impact of these changes. From Texas to Missouri, state legislatures have already prefiled nearly 100 bills that could have a serious impact on voter turnout and experience.

Our team at Voting Rights Lab will be hard at work following every new development and identifying the latest trends. As always, you can follow along with our [State Voting Rights Tracker](#) as we provide twice-daily updates on the voting- and election-related legislation moving in all 50 states and DC.

## Appendix: Significant Developments Since Our Mid-Session Report

Since releasing our [mid-session report](#) in early July, states have made a number of changes to their election laws. These changes have been established both through ballot initiatives and legislative action. Here are some of the most significant changes:

Arizona: In November, Arizona voters notably [rejected an initiative](#) that would have made the state's voter ID law stricter. Additionally, the legislature passed two significant bills since our last report. One, a pro-voter bill, requires and provides funding for [statewide mail ballot tracking](#) by the end of 2023. The other, a [restrictive voter purge bill](#) that targets people who election officials have a "reason to believe" are non-citizens requires investigations of voters' registrations using data sources that are not designed to determine voter eligibility, and thus may contain incomplete or incorrect citizenship information. Some voters identified through these investigations will not receive notice prior to cancellation of their registration or have an opportunity to contest the cancellation.

California: The year-round California legislature passed a number of bills since July, including legislation that ensures [voters are notified](#) before their registrations are canceled, [protects election workers](#) by enabling them to keep their identities and addresses confidential, [improves bilingual poll worker recruitment](#), provides [greater transparency](#) into the signature verification process, and places ballot [drop boxes on state university campuses](#) if school is in session during an election.

Connecticut: In the November election, Connecticut voters approved an amendment to the state constitution authorizing the legislature to establish [in-person early voting](#). Connecticut is currently [one of only four states](#) – along with Mississippi, Alabama, and New Hampshire – that does not offer all voters an opportunity to cast a ballot before Election Day. It is now up to the legislature to establish the parameters of future early voting opportunities. The incoming secretary of state has expressed to lawmakers her interest in establishing [three to five days](#) of early voting.

Delaware: The Delaware legislature passed new laws creating [no-excuse mail voting](#) and [same-day registration](#). However, the state supreme court [struck down](#) both bills, finding that the state constitution does not allow the legislature to institute these policies. Delaware will need to amend its constitution to make these reforms.

Michigan: Michigan voters approved [Proposal 2](#), enshrining nine days of early voting in the state constitution, expanding mail ballot access, and ensuring election results will always be based on the votes cast, not according to the whims of local or state leaders. Prior to

the election, Michigan's split government agreed on some important election reforms, including legislation to [allow clerks to start processing mail ballots before Election Day](#). Prior to the enactment of the bill, election officials had to wait until the morning of Election Day to begin processing mail ballots. The bill also ensures people who have died are removed from the voter registration list.

Nebraska: A state constitutional amendment [requiring photo ID](#) was [approved](#) by Nebraska voters in the November election. While the details and exceptions will be determined by the legislature, Nebraska will join [21 other states](#) that generally require photo ID to vote in person.

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