



Voting Rights Issue Briefs

Prepared by Tony Corrado
Professor of Government at Colby College

for The Committee for Economic Development

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Policy Issue Brief:
State Voting Law Reform
5.26.2021

Two-thirds of eligible voters participated in the 2020 election, which represented the highest turnout in a national election since 1900, before women had the right to vote. More than 159 million Americans voted, the largest total voter turnout in our history and the first time more than 140 million individuals participated in an election. Turnout rose among all racial and ethnic groups, and for the first time a majority of Americans under the age of 30 cast ballots. This historic level of participation is more remarkable given that the election took place in the midst of the coronavirus pandemic.

Voter participation in 2020 reflected the high level of public interest in the outcome of the election, deeply felt partisan attitudes about President Trump, and the perceived stakes associated with the determination of party control in Congress, which led to a highly motivated electorate. It also reflected the extensive temporary or emergency measures implemented by many states in response to the pandemic to facilitate voting and avoid crowding at the polls. In all, 35 states revised their voting rules, including 29 states that adopted procedures to expand access to the ballot, primarily by easing their rules for absentee voting or expanding options for early in-person voting. Consequently, 69% of those who cast ballots did so by mail or by voting early in-person, a significant increase from 2016, when 40% of voters cast ballots by one of these methods.

Yet, instead of creating common ground on the rules best suited to the conduct of free and credible elections, the 2020 experience exacerbated partisan disputes that have emerged over voting rights. Republicans, spurred by false narratives of widespread voting irregularities and voter fraud propagated by President Trump and other Republican party officials, contend that new restrictions are needed to ensure the integrity of elections and bolster public confidence in the legitimacy of outcomes. Democrats, emphasizing the need to ensure equal access to the ballot, contend that proposed restrictions are designed to suppress the vote of particular groups within the electorate and argue that many measures used in 2020 should be retained or expanded to protect voting rights in future elections. Although voter access and election integrity need not be mutually exclusive, partisan advocates have advanced substantively different policy approaches for achieving these objectives.

State Legislative Proposals

Legislators across the country responded to the events of 2020 by introducing an extraordinary number of voting law proposals for state legislative consideration. Based on a compilation by the Brennan Center for Justice, by the end of March proposed legislation had been submitted in 47 states, including 361 bills that included restrictive provisions and 843 bills that included expansive provisions. These proposals generally divided along partisan lines, with the vast majority of bills including restrictions or additional safeguards in casting and counting ballots advanced by Republican legislators,

and the vast majority of expansive bills filed by Democrats, including 125 such proposals in New York and New Jersey alone.

This unusually high number and scale of proposed changes is not solely due to partisan politics and policy differences over how to best ensure fair and credible elections. It is also in part a response to the unique actions taken to adapt to the pandemic. In half of the 29 states that eased or expanded voting access in 2020, rules were adopted as temporary or emergency actions that expired at the end of the year. Based on the experience in 2020, legislators in some of these states are acting to make at least some of the changes permanent, such as the use of drop boxes for the submission of absentee ballots. In others, bills seek to prohibit 2020 practices, such as the mailing of absentee ballot applications to all registered voters or the use of emergency authority to change voting procedures.

A. Bills with Procedural Restrictions

While the proposals submitted vary in their details from state to state, bills that seek to tighten restrictions in voting law commonly focus on absentee voting (voting by mail), early in-person voting, voter identification requirements, voter registration rules, and procedures for purging voters from registration lists. Proposed changes include:

1. Absentee Voting/Voting by Mail

- Restricting the ability of election officials to send absentee ballots to voters without a specific request.
- Eliminating “no excuse” absentee mail voting or making the “excuse” required to qualify for an absentee ballot more stringent.
- Reducing the period in which a voter may apply for an absentee ballot and shortening the period for ballot receipt or postmark deadline in order for a ballot to be counted.
- Limiting who may assist voters in the collecting and delivering of absentee ballots, and limiting the number of absentee ballots any one individual may collect to avoid “ballot harvesting.”
- Increasing witness signature requirements, requiring copies of state-approved identification with submission of ballot, or requiring signature matching on absentee ballots.
- Limiting the use of drop boxes for absentee ballot return, or reducing the availability of drop boxes by restricting locations and hours of operation.

2. Voter Identification Requirements

- Requiring a voter to present a photo ID at the polls to cast a ballot (10 states currently have no ID requirement).
- Eliminating the use of certain forms of ID, such as student IDs or out-of-state driver’s licenses.

3. Voter Registration

- Rescinding election day registration or prohibiting its adoption in the future.
- Rescinding automatic registration or prohibiting its adoption in the future.
- Requiring individuals to provide proof of citizenship in order to register to vote or establishing some other means of verifying an individual's citizenship.

4. Voter Purge Procedures

- Eliminating permanent absentee or early voter lists.
- Reducing the length of time a registrant may remain on the voter list without voting in an election.
- Changing data matching procedures for purging registration lists.

B. Bills with Expansive Provisions

Bills that seek to expand access to voting mostly focus on absentee voting (vote by mail), early in-person voting, voter registration procedures, and the restoration of voting rights for individuals with past convictions. Proposed changes include:

1. Absentee Voting/Voting by Mail

- Permitting all voters to vote by mail, eliminating "excuse" requirements.
- Reforming the notice and cure process to ensure that voters have a fair opportunity to correct any technical mistakes made on an absentee ballot.
- Authorizing or expanding the use of drop boxes for submitting mail ballots.
- Extending the deadlines for postmarks or receipt of mail ballots.
- Permitting election officials to begin processing mail ballots (i.e., preparing ballots to be counted) before election day.

2. Early Voting

- Implementing early voting for the first time in those states without early voting periods.
- Expanding the number of days in early voting periods.
- Increasing the number of early voting sites.

3. Voter Registration

- Establishing election day registration.
- Establishing automatic voter registration.
- Allowing individuals to register to vote online.
- Permitting pre-registration of 16- and 17-year-olds with their registration becoming automatically effective when they turn 18.

4. Voting Rights Restoration

- Establishing policies to restore voting rights or ease current restrictions for individuals with past convictions.

State Actions to Date

As of mid-May, 17 states have revised their voting laws, including 13 states with legislatures controlled by Republicans and 4 states with legislatures controlled by Democrats. Most of these states currently have one-party control in the legislative and executive branches. Two notable exceptions are Kansas, where the Republican legislature passed a law overriding the Democratic governor's veto, and Kentucky, where a Democratic governor signed a Republican bill that received bipartisan support.

Four states with Democratic majorities have enacted new laws (MA, NY, NJ, and VA). These states adopted meaningful, but relatively minor reforms, with the exception of New Jersey, which established a 9-day early in-person voting period, based on the experience in 2020.

Thirteen states with Republican majorities have enacted new laws (AZ, AR, FL, GA, ID, IN, IA, KS, KY, MT, UT, and WY). These states have generally made more extensive changes that impose new restrictions or limits in their voting procedures, although some states did include provisions that expand access at certain stages of the voting process as compared to prior law. Two notable exceptions are Kentucky and Montana. Kentucky expanded access by allowing a permanent online portal for voter registration, establishing a 3-day early in-person voting period (prior to 2020 the state had no early voting period), and allowing the establishment of voting centers where any voter may cast a ballot regardless of precinct. The state also required any new voting machine to have a paper trail to facilitate audits. Montana ended election day registration, but still allows registration up to the Monday prior to election day and improved access for voters with disabilities. States adopting major changes include Georgia, Florida, Arizona, and Iowa, four electorally important states in national elections. While the specific provisions adopted vary by state, the changes include:

- Voter registration: Requiring means of registering online.
- Absentee Ballots/Voting by Mail: Prohibiting distribution of unsolicited absentee ballot applications; reducing the period in which a voter may request an absentee ballot; adding proof of ID to absentee ballots; limiting who may assist a voter in completing and turning in an absentee ballot; restricting the use of drop boxes for returning absentee ballots; and tightening the deadlines for postmarks and receipt of absentee ballots.
- Voter ID requirements: Establishing voter ID requirements (WY) and specifying acceptable forms of ID, which exclude student IDs and out-of-state driver's license.

- Voting at the Polls: Reducing the hours polls are open on election day (IA); restrictions on provision of “gifts”, including food and water, to voters waiting in line; more stringent requirements for the casting of provisional ballots.
- Election Administration: Increasing the role of state boards in the administration of elections, and limiting the use of emergency powers to change voting procedures.

Most state legislatures end their sessions no later than the middle of June, so few are expected to revise their laws in the months ahead. Legislative leaders in Texas are actively working on a bill they plan to approve before the end of the session. Michigan and Pennsylvania are two states that bear watching, since they may take up voting law reform later in the year. Further changes may also be necessary depending on the outcome of legal challenges. Lawsuits have already been filed against the laws enacted in Arkansas, Florida, Georgia, Iowa, Montana, and Utah.

Policy Issue Brief:
Federal Election Law Reform
5.26.2021

Voting rights and procedures are a major topic of congressional debate in the wake of the 2020 election. Two major bills, both proposed by Democrats and viewed as high priorities by the Democratic leadership, have become the focal points of this debate. The first is H.R. 1/S. 1, the “For the People Act,” which calls for the most comprehensive revision of federal election law ever considered by Congress. The second is H.R. 4, “The John Lewis Voting Rights Advancement Act,” which seeks to protect the right to vote.

H.R. 1/S. 1: For the People Act

The “For the People Act” is a mammoth bill that encompasses a wide range of significant voting law reforms, campaign finance reforms, and procedural changes related to the conduct of federal elections. It is designed to establish uniform standards and procedures for federal elections applicable to all states. Some of the major voting law provisions included in the bill are:

- **Voter Registration:**
 - Requires an online voter registration process in every state.
 - Requires automatic registration where eligible individuals would be enrolled to vote whenever providing information to a government agency, such as a Department of Motor Vehicles, unless they decide to opt out.
 - Requires same day registration, including on election day.
- **Absentee Ballots:**
 - Requires no excuse absentee voting in all states.
 - Requires that absentee ballot applications be sent to all registered voters within 60 days of an election.
 - Prohibits voter ID requirements for mail-in ballots.
- **Early Voting:**
 - Establishes a 15-day early voting period including at least two weekends and operating for at least 10 hours per day.
- **Restoration of Voting Rights:**
 - Requires restoration of voting rights to those who have a previous criminal conviction.
- **Election Integrity:**
 - Requires the use of voter verified paper ballots to ensure verification of machine counts.
 - Provides grants and standards for safeguarding the election process from cyber-attacks.

- Provisional Ballots:
 - Establishes procedures for handling, issuing, and counting provisional ballots, including a requirement that all provisional ballots be counted.
- Voter Purges:
 - Establishes restrictions on the procedures and data-matches that may be used in purging voter rolls.

The bill also requires the use of independent redistricting commissions to draw legislative district maps and prohibits the adoption of any map that “unduly favors” one party over another. It also sets forth new ethics requirements for presidential and congressional candidates, and requires presidential candidates to release their tax returns to the public. The campaign finance reforms include a voluntary 6-1 multiple match on small individual contributions for congressional and presidential candidates, strengthened disclosure rules, disclosure and disclaimer requirements for online political ads, and Federal Election Commission reform, among others.

The House approved H.R. 1 on March 3 by a vote of 220-210 with all Democrats but one voting for the bill and all Republicans opposed. The Senate has now taken up the bill, where passage will be more difficult and seems unlikely at this time. At present, no Republicans have expressed support for the bill and Minority Leader Mitch McConnell has clearly expressed his opposition. While Majority Leader Chuck Schumer has said that this bill is a priority, the Democrats lack the votes needed for approval since Senator Joe Manchin, a Democrat from West Virginia, does not support the package, arguing that any reform of the election process should have bipartisan support. Even with Senator Manchin’s support, the Democrats are well short of the 60 votes needed to overcome an expected filibuster. The bill has thus become entwined with filibuster reform, with some Democrats proposing reform of the filibuster rules to pass H.R. 1, as well as other party legislative priorities. But here again the Democrats currently lack the votes to change the filibuster rules. Senator Manchin has stated on a number of occasions that he does not support changing the filibuster, and Senator Kyrsten Sinema, a Democrat from Arizona, has also expressed resistance to this idea. Discussions among the Democrats are ongoing and Majority Leader Schumer has expressed a desire to bring the bill to a vote sometime before August.

H.R. 4/ The John Lewis Voting Rights Advancement Act

The John Lewis Voting Rights Advancement Act is yet to be finalized and introduced in the House, but an earlier version of the bill was passed by the House in 2019 and renamed in 2020 to honor the former Congressman from Georgia and long-time voting rights advocate. The purpose of this bill would be to update the Voting Rights Act to restore Justice Department oversight of voting procedures in states with a history of discrimination and reestablish preclearance procedures requiring Justice Department or court approval before any change in voting laws adopted by a state could be implemented.

The bill is a response to the 2013 Supreme Court decision in *Shelby County v. Holder* in which the Court struck down the preclearance requirement in Section 5 of the Voting Rights Act on the basis that the provision was no longer necessary, given that it was based on violations that had occurred well in the past, and violated the Constitution because it treated equally sovereign states unequally. At the time of the Court's decision, Justice Department preclearance approval of changes in election procedures was required in nine states and in selected jurisdictions in six others.

Advocates of the bill argue that this legislation is needed to protect the right to vote of every American and provide a safeguard against procedures that would have a discriminatory effect and serve to suppress the vote, especially in the case of racial and ethnic minorities. While advocates cast this proposal as essential to protecting against discriminatory practices in the future, others are careful to note that it would not prohibit implementation of the reforms currently being adopted by states, which these advocates view as designed to suppress the vote. In this way, they seek to make clear that H.R. 4 should not be viewed as an alternative to H.R. 1, which would overrule current state procedures, at least for federal elections, but should be regarded as another piece of legislation needed to protect an equal right to vote now and in the future.

Critics argue that preclearance is an unnecessary federal intervention on state authority to set election rules. They also note that it would treat states unfairly and thus is unlikely to withstand judicial scrutiny, given the Supreme Court's ruling in *Shelby County*. To address this concern, Senator Manchin has suggested applying preclearance to all 50 states, a suggestion the Democratic leadership has resisted and one that will certainly strengthen Republican opposition. A bill with such a broad scope, if passed, would certainly be subject to constitutional challenge and is unlikely to be upheld by the Supreme Court, adding to other constitutional concerns that are likely to arise, depending on the findings produced to prove the existence of racial discrimination in voting procedures and the standards employed to determine violations of the law, which have not yet been finalized.

As with H.R. 1, the Democrats face a difficult path in mustering the votes needed for H.R. 4 in the Senate, assuming the House passes a bill. To date, Senator Lisa Murkowski of Alaska is the lone Republican to express support for such a bill. The Democrats are therefore faced with the problem of either changing the filibuster rules, an action for which they currently lack the votes, or finding a way to attract 60 votes needed to pass the measure in the face of a filibuster.

Brief Summary of State Voting Laws Enacted in 2021
(As of May 20, 2021)
5.23.21

Bills Enacted into Law (Republican Legislatures)

Arizona: Eliminates the Permanent Early Voting List (the current name of the absentee voter list) and changes it to the Active Early Voting List. Allows county officials to remove voters from the early voting (absentee) list if they do not vote early in two consecutive election cycles and do not respond to a warning of removal within 90 days. For this purpose, voting at the polls in an election does not count.

Arkansas: Bans the distribution of unsolicited absentee ballots; shortens period for in-person submission of absentee ballots to the Monday to Friday prior to election day; standardizes requirement for signature matching on absentee ballots; strengthens voter ID requirements; and increases role of state board of elections.

Florida: Requires voters to request an absentee ballot each election cycle; adds ID requirements for those requesting absentee ballots; limits who may turn in a voter's absentee ballot; places new restrictions on absentee ballot drop boxes, including limits on the location of drop boxes, limits on the hours of operation, and a requirement that boxes be monitored by election officials whenever they are open; adds new powers for partisan election observers; bans anyone from "engaging in any activity with the intent to influence or effect of influencing a voter" near the polls, but allows election officials to provide "nonpartisan assistance"; prohibits the use of private money to help pay for election administration.

Georgia: Prohibits the distribution of unsolicited absentee ballots; adds a voter ID requirement for absentee ballot requests; reduces the period to request absentee ballot from 180 days before election day to 78 days; absentee ballots may be sent to voters beginning 29 days before election day (previously 49 days); establishes a 17-day early voting period, including at least two Saturdays; codifies the use of drop boxes and places limits on the location of drop boxes and hours of operation; standardizes days and hours of operation for early voting across counties; bans giving voters any gifts, "including but not limited to, food and drink" within restricted areas around polling sites, but allows poll workers to provide "self-service water"; limits use of provisional ballots by voters who appear at wrong precinct; codifies period for processing absentee ballots beginning 15 days before election day; shortens period of runoff elections from nine weeks after election day to 28 days after election day, with early voting period reduced from three weeks to a single Monday-Friday period; removes Secretary of State as chair of state elections board, but Secretary remains on board as an ex-officio, non-voting member; state elections board chair and members to be elected by the legislature; grants new powers to state election board over local election officials.

Idaho: Requires that a voter's signature on absentee ballot match signature on voter registration.

Indiana: Standardizes election procedures; requires Secretary of State to develop online system for absentee ballot applications; specifies family members who may assist a voter in turning in an absentee ballot; prohibits use of drop boxes that are not under physical control and supervision of county election board; specifies procedure for signature matching on ballots and provides a notice and cure process for correcting signature mismatches.

Iowa: Prohibits the distribution of unsolicited absentee ballots; shortens the period for requesting absentee ballots from 120 days before election day to 70 days; limits who can assist a voter in turning in an absentee ballot; shortens the early voting period to 17 days from 25; limits the number of drop boxes per county; reduces the time the polls are open on election day by one hour; revises voter purge procedures by moving voters to inactive list every time they miss a federal election; requires use of Postal Service change-of-address data for list maintenance; limits the use of emergency powers for changes in voting procedures.

Kansas: Passed by Republican legislature overriding Democratic Governor's veto. Prohibits any changes in election laws other than by the legislative process; prohibits the Secretary of State from extending absentee voting deadlines; establishes new restrictions on who may solicit absentee ballots and assist voters in turning in absentee ballots.

Kentucky: A bipartisan bill from Republican-controlled legislature signed by Democratic Governor. Requires any new voting machine to have a paper back-up to facilitate audits; establishes a three-day early voting period (prior to 2020 the state did not provide for early voting); allows permanent online registration portal for absentee ballots (but excuse still required); allows counties to establish vote centers where any voter may cast a ballot regardless of precinct); allows the use of drop boxes for absentee ballots; limits who may assist a voter in turning in an absentee ballot; provides for a cure process for absentee ballots that are submitted with signature mismatches.

Montana: Ends same-day election day registration; revises voter ID rules by requiring individuals without a government-issued photo ID to produce a second, supplemental ID to vote; added conceal carry permits as an acceptable form of ID; new procedures to ensure access for voters with disabilities; prohibits Governor from changing election laws under emergency power without legislative approval.

Utah: Changes voter purge procedures by requiring county clerks to cross-reference all death certificates and remove the names of deceased individuals within 10 days (without any requirement of notice or specifics of matching criteria).

Wyoming: Enacts a voter ID bill applicable to voters who cast ballots in person at the polls.

Bills Enacted into Law (Democratic Legislatures)

Massachusetts: Extends no-excuse absentee and early voting through June 30, 2021.

New Jersey: Establishes a 9-day in-person early voting period at specially designated polling sites and gives county boards of election the authority to determine the location of ballot drop boxes.

New York: Expands automatic voter registration agencies to include the State University of New York.

Virginia: Allows pre-registration for 16- and 17-year-olds with registration becoming effective automatically when the individual turns 18; allows election officials to provide early voting in more than one office and gives officials the authority to permit in-person early voting on Sundays; improves access for voters with disabilities in part by noting that they are entitled to vote outside of a polling place (“curbside voting”).