

¹ A Right Restricted^{*}
² Understanding the Introduction and Passage of Restrictive Voting Laws

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⁵ **Abstract**

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⁷ 1 Recent Work on Restrictive voting Laws

⁸ Over the past 15 years, scholars have explored the introduction and passage of restrictive
⁹ of restrictive voting laws across the country. This work has largely focused on state-level
¹⁰ factors, with a general consensus that these laws find the most fertile ground in states with
¹¹ large demographic change and a growing nonwhite electorate (Bentele and O'Brien 2013),
¹² where large numbers of Black Americans reside (Behrens, Uggen, and Manza 2003), and in
¹³ electorally competitive states where Republicans hold a slight edge (Hicks et al. 2015).

¹⁴ Behrens, Uggen, and Manza (2003) uses a historical approach to understand the passage
¹⁵ of laws disenfranchising citizens convicted of felony offenses. As they note, all but two
¹⁶ American states restrict voting rights for at least some incarcerated citizens; the two that
¹⁷ do not—Maine and Vermont—are also the two whitest states in the nation. Behrens and
¹⁸ colleagues document the rise of these restrictive laws in the aftermath of the passage of the
¹⁹ 14th and 15th Amendments, expanding formal citizenship and granting voting rights to Black
²⁰ men. Drawing on Blumer (1958) and other scholars of group threat, they argue that white
²¹ (male) Americans were threatened by the prospect that their sole control over the political
²² domain was no longer so secure. Of course, their claims to racial political dominance were
²³ threatened proportionate to the number of nonwhite potential voters; as such, states with
²⁴ larger nonwhite populations had political incentives to develop new ways to disenfranchise
²⁵ Black men. They find strong support for the theory that the widespread adoption of felony
²⁶ disenfranchisement rules rose from this threat. “Our key finding can be summarized concisely
²⁷ and forcefully,” they write. “The racial composition of state prisons is firmly associated with
²⁸ the adoption of state felon disenfranchisement laws. States with greater nonwhite prison
²⁹ populations have been more likely to ban convicted felons from voting than states with
³⁰ proportionally fewer nonwhites in the criminal justice system” (Behrens, Uggen, and Manza
³¹ 2003, 596). There conclusions have been corroborated more recently. Eubank and Fresh
³² (2022) finds that states subject to strict federal oversight under the 1965 Voting Rights

³³ Act’s Section 5 selectively increased the incarceration of Black Americans, providing further
³⁴ evidence that increased political opportunity for racial minorities leads white majorities to
³⁵ seek other ways of restricting their effective power.

³⁶ Of course, the incarceration of citizens and subsequent legal disenfranchisement is perhaps
³⁷ only the most drastic example of curtailing access to the ballot.¹ Might less extreme attempts
³⁸ to limit the pool of eligible voters follow a similar pattern? And do such considerations
³⁹ structure legislative behavior in the modern era? Bentle and O’Brien (2013) consider the
⁴⁰ introduction and passage of 5 types of restrictive voting legislation (“photo identification
⁴¹ requirements, proof of citizenship requirements, laws that introduce restrictions on voter
⁴² registration, restrictions on absentee and early voting, and restrictions on participation by
⁴³ felons” (1095)) over the 2006–2011 period. They conclude that the strongest predictor of
⁴⁴ the introduction and passage of restrictive voting laws is the political power demonstrated
⁴⁵ by racial and ethnic minorities, arguing that “legislative developments in this policy area
⁴⁶ remain heavily shaped by racial considerations” (Bentle and O’Brien 2013, 1089). At the
⁴⁷ same time, they find no evidence that prevalence of voter fraud impacted the introduction
⁴⁸ of restrictive provisions and that it is “only a minor contributing factor” to the passage of
⁴⁹ these laws in 2011 (1103).

⁵⁰ A further insight from Bentle and O’Brien (2013)—that restrictive provisions are passed
⁵¹ most frequently in electorally-competitive states—is corroborated by Hicks et al. (2015).

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⁵³ This scholarship sheds important light on where restrictive voting laws are the most likely
⁵⁴ to go into effect, and the results are not encouraging. There is strong evidence that racial
⁵⁵ threat predicts the passage of these restrictive bills across the country, even as legislators
⁵⁶ proclaim that the changes are needed to combat widespread fraud (see, for instance, Piven,
⁵⁷ Minnite, and Groarke 2009; Minnite 2010). Important as this research has been, however, it

¹It bears noting, however, that being drastic does not mean it is uncommon. More than 6% of Black Americans were legally disenfranchised in 2020 due to a felony conviction. This number topped 10% in 7 of the 33 states where the Black voting age population exceeded 100,000 (Uggen et al. 2020).

58 fails to explain the full set of dynamics between demographic composition and bill introduc-
59 tion. The explosion in the introduction of restrictive voting laws in 2021 makes this clear:
60 according to the data from the Brennan Center for Justice used throughout this project,
61 just one state (Vermont) introduced *no* voting bills in 2021 containing no restrictive pro-
62 visions. Moreover, the number of restrictive provisions introduced and passed in 2021 has
63 little historical precedent: 880 restrictive provisions were introduced and 93 were passed. By
64 way of comparison, Bentle and O'Brien (2013)—which also used data from the Brennan
65 Center—calls roughly the roughly 20 passed provisions in 2011 a “dramatic increase” (1088;
66 see their Figure 2).

67 Clearly, something more complex than state-level factors are at play in the contemporary
68 push to restrict voting rights. By considering not only state-level factors but also examining
69 the demographics of the districts represented by legislators who introduce, co-sponsor, and
70 vote for these restrictive bills, this project marks a significant step forward in understanding
71 how racial threat’s influence on the policy-making process is mediated by factors at multiple
72 political levels. The following section steps back to engage with the (racial) threat literature
73 and, more specifically, consider how spatially-situated theories of threat help us to formulate
74 expectations about the roles played by state and local factors in the introduction and passage
75 of restrictive voting laws.

76 **2 A Changing Electorate and Threat**

77 Scholars across the social sciences have long noted the importance of threat to the policy-
78 making process; indeed, each of the studies discussed in the previous section implicitly or ex-
79 plicitly draw on this literature. Tilly (1978) separates collective action into three categories:
80 defensive, offensive, and preparatory (73). Of these, two—defensive and preparatory—are
81 explicitly linked to threats, where political actors pool their resources to fend off challenges
82 to their interests, or to regain what has already been lost. Beck (2000) extends this theory to

⁸³ note that defensive actors need only *perceive* that their interests have been compromised to
⁸⁴ mobilize in a reactionary way; the *reality* of any worsened station is perhaps less important.
⁸⁵ These threats can take multiple forms, be they economic, political, or demographic (Van
⁸⁶ Dyke and Soule 2002).
⁸⁷ The social sciences are replete with empirical evidence of the mobilizing effect of these three
⁸⁸ forms of threat. Early work on collective action demonstrates that unemployed workers
⁸⁹ Only recently, however, have the spatial dynamics of racial threat and policy threat been
⁹⁰ considered with serious attention. They conclude: “theoretical insights derived from analyses
⁹¹ at one political scale will not necessarily hold for higher or lower-level units” (Andrews and
⁹² Seguin 2015, 503).

⁹³ 3 Methods and Matierals

⁹⁴ Throughout our analyses, I rely on the Voting Laws Roundup, a project of the Brennan
⁹⁵ Center for Justice at NYU School of Law. The Brennan Center systematically reviews all
⁹⁶ laws introduced around the country that relate to voting and the administration of elections
⁹⁷ in each state. The Brennan Center then manually separates each bill introduced into its con-
⁹⁸ stituent provisions, using two coders to designate each provision as “restrictive,” “neutral,”
⁹⁹ or “expansive.” Each provision is also assigned to a category describing its effect (categories
¹⁰⁰ include effects such as “voter ID,” “polling place count,” or “funding for poll workers”). In
¹⁰¹ 2021, the Brennan Center identified 2,891 bills that were introduced and related to voting,
¹⁰² consisting of 5,961 provisions. Of these provisions, 815 were deemed restrictive; 3,461 neu-
¹⁰³ tral; and 1,685 expansive. A total of 72 restrictive provisions were passed into law that
¹⁰⁴ year; 157 neutral provisions and 19 expansive ones were also passed. Figure 1 shows the
¹⁰⁵ categorical breakdown of restrictive provisions introduced and passed, while Figure 2 shows
¹⁰⁶ the geographical distribution of these provisions.

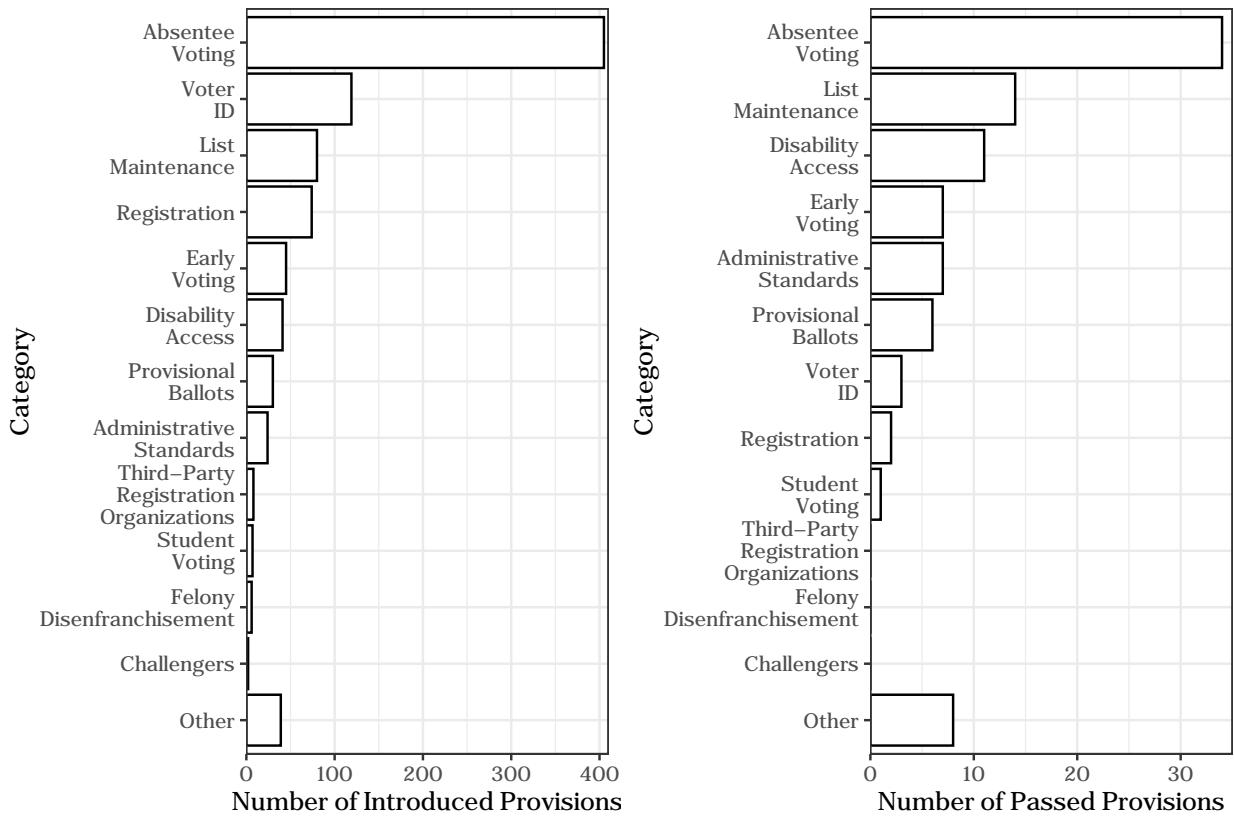


Figure 1: Categories of Restrictive Provisions, 2021

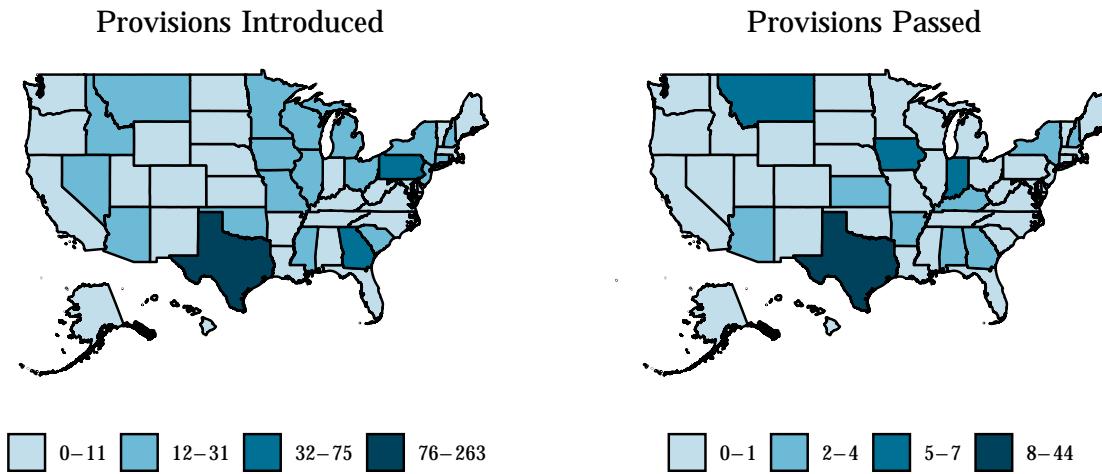


Figure 2: Restrictive Provisions, 2021

¹⁰⁷ These provisions are then merged with data from LegiScan, which tracks bills of all kinds in
¹⁰⁸ statehouses throughout the United States. The LegiScan data includes information on bill
¹⁰⁹ sponsorship, roll-call votes, and dates of introduction. These data are used to identify the

¹¹⁰ (co)sponsors of all the voting laws identified by the Brennan Center, as well as the legislators
¹¹¹ voting in favor or against them.

¹¹² To account for pre-2021 variation in the electoral landscape, I incorporate each state's score
¹¹³ on the (pre-COVID) 2020 Cost of Voting Index (Schraufnagel, Pomante II, and Li 2020).

¹¹⁴ This index captures many of the same items tracked by the Brennan Center, such as whether
¹¹⁵ a state has same-day registration, voter ID laws, and the number of days of early voting.

¹¹⁶ The index is widely used by social scientists to measure the difficulty of voting (e.g. Juelich
¹¹⁷ and Coll 2020; Pabayao et al. 2021; Rackey and Camarillo 2022).

¹¹⁸ In addition to these measures of voting legislation and policy environment, I incorporate de-
¹¹⁹ mographic data at the state and legislative-district level from the Census Bureau's American
¹²⁰ Communities Survey. Except where noted, these estimates are the 5-year numbers ending
¹²¹ with 2019.²

²At the time of writing, the 2020 estimates were not yet available. The study will be updated when they become available.

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