

Rethinking American Electoral Democracy

Prof. Jonathan Cervas

Updated: February 28, 2023

Starting with an in-class exercise

Think about the term “represent”. What does it mean to you? In which situations in life do we find ourselves represented?

Thinking broadly (i.e., not just in terms of politics), who best represents you (including people or groups)?

- ①
- ②
- ③

Thinking in this same way, who do you represent?

- ①
- ②
- ③

Name three general categories where you need representation.

- 1
- 2
- 3

What qualities compelled you to include them. Is there anything special about their (your) identity? In what ways does having representation make life better?

Some dictionary definitions of the term include:

- to substitute in some capacity for : act the part of, in place of, or for (as another person) usually by legal right: as
- to serve especially in a legislative body by delegated authority usually resulting from an election
- to provide legal representation to as a lawyer
- to act as the representative of in a class action
- to describe as having a specified character or quality

Rethinking American Electoral Democracy

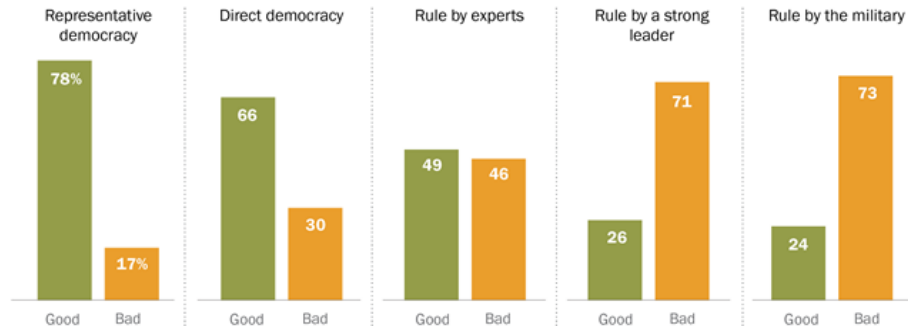
Chapter 1 - Creating a Model Electoral Democracy

Positive view of democracy

-American widely view democracy as a good thing

Widespread support for representative and direct democracy, but many are also open to nondemocratic alternatives

Would ___ be a good or bad way of governing our country?



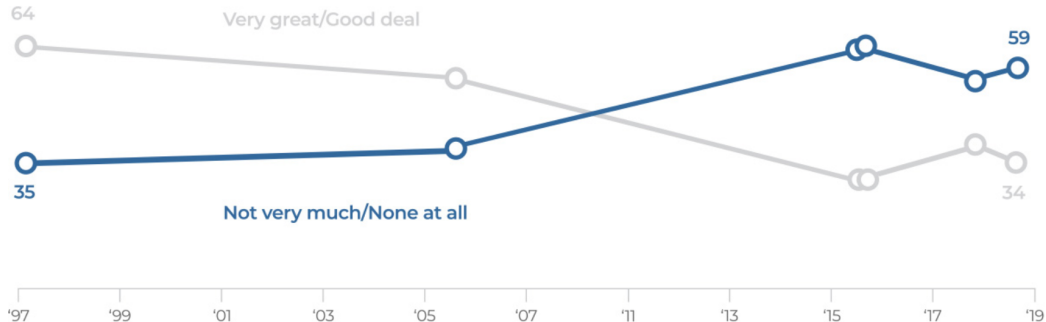
Note: Percentages are global medians based on 38 countries. Full question wordings for political systems: Representative democracy, "A democratic system where representatives elected by citizens decide what becomes law"; Direct democracy, "A democratic system where

Declining trust and confidence

- But American's trust and confidence in the wisdom of other Americans to make political decisions is in decline

Less than half of Americans express confidence in public's political wisdom

% saying they have ____ (of) trust and confidence in the wisdom of American people in making political decisions



Democracy in trouble?

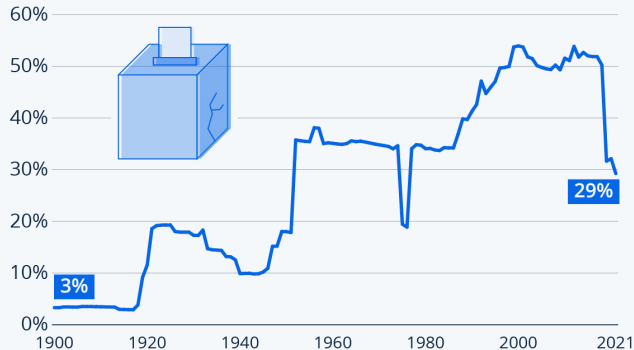
- A majority (52%) of young Americans believe that our democracy is either “in trouble,” or “failing”¹
- On American Exceptionalism, less than one-third believe that “America is the greatest country in the world”
- Young Americans place the chances that they will see a second civil war in their lifetime at 35%; chances that at least one state secedes at 25%
- Nearly half (46%) of young Republicans place the chances of a second civil war at 50% or higher, compared to 32% of Democrats

¹The Harvard Youth Poll, 2,109 18 to 29-year-old U.S. residents conducted between Oct. 26 and Nov. 8, 2021. <https://iop.harvard.edu/youth-poll/fall-2021-harvard-youth-poll>

Global Share of the Population living in a democracy

Fragile Democracy

Share of global population living in a democracy*
(1900-2021)



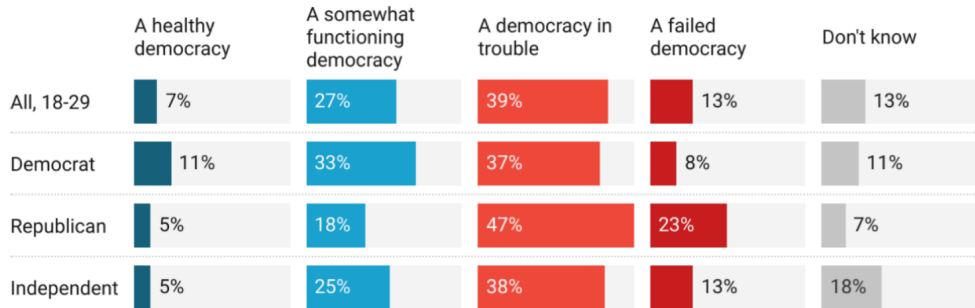
Political regime classifications are based on criteria set by Lührmann et al. (2018) and as assessed by V-Dem Institute.

* 'Electoral' or 'Liberal' democracies

Source: Our World in Data

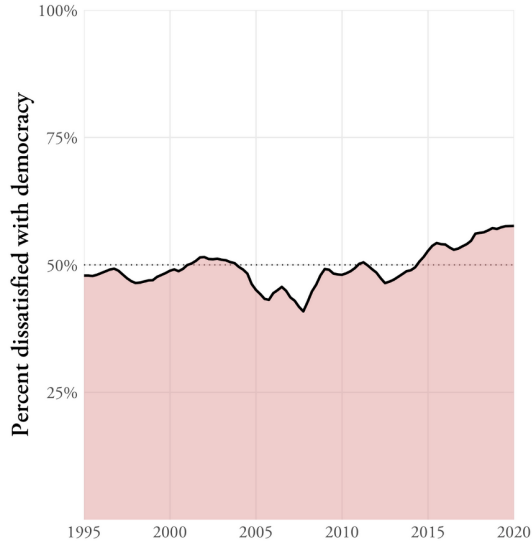
Public is split on how well democracy is working

Which of the following phrases best describes the United States today?



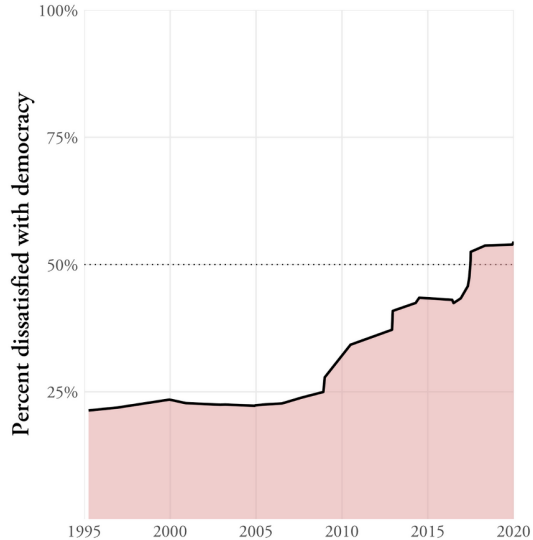
Source: Harvard IOP Youth Poll; Fall 2021 • Created with Datawrapper

Dissatisfaction with democracy in all democracies



Graphic by David H. Montgomery; Source: University of Cambridge's Centre for the Future of Democracy

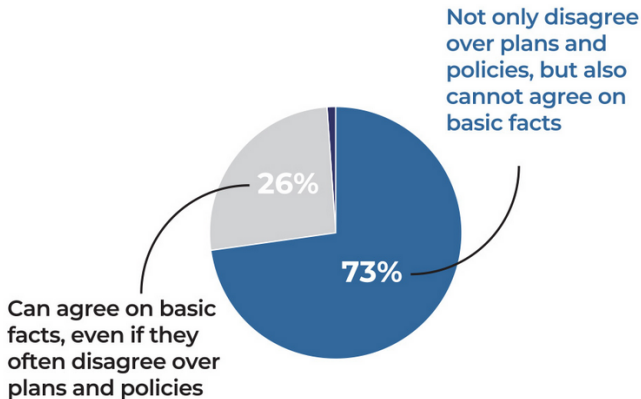
Dissatisfaction with democracy in the United States



Graphic by David H. Montgomery; Source: University of Cambridge's Centre for the Future of Democracy

Republicans and Democrats say they can't agree on 'basic facts'

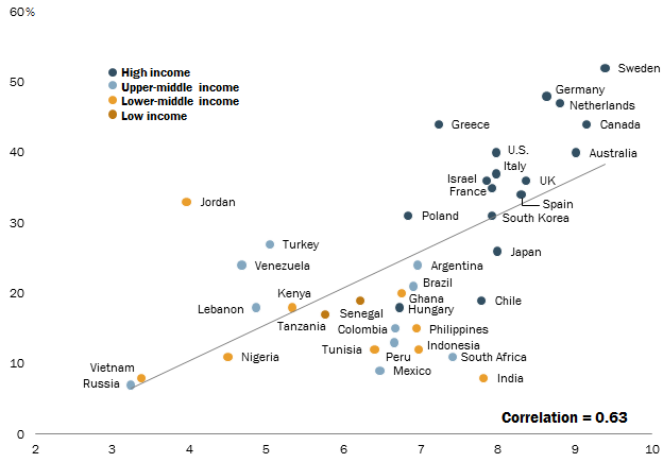
On important issues facing the country, most Republican voters and Democratic voters... (%)



Countries with more democratic systems, greater wealth show more widespread commitment to representative democracy

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*% committed to representative democracy**



Assuming Democracy is good. . .

Assuming democracy is good:

- How much and what kind of democracy should we have?
- Should we have direct democracy where everyone votes on the internet?
- Should this happen for all levels of government, from city issues to federal issues?
- What offices should be elected, and which appointed?
- Who should appoint, and who should confirm? Can the public recall?

Criteria for a Model Electoral Democracy

- “In every democratic country a substantial gap exists between actual and ideal democracy. That gap offers us a challenge: can we find ways to make ‘democratic’ countries more democratic?”²
- One Person, One Vote
- Competitive Elections
- Transparency
- Rules that are not burdensome

²Dahl, R.A., Dahl, and Yale University Press. 1998. On Democracy. Yale University Press.

Chapter 2 - Factors that Influence Voter Turnout

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Cost of Voting

The New York Times

The 'Cost' of Voting in America: A Look at Where It's Easiest and Hardest

By Nick Corasaniti and Allison McCann Updated Sept. 21, 2022

Voters in New Hampshire and Mississippi face the highest personal cost in the country in terms of the time and effort required to cast a ballot, according to a new academic study. Voters in Oregon and Washington have it the easiest.

And while residents of Georgia, Florida and Iowa face taller barriers to voting since [Republicans tightened their election laws](#) last year, all three states remain roughly in the middle nationally in terms of how easy it is to register and to vote.

That is in part a reflection of the fact that many deep-red states, but also politically divided states like New Hampshire and Wisconsin and deep-blue ones including Connecticut, have had many limits on access to the ballot for years, well before the Republican-led push after the 2020 election to overhaul voting laws.

Cost of Voting

(<https://www.nytimes.com/interactive/2022/09/20/us/politics/cost-of-voting.html>)

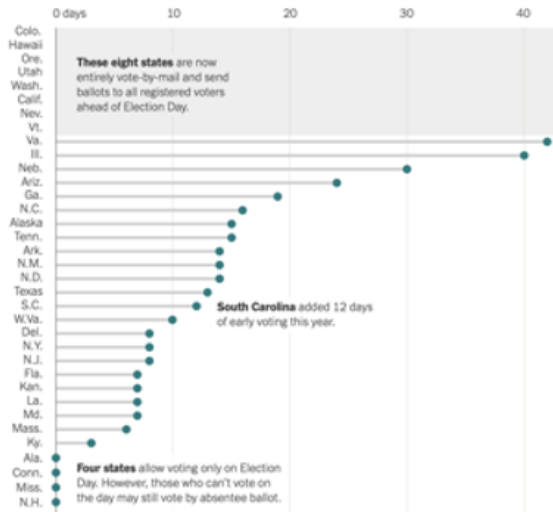
Where it's easiest and hardest to vote

STATE	TOP 10	STATE	BOTTOM 10
Oregon	1st	Ohio	41st
Washington	2nd	Missouri	42nd
Vermont	3rd	South Carolina	43rd
Hawaii	4th	Wyoming	44th
Colorado	5th	Alabama	45th
California	6th	Texas	46th
Nevada	7th	Wisconsin	47th
Utah	8th	Arkansas	48th
Illinois	9th	Mississippi	49th
North Dakota	10th	New Hampshire	50th

Source: Cost of Voting in the American States: 2022.

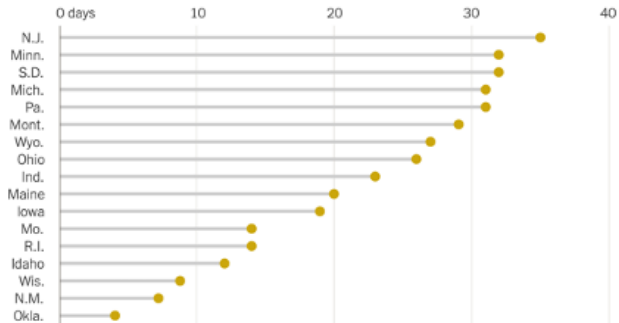
Some states move to expand early voting and vote-by-mail

Number of days before Election Day in which voters can cast ballots in person or by mail



Where you can vote early by absentee ballot

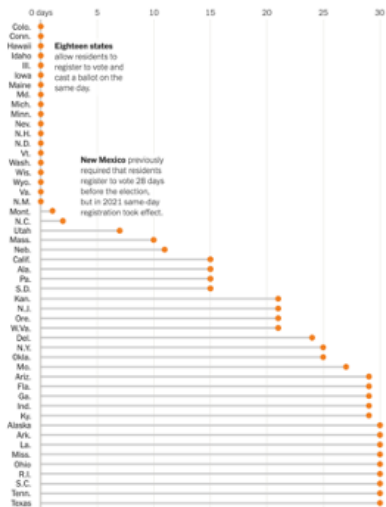
In some states voters can request an absentee ballot before Election Day, but the study's authors do not consider this to be the same as early voting



Source: Cost of Voting in the American States: 2022. • Note: Figures are based on the latest available information and reflect the actual number of days of voting, excluding weekends.

Voter registration deadlines remain mostly unchanged

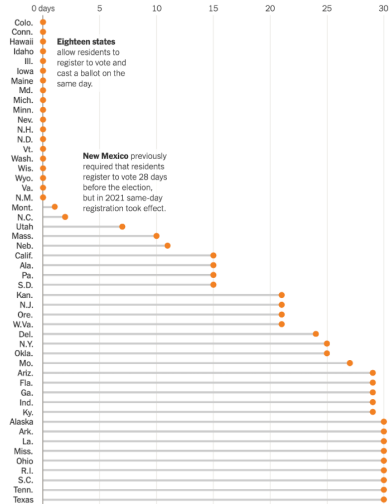
Number of days before the election a voter must be registered to vote



Source: Cost of Voting in the American States: 2022. - Note: Utah and California allow same-day voter registration but only by provisional ballot. The researchers add days to reflect this restriction. Figures are based on the latest available information from each state.

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Factors that Influence Voter Turnout

- “Didn’t We Just Vote?”
- Voter Registration and Election-Day Registration
- No-Excuse Absentee Voting and Early In-Person Voting
- Photo Identification
- Times and Dates of Elections
- Felon Voting
- Compulsory Voting

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Chapter 3 - The Offices We Elect

Table 3.1 A Sample of the Elected Statewide Offices

Office	Number of States Electing Office
Governor	50
Attorney General	42
Secretary of State	35
Treasurer	35
Auditor	24
Supreme Court Justices	22 ^a
Lieutenant Governor	19 ^b
Intermediate Appellate Court Judges	18 ^a
Superintendent of Public Instruction	14
Commissioner of Agriculture	11
Commissioner of Insurance	10
Comptroller	6
Commissioner of Public Service	5
Commissioner of Public Lands	4
Commissioner of Labor	4
Controller	3
Corporate Commissioner	2
Commissioner of Public Utilities	1
Commissioner of Railroads	1
Mine Inspector	1

Source: Compiled by author from states' Secretary of State or elections division webpages.

Note: Some offices may have slightly different names in certain states (e.g., Commissioner of Agriculture, Secretary of Agriculture).

a Does not include states that hold retention elections.

b Does not include states where the gubernatorial and lieutenant gubernatorial candidates run as a ticket in the general election.

- Why Do We Have Judicial Elections?
- Justice for Sale?
- The Problem with Judicial Accountability
- Potential compromise solutions

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Creating Judges

Retention Plan

Term Limits

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The New York Times

2023's Biggest, Most Unusual Race Centers on Abortion and Democracy

The election for a swing seat on Wisconsin's Supreme Court has huge policy stakes for the battleground state. Cash is pouring in, and some of the candidates have shed any pretense of judicial neutrality.

The
Guardian

In Wisconsin's supreme court race, a
super-rich beer family calls the shots



Field for Wisconsin Supreme Court seat will be cut in half after Tuesday's primary

Published February 21, 2023 12:45pm EST
Because a Republican justice is retiring, WI voters have a chance to tip the balance of the court towards the left

Wisconsin voters head to polls for high-stakes state Supreme Court election



By Tierney Sneed, Fredrika Schouten and Eric Bradner, CNN
Updated 8:50 AM EST, Tue February 21, 2023



The New York Times

What to Watch For in a Consequential Court Election in Wisconsin

Voters are going to the polls today in the primary election for a swing seat on the state's Supreme Court, with abortion rights, gerrymandered maps and more at stake.

Discussion Questions

- ① In what ways do judges represent the public, and how does this differ from governor and legislators?
- ② Can judges remain impartial if they are relying on campaign funds for re-election?
- ③ Should we elect judges, and if so, which judges?
- ④ Should we elect *Supreme Court* justices?

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What alternative to electing judges make the most sense?

- ① Merit with retention election?
- ② Lottery?
- ③ Elected by judges and lawyers?

Should we elect judges for state Supreme Court statewide or in regional districts?

Chapter 4 - Direct Democracy

What is the Initiative and How Does it Work?

- Initiatives are placed on the ballot by obtaining signatures and then voted on directly by the people, bypassing the legislature altogether, referenda are passed by the legislature and then presented to the people for a “yes” or “no” vote
- The initiative emerged around the turn of the twentieth century
- During the early 1900s, large amounts of money entered the political process and the common belief was that politicians were beholden to special interests
- While this view is still popular among some people today, concern about corruption was even worse then because campaign contributions were unregulated
- The initiative was first passed in South Dakota in 1898
- Mississippi was the last state to adopt initiative in 1992

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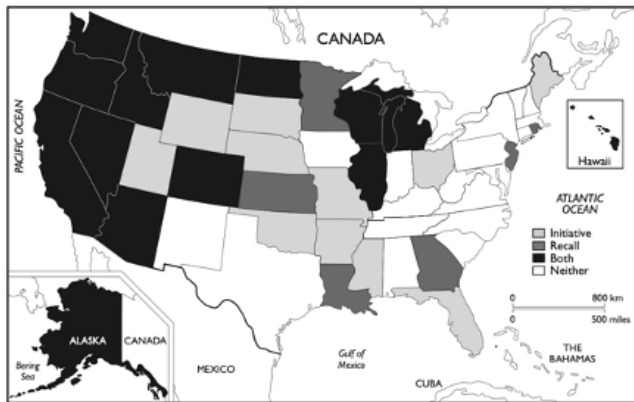


Figure 4.1 A Map of States that use the Initiative and Recall.

Source: National Conference of State Legislatures.

Note: Initiative states include states that either have a direct or an indirect initiative and/or allow initiatives for statutes or to change the state constitution. Virginia is not listed as a recall state because its process, while requiring citizen petitions, allows a recall trial rather than an election.

- Residents of all 50 states support the initiative process by a two-to-one margin
- A poll of Californians found that 59 percent thought that public policy decisions made through the initiative process are “probably better” than decisions made by the governor or state legislature
- 55 percent were either “very satisfied” or “somewhat satisfied” with the way the initiative process was working



The Pa. House is coming back with a Democratic majority. Will it finally be able to move forward?

By Stephen Caruso | Spotlight PA
Published February 21, 2023 at 10:49 AM EST



Pennsylvania  Capital-Star

Pa. House Speaker Rozzi headed for clash with Senate Republicans on abuse survivors' bill

'I believe the only path to resolve the speaker's top priority is for the House to pass Senate Bill 1 as presented,' Senate Majority Leader Joe Pittman said

BY: PETER HALL AND MARLEY PARISH - FEBRUARY 20, 2023 7:14 AM



Despite pushback from advocates and the majority of Democrats in the upper chamber, the legislation also included provisions for voter identification and expanded legislative authority over state regulations.

The Role of Big Money

- Empirical evidence indicates that money is not a significant predictor of whether an initiative passes
- money spent by opponents of initiatives is likely to keep an initiative from passing while money spent in support has a limited effect
- the side that spends the most only a 25 percent success rate in promoting ballot issues, but a 75 percent rate in stopping ballot initiatives
- However, without money there is no chance of getting an initiative placed on the ballot
- It generally costs about \$1 million, sometimes more, to get a measure put before voters

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Violating the Rights of the Minority?

- The initiative inherently means that a majority will win at the expense of a minority

Why the Public Supports the Initiative

- While large interest groups have a limited ability to pass legislation that the public does not agree with, as I said, they *do* have the ability to keep initiatives that the public supports from passing
 - the immense costs of simply getting an initiative on the ballot, much less passed, it is difficult for many grassroots organizations to have a voice come voting time
- It is not apparent that the public cares about the issues on which they are voting
 - The issues that can get on the ballot are not necessarily issues that the public cares about
 - The issues that do appear on the ballot are typically not the same issues that voters list as the most important problems facing their state or the nation
- The initiative process allows the public to act when legislators evade tough issues
- Direct democracy forces legislators to act on issues that are salient to the public and because, if legislatures do not do so, people can bring the issue to a vote
- The process will raise people's political efficacy, make citizens more knowledgeable about politics, and increase voter turnout

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Tax cuts are very popular with the public

Social spending is very popular with the public

- Recall Election: An election to remove an elected official from office during the middle of her term
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Recall Election History

- The recall device began in the United States in Los Angeles in 1903
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- There have been many attempts to recall governors throughout U.S. history, but only four have gathered enough petition signatures to trigger recall elections
 - In 2021, California Governor Gavin Newsom survived a recall election.
 - In 2012, Wisconsin Governor Scott Walker survived a recall election.
 - In 2003, California voters successfully recalled Governor Gray Davis,
 - In North Dakota in 1921, voters successfully recalled not only Governor Lynn J. Frazier, but also the attorney general and the commissioner of agriculture.
 - In 1988, Arizona voters submitted enough signatures to trigger a recall election for Governor Evan Mecham, but he was impeached by the state's House of Representatives before the scheduled recall election.

Specific Grounds for Recall

Specific grounds for recall are required in only eight states:

Alaska: Lack of fitness, incompetence, neglect of duties or corruption (AS §15.45.510)

Georgia: Act of malfeasance or misconduct while in office; violation of oath of office; failure to perform duties prescribed by law; willfully misused, converted, or misappropriated, without authority, public property or public funds entrusted to or associated with the elective office to which the official has been elected or appointed. Discretionary performance of a lawful act or a prescribed duty shall not constitute a ground for recall of an elected public official. (Ga. Code §21-4-3(7) and 21-4-4(c))

Kansas: Conviction for a felony, misconduct in office, incompetence, or failure to perform duties prescribed by law. No recall submitted to the voters shall be held void because of the insufficiency of the grounds, application, or petition by which the submission was procured. (KS Stat. §25-4301)

Minnesota: Serious malfeasance or nonfeasance during the term of office in the performance of the duties of the office or conviction during the term of office of a serious crime (Const. Art. VIII §6)

Montana: Physical or mental lack of fitness, incompetence, violation of oath of office, official misconduct, conviction of certain felony offenses (enumerated in Title 45). No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct. (Mont. Code §2-16-603)

Rhode Island: Authorized in the case of a general officer who has been indicted or informed against for a felony, convicted of a misdemeanor, or against whom a finding of probable cause of violation of the code of ethics has been made by the ethics commission (Const. Art. IV §1)

Virginia: Neglect of duty, misuse of office, or incompetence in the performance of duties when that neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse effect upon the conduct of the office, or upon conviction of a drug-related misdemeanor or a misdemeanor involving a “hate crime” (§24.2-233)

Washington: Commission of some act or acts of malfeasance or misfeasance while in office, or who has violation of oath of office (Const. Art. I §33)

Source: National Conference of State Legislatures, May 2019

The Recall Election

In seven states, the election for a successor is held simultaneously with the recall election.

In California and Colorado, the ballot includes two questions. The first question is whether the official should be recalled. Voters are then asked to vote for a candidate for the office. The official who is the subject of the recall may not be among the listed candidates. If a majority votes “yes” on the recall question, then the incumbent is recalled and the successor is elected via the second part of the ballot. If a majority votes “no” on the recall question, the incumbent remains in office and the second portion of the ballot is moot.

In the other states using the simultaneous model (Arizona, Michigan, Nevada, North Dakota and Wisconsin), the submission and certification of the recall petition essentially triggers a special election for the office, and the recall ballot consists of a list of candidates for the office. The name of the official who is the subject of the recall may appear on the ballot along with other nominees. In fact, in Arizona, Michigan, North Dakota and Wisconsin, the name of the official being recalled is automatically placed on the recall ballot for reelection unless the official resigns from office.

Discussion Questions

- ① How do direct democracy and indirect democracy differ? What are the benefits or downfalls to either?
- ② What is the difference between a referendum and an initiative?
- ③ What kinds of initiative questions should be left to the public to decide?
- ④ What threshold should be used to determine if a question gets on the ballot?
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Broader Questions about Democracy

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Rethinking the Mechanics of Voting

Streb, Part II: **Rethinking the Mechanics of Voting**

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SIGNATURE REQUIREMENTS AND FILING FEES

OFFICE	SIGNATURE REQUIREMENTS	FILING FEES
JUSTICE OF THE SUPREME COURT	1000 (including at least 100 from each of at least 5 Counties)	\$200.00
JUDGE OF THE SUPERIOR COURT	1000 (including at least 100 from each of at least 5 Counties)	\$200.00
JUDGE OF THE COMMONWEALTH COURT	1000 (including at least 100 from each of at least 5 Counties)	\$200.00
JUDGE OF THE COURT OF COMMON PLEAS - PHILADELPHIA	1000	\$100.00
JUDGE OF THE COURT OF COMMON PLEAS - ALLEGHENY	500	\$100.00
JUDGE OF THE COURT OF COMMON PLEAS	250	\$100.00
JUDGE OF THE MUNICIPAL COURT	1000	\$100.00

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What about number of candidates

- California recall in early 2000s:
 - 134 candidates on ballot
 - Candidates needed 65 signatures and a \$3,500 filing fee or 10,000 signatures and no filing fee

Candidate Information on the Ballot

- Americans vote for a large number of offices
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 - Anywhere from 2.5% to 25%
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The primacy effect may have allowed Bush to win the 2000 presidential election even though he was listed first on the ballot in the state of Florida. When the first name on the ballot is listed first, only 5% of voters vote for the second name.

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Order of Candidate Names

- Research finds that candidates who are listed on the ballot first do better than those who are not
 - Anywhere from 2.5% to 25%
- “Primacy effect”
 - the primacy effect may have allowed Bush to win the 2000 presidential election since he was listed first on the ballot in the state of Florida where he beat Vice President Al Gore by only 537 votes

- The solution to this problem is simple: mandatory rotation of names
 - With the mandatory rotation of names the candidate listed first would vary by precinct or, potentially, county or assembly district
 - major arguments against mandatory rotation of candidate names include voter confusion, cost, and difficulty counting ballots

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- Because of federalism, there are numerous formats of ballots

“The probable errors caused by the infamous ‘butterfly ballot’ were enough to swing the outcome in the county, state, and Electoral College from one candidate to another.” Political scientists Richard Niemi and Paul Herrnson

1
OFFICIAL BALLOT, GENERAL ELECTION
PALM BEACH COUNTY, FLORIDA
NOVEMBER 7, 2000

<p>ELECTORS FOR PRESIDENT AND VICE PRESIDENT</p> <p>(A vote for the candidates will actually be a vote for their electors.)</p> <p>(Vote for Group)</p>	(REPUBLICAN)	
	GEORGE W. BUSH - PRESIDENT	3 ➡
	DICK CHENEY - VICE PRESIDENT	
	(DEMOCRATIC)	
	AL GORE - PRESIDENT	5 ➡
	JOE LIEBERMAN - VICE PRESIDENT	
	(LIBERTARIAN)	
	HARRY BROWNE - PRESIDENT	7 ➡
	ART OLIVIER - VICE PRESIDENT	
	(GREEN)	
	RALPH NADER - PRESIDENT	9 ➡
	WYRONA LA DUKE - VICE PRESIDENT	
(SOCIALIST WORKERS)		
JAMES HARRIS - PRESIDENT	11 ➡	
MARGARET TROWE - VICE PRESIDENT		
(NATURAL LAW)		
JOHN HAGELIN - PRESIDENT	12 ➡	
NAT GOLDHABER - VICE PRESIDENT		

1 B
OFFICIAL BALLOT, GENERAL ELECTION
PALM BEACH COUNTY, FLORIDA
NOVEMBER 7, 2000

4	(REFORM)	
	PAT BUCHANAN - PRESIDENT	
	EZOLA FOSTER - VICE PRESIDENT	
5	(SOCIALIST)	
	DAVID McREYNOLDS - PRESIDENT	
	MARY CAL HOLLISS - VICE PRESIDENT	
8	(CONSTITUTION)	
	HOWARD PHILLIPS - PRESIDENT	
	J. CURTIS FRAZIER - VICE PRESIDENT	
10	(WORKERS WORLD)	
	MONICA MOOREHEAD - PRESIDENT	
	GLORIA La RIVA - VICE PRESIDENT	
	WRITE IN CANDIDATE	
	To vote for a write-in candidate, follow the directions on the long stub of your ballot card.	

TURN PAGE TO CONTINUE VOTING ➡

MUNICIPAL REFERENCE

CONSTITUTIONAL AMENDMENT & OTHER MEASURES

JUDICIAL & NONPARTISAN CANDIDATES

JUDICIAL CANDIDATES

COUNTY CANDIDATES

- Analysis would suggest that between 2,000 and 3,000 people in Palm Beach County voted for Buchanan by making that mistake, along with uncommonly large numbers, thousands, of other problems³:
 - overvotes (people voting for more than one candidate for the same office, such as both Buchanan and Gore)
 - undervotes (people who voted for other offices but not for president)
 - problems with chads

³<https://ischool.uw.edu/podcasts/dtctw/palm-beach-county-butterfly-ballot>

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- Clutter is another reason why it makes sense only to include a candidate's party affiliation on the ballot
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 - But what about non-partisan offices?

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Chapter 6 – Voting Machines

“The methods used to cast and count ballots are surely one of the most mundane aspects of elections” - Stephen Ansolabehere and Charles Stewart III

- All voting machines are not equal

- Types of Voting Equipment
 - Hand-counted paper ballot
 - Mechanical lever machine
 - Punch cards
 - Optical scan
 - Electronic voting machine
 - Mixed voting systems

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- The word itself, of uncertain origin, traces back to the late 1950s and refers to the little bits that get punched out of early computer storage technologies like cards and paper tape. Basically confetti.⁴
- A good solid punch hole is made, chad falls away, everybody's happy
- But a half-hearted, uncertain, hurried, indifferent punch, and you can get one of (not kidding here) 6 different kinds of problematic chad: dangling, dimpled, hanging, pierced, pregnant and swinging.

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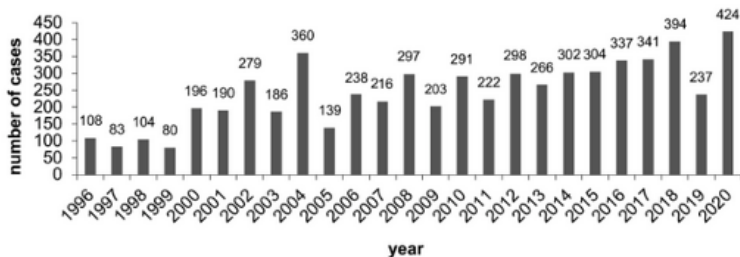


FIG. 1. “Election challenge” litigation by year, 1996–2020.