



7. Voting rights and voter suppression in the United States

Basic definitions

Today we're going to talk about structural barriers to voting, in particular how the government and those in power can influence the outcomes of elections by restricting access to voting.

We will focus on the United States.

The history of who gained the right to vote and when is called **voting rights**.

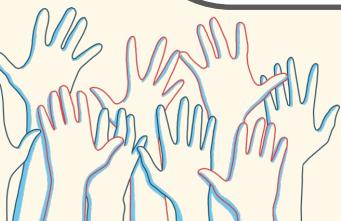
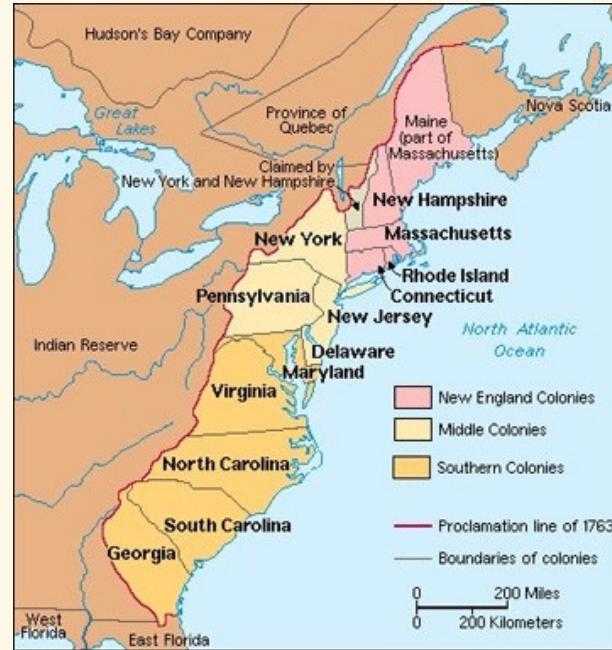
Even with the legal right to vote, there maybe widespread efforts to restrict certain groups of people from voting, usually for political gain. When this happens it is called **voter suppression**.



Early colonies

Prior to the passage of the US Constitution, each of the colonies in the 1700's had their own way to decide who voted. They were all basically the same though --- anyone who owned property could vote.

Functionally at this time, this meant that white men were the only group of people allowed to vote.

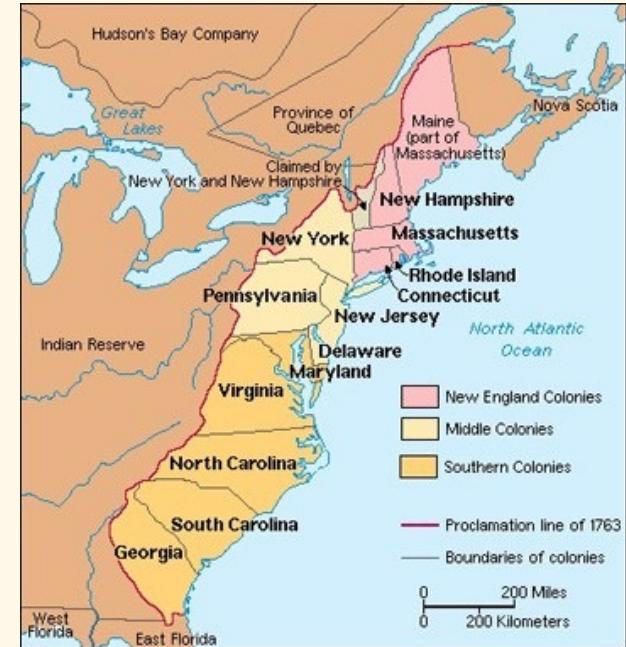


Early colonies

When the US Constitution was drafted in 1787, it didn't specify who could vote, leaving the decisions up to each state.

The constitution set up ***proportional representation*** in the House of Representatives. This means that states have representation in their government *proportional* to their population.

So more populous states got more representatives, but had to pay more in taxes.



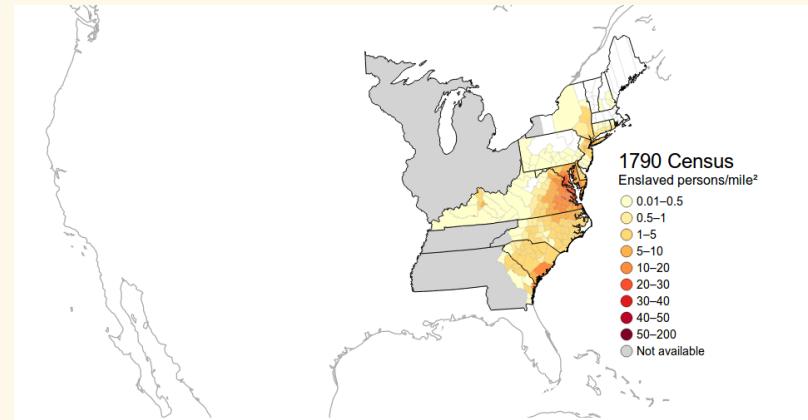
This led to a huge debate -- *how should enslaved people be counted for representation purposes?*

Early colonies

Northern representatives, where there were fewer enslaved people, wanted each enslaved person to count for taxation purposes but not for representation purposes, so that the South would pay more in taxes but only have as many representatives as they have free citizens.

Southern representatives wanted the opposite -- for enslaved people to artificially increase their representation in government, while not counting for tax purposes.

Representatives agreed in 1789 on the *Three-Fifths Compromise*, which dictated that each enslaved person counts as three-fifths of a person for both taxation and representation purposes.



[ref](#)

Early colonies

Let's look at some data from the 1790 census:

| DISTRICTS. | Free white Males of sixteen years and over, including such as do not live in families. | Free white Males under sixteen years. | Free white Males, including heads of families. | All other free persons. | Slaves. | Total. |
|---------------------------------|---|--|--|----------------------------|---------|--------|
| Vermont | 22435 | 22328 | 40505 | 255 | 16 | 85539 |
| New Hampshire | 36086 | 34851 | 70160 | 631 | 158 | 141885 |
| Maine | 24384 | 24748 | 45870 | 538 | NONE | 96540 |
| Massachusetts | 95453 | 87289 | 190582 | 5463 | NONE | 378787 |
| Rhode Island | 16019 | 15799 | 32052 | 3407 | 938 | 68825 |
| Connecticut | 60523 | 54403 | 117448 | 2808 | 2704 | 237946 |
| New York | 83700 | 78122 | 152320 | 4644 | 21324 | 340120 |
| New Jersey | 45251 | 41416 | 8287 | 2762 | 11423 | 184139 |
| Pennsylvania | 110788 | 106948 | 209363 | 6537 | 3737 | 434373 |
| Delaware | 11783 | 12143 | 22384 | 3899 | 8887 | 59094 |
| Maryland | 55915 | 51339 | 101395 | 8443 | 103036 | 319228 |
| Virginia | 110136 | 116135 | 215046 | 12866 | 292627 | 747610 |
| Kentucky | 15154 | 17057 | 28922 | 114 | 12430 | 73677 |
| North Carolina | 69988 | 77500 | 140710 | 4975 | 100572 | 393751 |
| South Carolina | — | — | — | — | — | — |
| Georgia | 13103 | 14044 | 25739 | 398 | 29264 | 82548 |
| S.Western territory N. Ditto | Free white Males of twenty-one years and over, including such as do not live in families. | Free white Males under twenty-one years. | Free white Males, including heads of families. | All other Persons | Slaves. | Total. |
| | 6271 | 10277 | 15365 | 361 | 3417 | 35691 |

Truly stated from the original Returns deposited in the Office
of the Secretary of State.

TH. JEFFERSON.

In the first four columns, we notice the free populations of Pennsylvania and Virginia are very comparable.

However in this last column, we see 3737 enslaved people in Pennsylvania, compared to 292,627 enslaved people in Virginia.

As a consequence, although enslaved people couldn't vote, Virginia got 19 seats in Congress, compared to Pennsylvania's 13 seats, under the Apportionment Act of 1792.

Jacksonian Democracy

In the early 1800's, one of the biggest structural changes occurring in the United States economy was the *industrial revolution*.



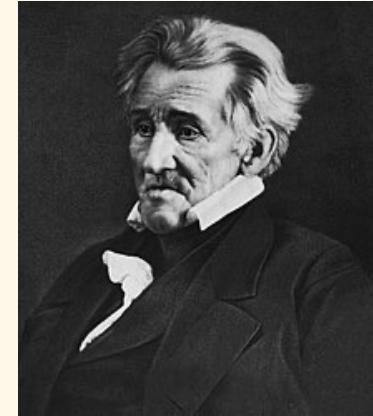
People began to move to cities, working in factories. In many cases, this meant that white free men were no longer owners of small farms or houses (as was previously the norm), and therefore didn't meet the minimum property requirement to vote.

As a result, states began dropping the property requirement for voting. It was replaced by differing requirements in each state, but all such laws ended up letting white men vote.

Jacksonian Democracy

The new voting laws *explicitly excluded*:

- women
- enslaved people
- free African Americans
- Native Americans
- immigrants



These voting laws supported a rising political bloc of white working-class men, who formed the *Democratic party*, represented by Andrew Jackson.

This era is called **Jacksonian democracy**.

Jacksonian Democracy

A small number of states refused to drop the property requirement at first.

In Rhode Island for example, 60% of the white male population didn't meet the property requirement.

Thomas Dorr, a state politician, led a militia of white and black men to gain suffrage, drafting a new state charter. This was called *Dorr's Rebellion*.



The state compromised and ratified a new charter, dropping the property requirement.

It was replaced by a law which gave voting rights to any native born man who could pay a **poll tax** of \$1. It explicitly retained the property requirement for immigrants and Native Americans.

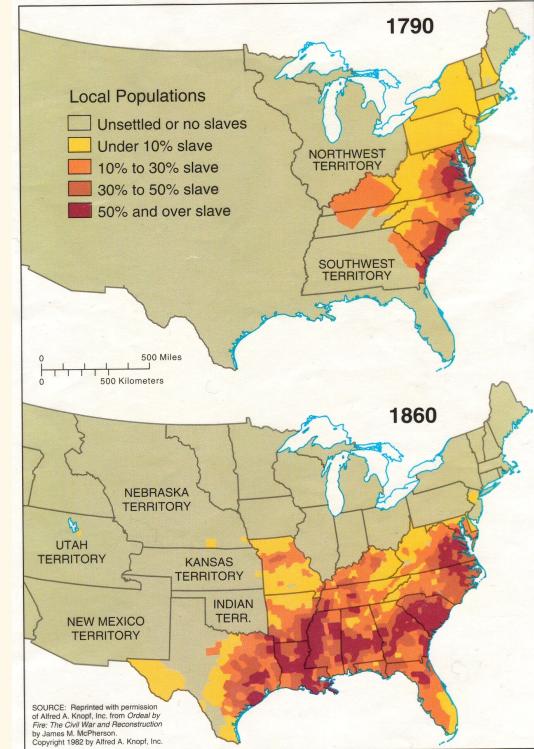
We will talk more about poll taxes as they become increasingly important later on.

Reconstruction

Following the American Civil War and the Union victory, the *Thirteenth Amendment* was passed in 1865, which ended slavery except as a punishment for incarcerated people.

Lincoln assembled new governments in the South, and the Union army stayed behind to occupy the land. These time period (1865–1877) is called **reconstruction**.

The entire economy of the South relied on the institution of slavery. With around 4 million freed African Americans after the war, white Southerners wanted to maintain white supremacy and wanted to ensure they could still exploit African Americans as a cheap source of labor.



White plantation owners tried to force free African Americans to sign contracts accepting almost no money to perform menial labor. If any refused, they could be arrested and re-enslaved as part of their prison sentence (by the 13th amendment).

Reconstruction

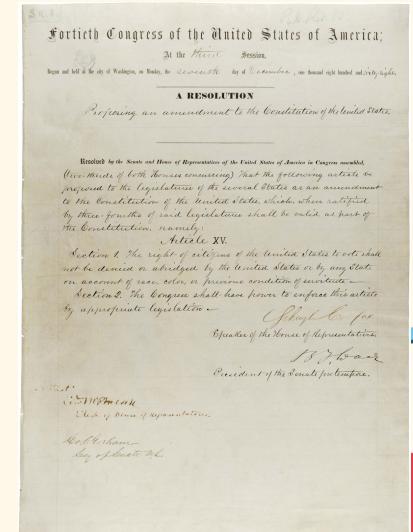
Most police forces in the South were comprised of former slave-catchers, and the police "functioned in a way analogous to the earlier slave patrols, enforcing segregation and disenfranchisement of freed slaves." [\[ref\]](#)

A block of Northern Republicans in Congress disagreed with Johnson's approach, and took over reconstruction.

They passed the *Reconstruction Act of 1867*, over Johnson's veto, which required Southern states to ratify the *Fourteenth Amendment*, declaring that African Americans had civil rights and should be treated fairly under the law. The *Fifteenth Amendment*, passed in 1870, gave African American men the right to vote.

At the end of 1865, Mississippi and South Carolina enacted the first **black codes**. These were laws designed to force black servitude. They required African Americans to have written proof of employment, and if not, they were subject to arrest. Andrew Johnson (who was president after Lincoln's assassination), was a big proponent of states' rights, and let each state decide their own laws in this regard.

"The right of citizens of the United States to vote shall not be abridged by the United States or by any State on account of race, color, or previous condition of servitude."



Reconstruction

At this time, white and black Northerners had been moving to the South in large numbers, setting up multiracial governments.

Hiram Rhodes Revels became the first African American to serve in Congress, elected in 1870.

In response to a growing Northern presence in the South, and as a white supremacist backlash to the new rights of African Americans, white paramilitary groups began carrying out massacres and widespread violence throughout the South.

The biggest such group was the Ku Klux Klan, affiliated with the Southern Democratic party. Ulysses Grant, who was president 1869–1877, sent in federal troops to pressure states to ratify the reconstruction amendments, and was able to almost completely stamp out the KKK, although many similar groups continued operating.



Reconstruction

The *Civil Rights Act of 1875* was one of the last big acts of reconstruction. It attempted to make discrimination against African Americans illegal in housing, schools, transportation, etc.

This spurred a massive fear of racial equality in Southern white supremacists, and the law was struck down by the Supreme Court in 1883. These ideas wouldn't come into law again until the Civil Rights Act of 1964.

While the multiracial governments set up after the war initially had political power in the South, white paramilitary groups amplified their attacks around elections. Their hope was to make African Americans scared to go to the polls to vote, for fear of being killed.

One such instance was the *Colfax massacre* after the election for Louisiana governor in 1872, in which white militias massacred a surrendering black militia trying to defend the statehouse.

In Mississippi's 1875 election, Democrats killed hundreds of African American men in an effort to kill enough Republicans to get a Democrat elected. Ulysses Grant refused to send in federal troops to help out.



The election of 1876 was massively important, as it led to the end of reconstruction.

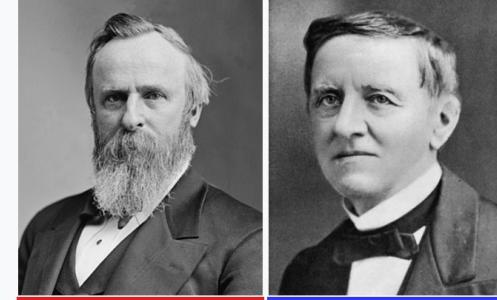
White militias were carrying out widespread violence in the South in order to terrorize and intimidate African American voters. Most historians furthermore agree that the elections were rigged by white militias in order to elect Samuel Tilden to president.

Tilden won the popular vote, but Hayes won the electoral college and stayed on as president, under the condition that reconstruction was brought to an end.

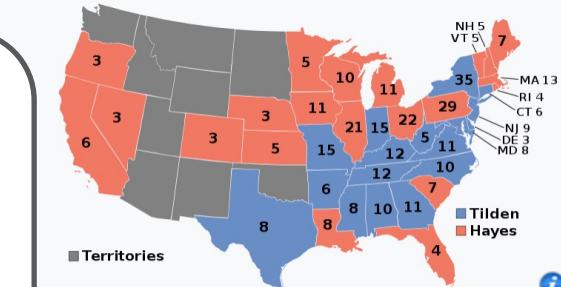
The *Compromise of 1877*, known as the “corrupt bargain,” withdrew all federal troops from the south, and gave the south the “right to deal with black people without northern interference.”

So even though African American men were given the right to vote under the 15th amendment, there was no way to prevent voter suppression and violence after they were abandoned by Union troops.

By 1905, the African American vote in the South would become almost completely nonexistent due to voter suppression.



| Nominee | Rutherford B. Hayes | Samuel J. Tilden |
|----------------|---------------------|---------------------|
| Party | Republican | Democratic |
| Home state | Ohio | New York |
| Running mate | William A. Wheeler | Thomas A. Hendricks |
| Electoral vote | 185 | 184 |
| States carried | 21 | 17 |
| Popular vote | 4,846,436 | 5,300,145 |
| Percentage | 47% | 51.4% |



Jim Crow

Southern legislatures now had complete authority to dictate how people voted, so long as they didn't directly violate the 15th amendment. So white legislators determined a way to exclude African Americans from voting without *explicitly* excluding them from voting. These laws were called **Jim Crow laws**, and they are some of the most profound examples of voter suppression in American history, since they effectively silenced the entire African American vote in the south.

Poll taxes: Citizens were required to pay a tax in order to vote. Poll taxes were often high enough so that African Americans working for extremely low wages couldn't afford to pay.

Literacy tests: Literacy tests were required in order to vote. Recall that formerly enslaved people had been barred from learning how to read.

Voter registration: Voters had to register ahead of time in order to vote. Voter registration laws are still in place today, and critics argue they statistically disenfranchise working-class and lower income people.

These three laws alone would completely disenfranchise the African American vote, but they would also disenfranchise the poor white vote, which was a huge block of support for the Democratic party. So they passed one more law:

Grandfather clause: If your ancestors had a right to vote *before the Civil War*, you are automatically registered to vote, and the poll taxes and literacy tests don't apply to you.

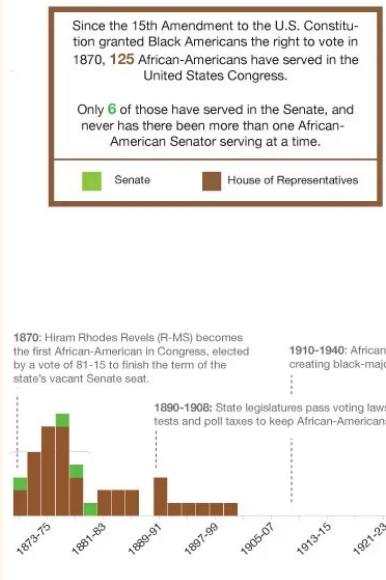


Jim Crow

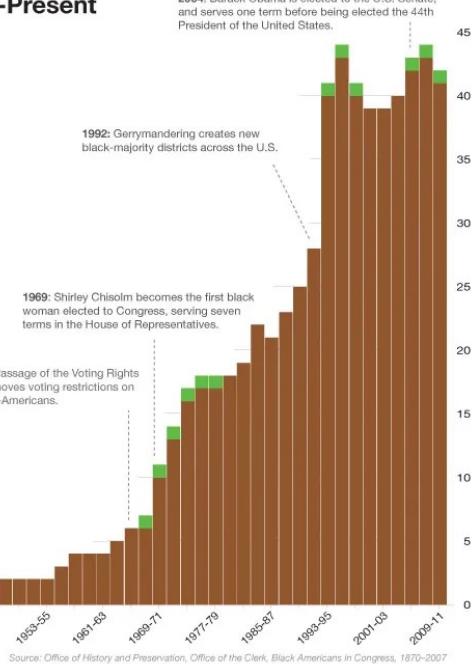
Jim Crow laws completely disenfranchised the African American vote, as well as stamping out African American representation in the government.

African-American Members of Congress, 1870-Present

by Greg Emerson Bocquet



2004: Barack Obama is elected to the U.S. Senate, and serves one term before being elected the 44th President of the United States.



Women's suffrage

In 1887 the Dawes Act was passed, which authorized the president to convert tribal land to private family-owned land. This act also forced mixed-race Native American and white citizens to abandon their tribes and become US citizens, making them eligible to vote. This act had horrific affects on Native American tribes, fracturing them and stealing their land.



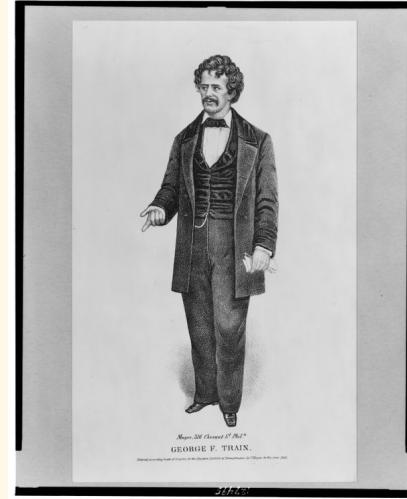
Throughout the 1800's, women had began campaigning for suffrage. In 1869, the NAWSA was formed, with Susan B. Anthony as its leader. White women attempted to vote at this time, and filed lawsuits when they were turned away. One made it to the supreme court, and *Milnor v. Happersett* (1875) dictated that women were citizens, but citizenship did not equal the right to vote, so therefore laws preventing women from voting were constitutional.



Women's suffrage

Many women's suffrage members were also abolitionists prior to the Civil War, and supported voting rights for all African Americans, both men and women.

A massive fracture happened inside NAWSA around 1868, when Susan B. Anthony and Elizabeth Cady Stanton collaborated and campaigned with George Train, a white supremacist.



Susan B. Anthony campaigned with Train in the south under the slogan "woman first and negro last," and in 1903 she barred black members of NAWSA from attending a convention.

In order to gain southern support for women's suffrage, she pandered to white supremacists, creating a narrative that educated white women would help to preserve and uphold white supremacy.



Women's suffrage

Following massive marches and hunger strikes, women gained the right to vote with the *Nineteenth Amendment*, in 1920.

Functionally, however, only white women gained the right to vote, since African American women were structurally restricted under Jim Crow legislation.



20th century

- In 1924, all Native Americans were given the right to vote
- In 1943, the *Magnuson Act* gave Chinese immigrants the right to vote, but maintained a ban on Chinese ownership of property or businesses.

In 1964, at the height of the Civil Rights Movement, the *Twenty-Fourth Amendment* abolished the poll tax for federal elections.

The Civil Rights Act was passed in 1964, preventing discrimination against African Americans as was initially intended in 1875.

The Civil Rights Act contained some provisions about voting (e.g. you can't just give literacy tests to African American voters, they have to be given out to everyone or no one). Despite this, the act didn't actually protect the African American right to vote, or increase turnout.



20th century

As a consequence, the Southern Christian Leadership Conference, led by Martin Luther King Jr., and the Student Nonviolent Coordinating Committee, led protests to demand further federal legislation to protect voting rights.

The groups demonstrated in Selma, Alabama, where they were violently attacked by police and white counterprotesters. This received national media coverage, and President Johnson gave a televised address calling on Congress to pass legislation protecting voting rights.

This led to the *Voting Rights Act of 1965*.



20th century

The **Voting Rights Act of 1965** was one of the single biggest pieces of voter legislation in American history. it:

- outlawed literacy tests and similar voter suppression devices
- prohibited any government (federal, state, city, local) from imposing a law *that results in* discrimination against racial minorities
- required bilingual ballots in jurisdictions with big minority populations
- required governments which were complicit in Jim Crow laws *to seek federal authorization before enacting any new voting laws* (this is super important, it'll come up later)



LBJ, MLK, and Rosa Parks at the signing of the Voting Rights Act.

The big result of this law was that African Americans were now functionally able to vote, and African American women in particular were able to vote for the first time in history. This massively increased African American voter turnout, and drastically reduced racial discrimination in voting.

As African Americans began to vote for liberal Democrats in the south in large numbers, white southerners changed their voter registrations to the Republican party in protest. This led to a complete realignment of the two parties.

20th century

One of the last big changes in voter rights in the 20th century came in 1971, with the *Twenty-Sixth Amendment*.

This amendment lowered the voting age from 21 to 18 years old. In the height of the Vietnam War protests, the justification was that people old enough to serve in the military should be old enough to vote.



Nixon signing the *Twenty-Sixth Amendment*

Ongoing voter suppression: felon disenfranchisement

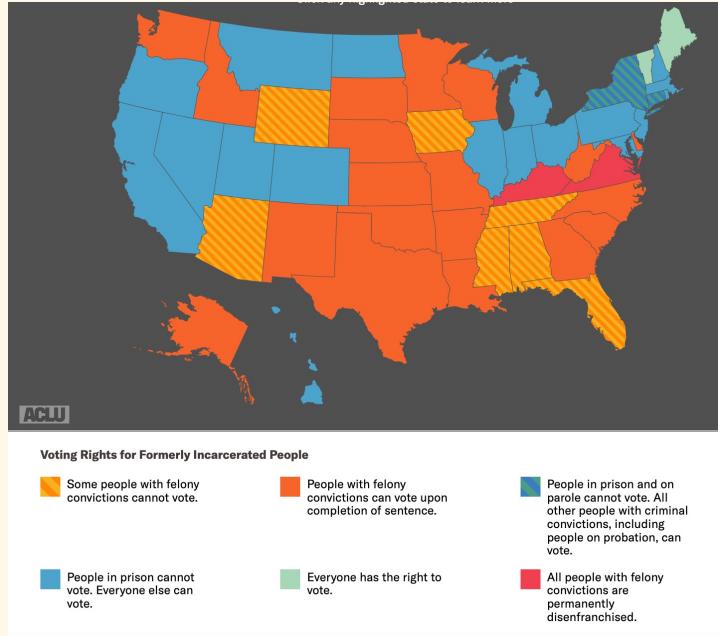
In most democracies in the world today, incarcerated people are still able to vote. This is not true in the United States.

Currently in every state except Maine and Vermont, incarcerated people cannot vote. This is called ***felon disenfranchisement***. The current state is as follows:

In many cases, inmates are counted for census data in the county where the prison is, rather than their home address. This allows rural counties (where most prisons are) to be better represented in Congress, despite a portion of their population being incarcerated.

For example 60% of Illinois' prisoners are from Cook County (Chicago), yet 99% of them are counted outside the county.

This both underrepresents Chicago, and overrepresents rural counties. To learn more about this, look up ***prison gerrymandering*** -- [Prison Gerrymandering Project](#).



Ongoing voter suppression: voter purging

States will occasionally “purge” their list of registered voters, forcing people to re-register. This can be done for a number of reasons – e.g. when people die or move away, it is no longer necessary to have them registered.

Often it is done maliciously or irresponsibly, and voters are not notified, so purged voters are frequently unable to vote.

As with all other voter suppression policies, proponents of them argue that they are used to combat voter fraud, despite there **never having been evidence of voter fraud occurring at a significant enough level to make any impact on an election.** --- <https://www.brennancenter.org/our-work/research-reports/debunking-voter-fraud-myth>

The effect of voter purging is that a large percentage of voters who skew a certain way (politically or demographically) are forced to register again to vote. This statistically reduces their turnout.

- In Florida in 1998, the state purged voters whose names were *similar* to those of convicted felons. As a result of Florida’s high conviction of African Americans (89% of felons in Florida were black), the voters who were purged were 88% black. The effect of this policy is then *racial disenfranchisement*.
- In 2019, a Wisconsin judge purged around 234,000 voters who were flagged as “potentially having moved.” Analysis argues that this block of voters would be younger and skew more Democratic [\[ref\]](#)
- Earlier in 2021, Arizona passed a law making it easier to purge infrequent voters.

Voter purging is being used substantially more over the last decade. The increase is **highest in states with a history of voting discrimination** [\[ref\]](#)

Ongoing voter suppression: limiting early/absentee voting

Many states have been, and are currently attempting to limit absentee and mail-in ballots, despite these being legal ways to vote.

In 2020, Georgia passed a law requiring voters to buy postage stamps to mail in absentee ballots. The ACLU filed a lawsuit, arguing that this is equivalent to a poll tax, and therefore illegal under the Twenty-Fourth Amendment.

This additionally took place during COVID, when voting in person was unrealistic for many voters.



Ongoing voter suppression: voter ID laws

Many states require voters to show some form of ID in order to vote. Proponents of these laws argue that they need them to combat election fraud. Critics of the laws point to the wealth of empirical evidence that election fraud is incredibly rare.

Moreover, voter ID laws decrease voter turnout, and it is argued that they statistically reduce minority turnout, resulting in racial disenfranchisement.

In 2011, Texas enacted the strictest voter ID law in the nation, requiring limited kinds of voter ID in order to vote. An estimated 600,000 Texans were made unable to vote under this law. A district court in Texas ruled that:

*"SB-14 violates Section 2 of the VRA by impermissibly abridging African Americans' and Latinos' access to the ballot; it was passed by the Texas legislature **with the intent to discriminate against minority voters**; imposes an unconstitutional burden on the right to vote; and constitutes an unconstitutional poll tax."* [\[ref\]](#)

Regardless, Texas was able to pass a different voter ID law in 2017, which was very similar to SB-14.

It came into effect at the start of 2018.



Ongoing voter suppression: voter ID laws

The single biggest blow to voting access in recent years was the Supreme Court case *Shelby County v. Holder* (2013).

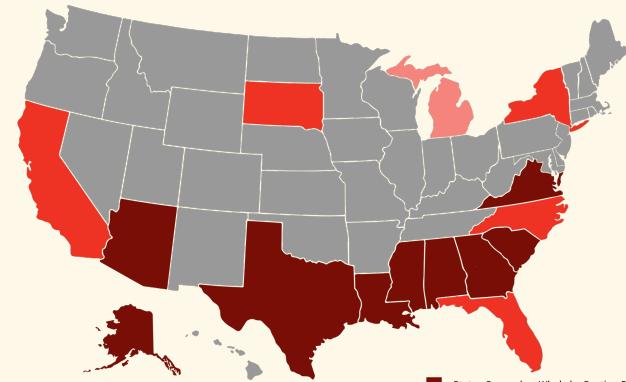
Remember Section 5 of the VRA requires that certain states and local governments (mostly those which had Jim Crow laws) had a “preclearance” requirement – meaning if they wanted to change any voting laws, they had to seek federal authorization to ensure the laws wouldn’t result in racial discrimination.

This preclearance requirement did a lot statistically to increase minority turnout in elections.

In 2013, the Supreme Court ruled that the formulas used to determine which areas were subject to clearance were outdated and unconstitutional and struck it down.

This made Section 5 of the VRA **unenforceable**.

States Covered by Section 5 at the time of the *Shelby County* Decision



BRENNAN
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FOR JUSTICE

Since this ruling, states have had free reign to enact new laws about voting, and to ramp up voter suppression. By 2018, almost a thousand polling places had been closed down, predominantly in majority African American counties. Voter purging has run rampant, and voter ID laws like Texas' SB5 have been passed.

Ongoing voter suppression

In the 2021 legislative sessions, over 389 bills in 48 states have been introduced to make it harder to vote.

The Brennan Center for Justice argues that we are in the midst of one of ***the most significant periods of legislative voter suppression*** in American history. [\[ref\]](#)

