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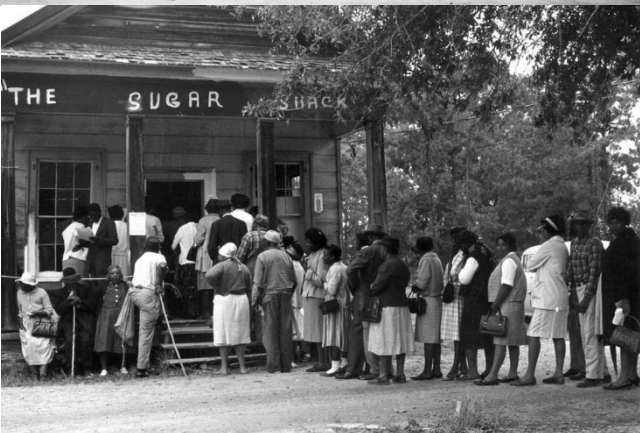
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VOTING RIGHTS: CONTEXT FOR THE 2020 ELECTION

**Women Lawyers Association of San Luis Obispo
Wednesday, June 3, 2020**

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Historical Overview: 1789-Present



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Historical Focus:

Post-Civil War & Reconstruction

“Discrimination! Why, that is precisely what we propose. . . to discriminate to the very extremity permissible . . . under the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of legally, without materially impairing the numerical strength of the white electorate.”

-Virginia Delegate Carter Glass (1902)

Historical Focus:

The End of Reconstruction & the Rise of Jim Crow

Courthouse demonstration in Selma, Alabama
1965. Credit: Bill Hudson, Associated Press.



Historical Focus:

The Constitution & the Right to Vote

15th Amendment (1870)	Prohibits denial/abridgment of the right to vote based on race, color, or previous condition of servitude
17th Amendment (1913)	Provides for popular election of senators (previously chosen by state legislators)
19th Amendment (1920)	Prohibits denial of the right to vote based on sex
23rd Amendment (1961)	Grants Washington D.C. residents the right to vote in Presidential elections
24th Amendment (1964)	Abolishes poll taxes in federal elections (<i>Harper v. Lee</i> extends the prohibition to other elections in 1966)
26th Amendment (1971)	Lowers legal voting age to 18

U.S. Supreme Court: **The Right To Vote is Fundamental**

“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.”

Wesberry v. Sanders, 376 U.S. 1 (1964)

U.S. Supreme Court: **Voting Restrictions & Dilution of the Vote**

“[T]he right of suffrage can be denied by debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”

Reynolds v. Sims, 377 U.S. 553 (1964)

U.S. Supreme Court:

Voting Restrictions Overview (1 of 2)

POLL TAXES

Unconstitutional in federal elections (24th Amendment) and unconstitutional in all other elections under *Harper v. Virginia Board of Elections* (1966)

PROPERTY OWNERSHIP REQUIREMENTS

Unconstitutional under *Kramer v. Union Free School District* (1969), but constitutional as applied to water districts under *Salyer v. Land Co. v. Tulare Lake Basin* (1973) and *Ball v. James* (1981)

LITERACY TESTS

Constitutionally permissible qualification for voting unless motivated by discrimination per *Lassiter v. Northhampton County Board of Elections* (1959), but *Katzenberg v. Morgan* (1966) upheld the Voting Right's Act ban on literacy tests finding they are almost always motivated by a discriminatory intent and are therefore unconstitutional.

U.S. Supreme Court:

Voting Restrictions Overview (2 of 2)

FELONY DISENFRANCHISEMENT

Constitutionally permissible to permanently disenfranchise convicted felons under Section 2 of the Fourteenth Amendment and *Richardson v. Ramirez* (1974) unless there is evidence of a racially discriminatory purpose behind a law denying the right to vote per *Hunter v. Underwood* (1985). Laws vary state-to-state.

VOTER ID LAWS

Crawford v. Marion County Election Board (2008) upheld Indiana's Voter ID Law 6:3 with no majority opinion. The court used a balancing test to weigh the interest in ensuring the integrity of the electoral process against the burden of requiring specific types of photo identification to vote.

VOTER ROLL PURGE

Husted v. A. Philip Randolph Institute (2018) upheld Ohio's system of voter purges, in which a failure to vote for two years triggered a multistep process of removal from voter registration lists. From 2011-2016 Ohio purged 2 million people from the state's list of registered voters, including 1.2 million who were eliminated because they vote infrequently.

Voting Restriction Case Study: Felony Disenfranchisement

Data from National Conference of State Legislatures: Restoration of Voting Rights After Felony Convictions

Never Lose Right to Vote	Maine, Vermont
Lost Only While Incarcerated/ Automatic Restoration After Release	Colorado, District of Columbia, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island
Lost Until Completion of Sentence (Parole and/or Probation)/ Automatic Restoration After	Alaska, Arkansas, California , Connecticut, Georgia, Idaho, Kansas, Louisiana, Minnesota, Missouri, New Jersey, New Mexico, New York (5), North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Washington, West Virginia, Wisconsin
Lost Until Completion of Sentence/In Some States a Post-Sentencing Waiting Period/Additional Action Required for Restoration	Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Tennessee, Virginia, Wyoming

Voting Restriction Case Study: Felony Disenfranchisement (Continued)



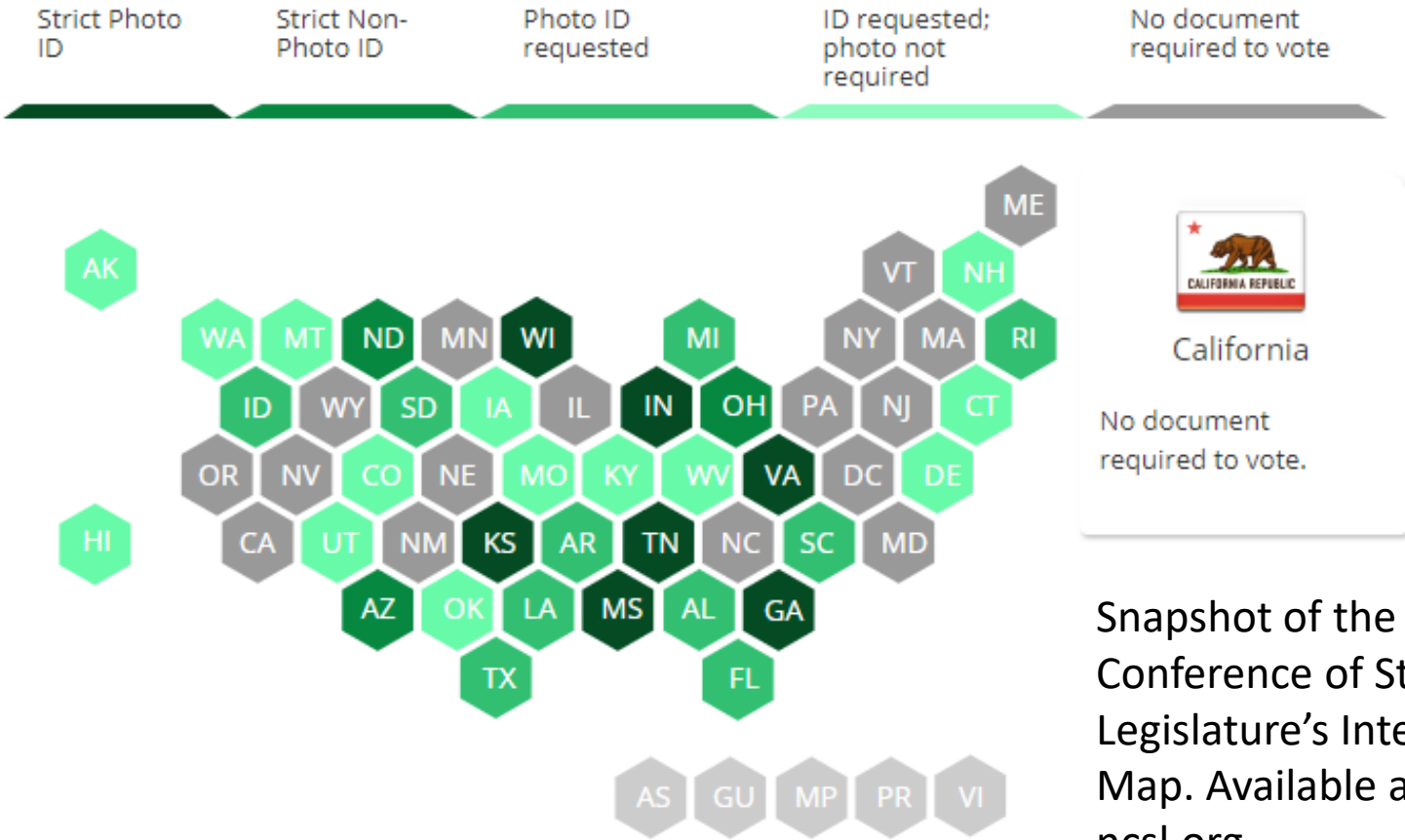
LEFT: Image from an educational video by Florida Rights Restoration Coalition, one of the many grassroots organizations that worked for years to pass Amendment 4 in 2018 with 64% bipartisan support.

RIGHT: Protesters gathered outside the federal courthouse in Tallahassee on Oct. 7, 2019, while a federal judge heard arguments against the Legislature's bill implementing Amendment 4. (Tampa Bay Times/Lawrence Mower.)



Voting Restriction Case Study: Voter ID Laws

Voter Identification Laws in Effect in 2020



Snapshot of the National Conference of State Legislature's Interactive Map. Available at nctl.org

Voting Restriction Case Study: Voter ID Laws (Continued)

TEXAS IDS FOR VOTING

Cast a regular ballot if you present:

Photo ID (current or expired up to 4 years, though it can be expired more than 4 years if you are 70 years or older):

- TX driver's license
- TX Election ID Certificate
- TX Personal ID Card
- Handgun License
- Military ID Card
- US Passport Book or Card
- US Citizenship Certificate*

If you do not have one of the above, then show:

- Voter registration certificate, or
- Certified US birth certificate, or
- Current utility bill or bank statement, paycheck, or government document including check** or

Any other government document showing the voter's name and an address (e.g., an out-of-state license, a government employee ID, etc.)

AND

Complete and sign reasonable impediment declaration - an election officer is not permitted to question the reasonableness of your impediment to getting an ID.

* Citizenship Cert. does not expire

** with voter's name and ANY address

844-338-8743

Info@VoteRiders.org

IDENTIFICACIONES PARA VOTAR EN TEXAS

Emita una boleta regular si usted presenta:

Identificación con foto: (vigente o vencida hasta por 4 años, aunque puede estar vencida por más de 4 años si tiene 70 años de edad o más.)

- Licencia de manejo de TX
- Certificado de Identificación Electoral de Texas
- Tarjeta de Identificación Personal de Texas
- Licencia de Portación de Armas
- Tarjeta de Identificación Militar
- Pasaporte tipo libreta o tarjeta de EE.UU.
- Certificado de Ciudadanía de EE.UU.

Si no cuenta con una de las anteriores, entonces muestre:

- Certificado de registro de votante, o
- Certificado de nacimiento estadounidense certificado, o
- Factura de servicio público o estado de cuenta bancaria vigente, talón de pago, o documento gubernamental incluyendo cheque** o

Cualquier otro documento gubernamental mostrando el nombre y una dirección del votante (por ejemplo, una licencia de fuera del estado, una identificación de empleado de gobierno, etc.)

Una declaración completa y firmada del impedimento razonable - un funcionario electoral no tiene permitido cuestionar la razonabilidad de su impedimento para obtener una identificación.

*Certificado de ciudadanía no vence

**con el nombre del votante y CUALQUIER dirección

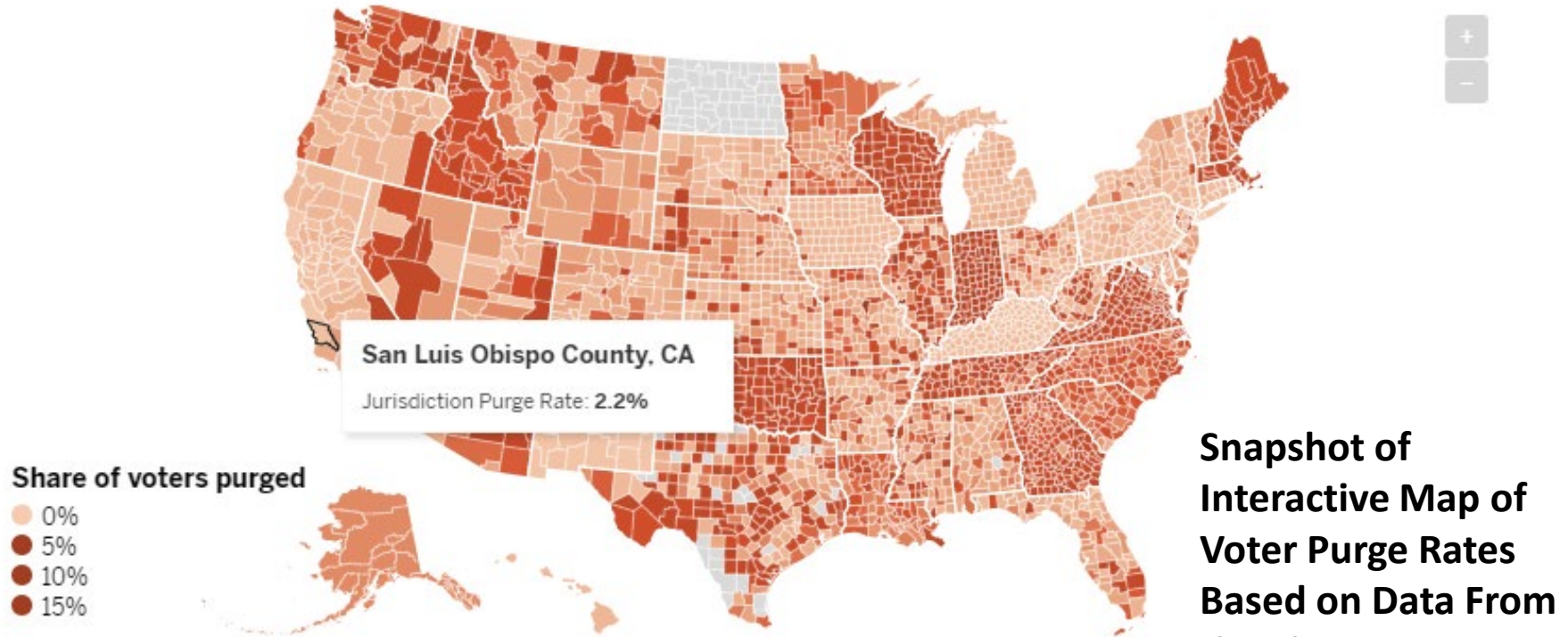
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Sample Voter ID Card
Created by
VoteRiders to Help
Citizens in Strict
Voter ID States
Understand
Confusing Voter ID
Laws.

Voting Restriction Case Study: Voter Purges

Purge Rate, 2016–18



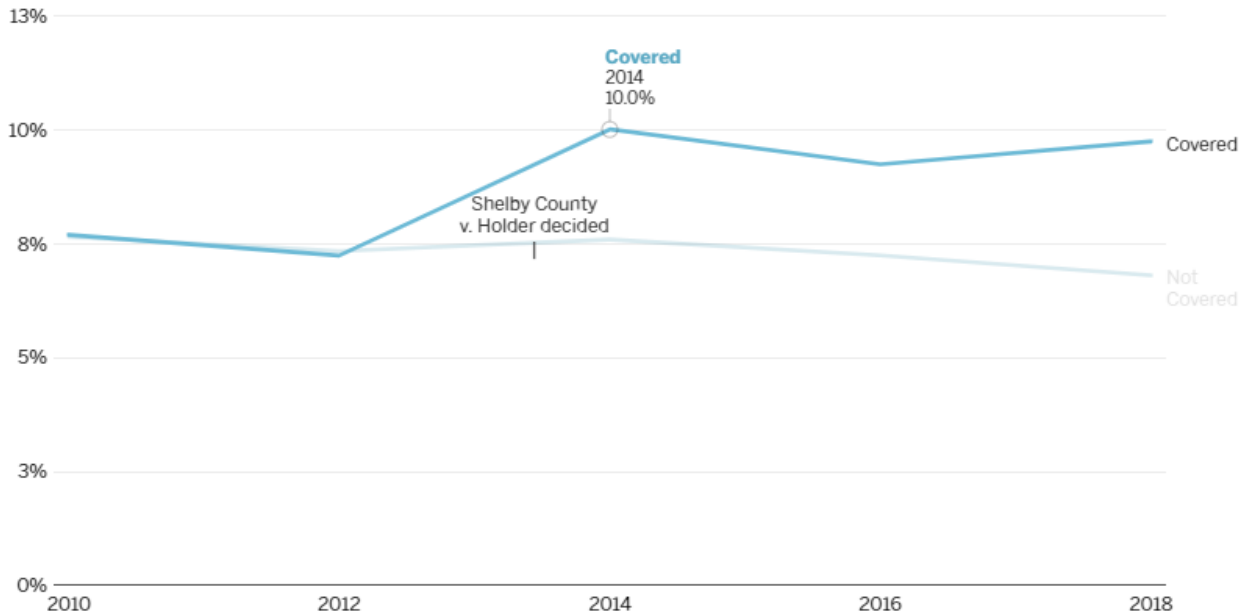
Notes:
Data in the following states are aggregated here to the county-level but are reported at the sub-county level: CT, MA, ME, NH, RI, VT, and WI
North Dakota does not have voter registration.

Source: EAVS

Snapshot of
Interactive Map of
Voter Purge Rates
Based on Data From
the Election
Administration and
Voting Survey.
Available at
[BrennanCenter.org](https://www.brennancenter.org)

Voting Restriction Case Study: Voter Purges (Continued)

Purge Rates, 2008–18



Note: Shows data for counties reporting in each period.

Source: EAVS

**Interactive Map of
Increases in Purge
Rates in
Jurisdictions
Previously Covered
by the Voting Rights
Act of 1965.
Available at
BrennanCenter.org**

U.S. Supreme Court: Dilution of the Vote

MALAPPORTIONMENT

Malapportionment occurs when voting districts are unevenly populated, diluting the votes of voters in more populous regions. The one person, one vote rule means for any legislative body, all voting districts must be about the same in population size. *Reynolds v. Sims* (1964); *Westberry v. Sanders* (1964); *Evenwel v. Abbott* (2016). Mathematical precision is not a workable constitutional requirement, but only small, justifiable deviations will be tolerated. More latitude is given to local and state voting districts than Congressional voting districts.

GERRYMANDERING

Racial gerrymandering violates the Equal Protection Clause of the 14th Amendment, but in 2018 the Court held that state legislatures are entitled to a presumption of good faith and challengers to redistricting bear the burden of proof when alleging a state law was enacted with discriminatory intent. *Abbott v. Perez*. In 2019, the Court deemed **political gerrymandering** a non-justiciable political question. *Rucho v. Common Cause*.

Dilution of the Vote Case Study: Malapportionment

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Getting a complete and accurate count in 2020 requires everyone's help. And there are many ways for individuals, businesses, community organizations, and others to play a part.



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Spread the Word



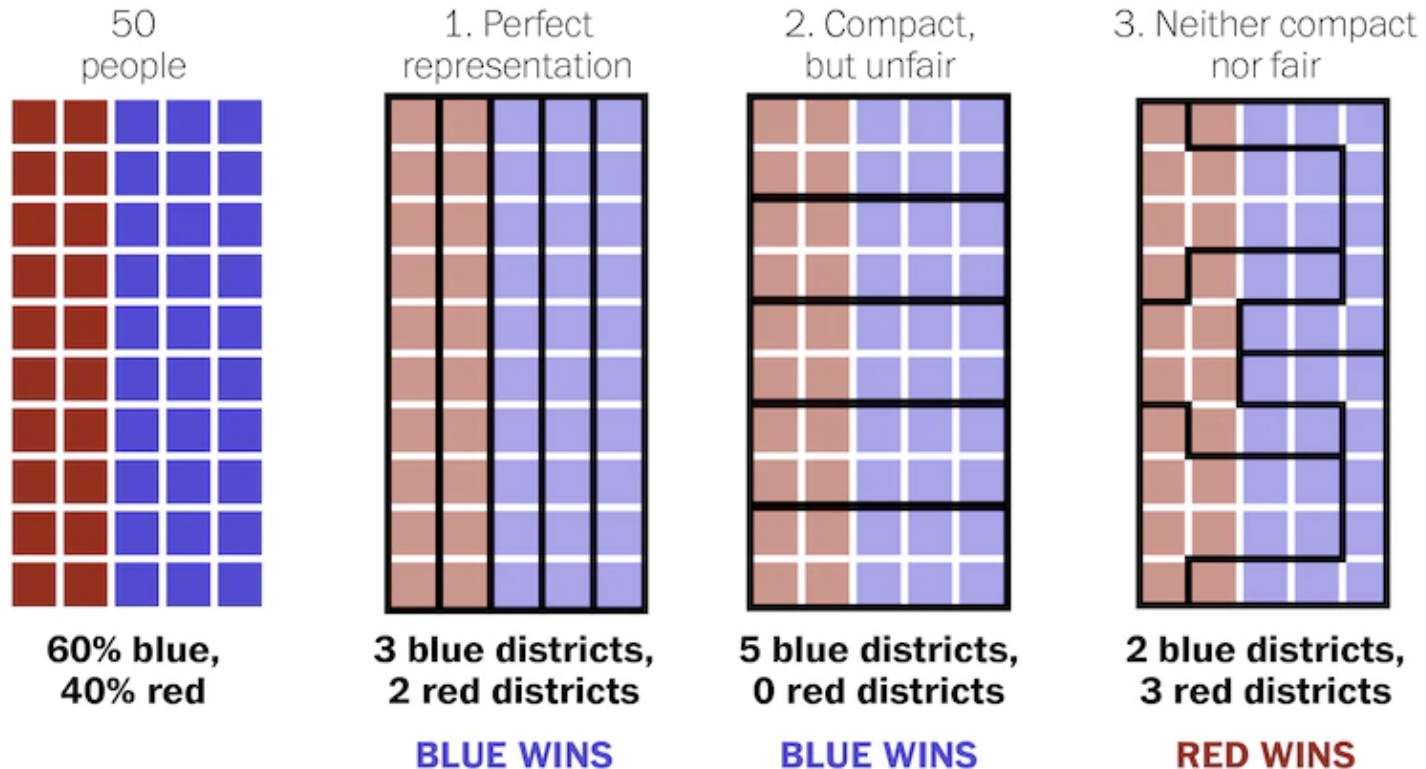
Get Answers to Your Questions

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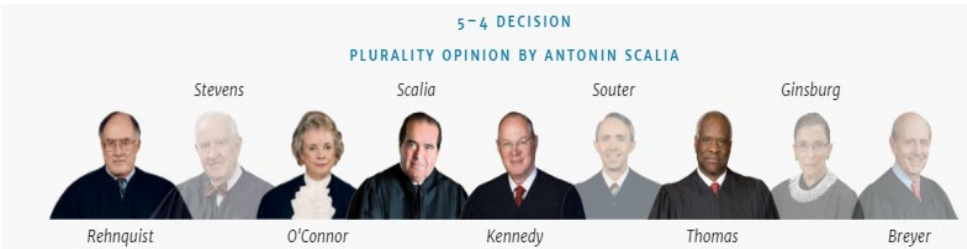
Dilution of the Vote Case Study: Gerrymandering

Gerrymandering, explained

Three different ways to divide 50 people into five districts

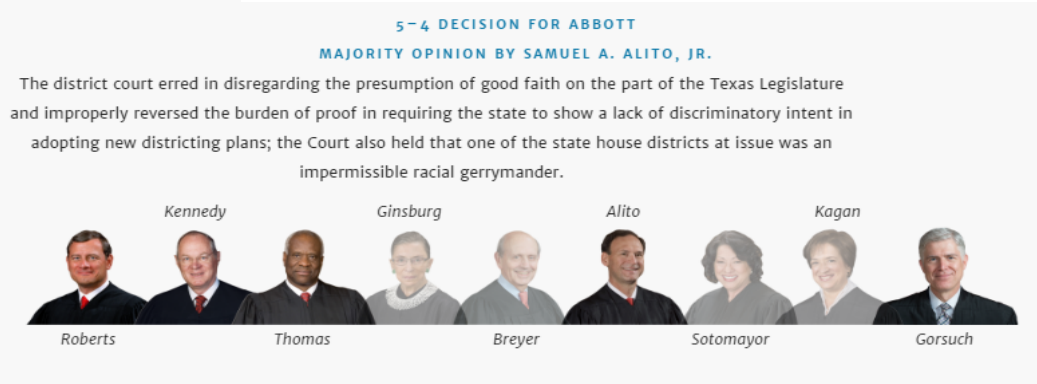


Dilution of the Vote Case Study: Gerrymandering (Continued)



Vieth v. Jubelirer (2004)

Abbot v. Perez (2018)



Rucho v. Common Cause (2019)

Legislative Focus: Voting Rights Act of 1965



Modern Voting Rights:

The Myth of Voter Fraud and the Resurrection of Voter Suppression

- Studies have shown all forms of voting fraud are extremely rare in the U.S.
- National study in 2016 found few credible allegations.
- In person voter impersonation, the target of voter ID laws, is almost non-existent. One study found 10 cases of voter impersonation fraud nationwide from 2000-2012.
- Mail voting systems, such as absentee ballots, are more vulnerable to fraud than in-person voting, but absentee ballot handling rules minimize the risk of ballot tampering while ensuring voters can cast valid ballots.
- Five states conduct all elections almost entirely by mail and they report very little fraud.
- In each election cycle there are no more than a handful of vote-by-mail fraud cases across the country.
- Examples:
 - In 2018 a North Carolina Congressional race, an operative rounded up absentee ballots for the Republican candidate and he was charged with election fraud.
 - A ballot harvesting scheme at New York nursing homes in the 1980s led to changes in the law limiting who may help nursing home residents fill out ballots.

Election 2020: **The Impacts of COVID-19**

Brennan Center for Justice at NYU School of Law
March 16, 2020 Memorandum

Re: How to Protect the 2020 Vote from the Coronavirus

- Polling place modification and preparation
- Expanded early voting
- A universal vote-by-mail option
- Voter registration modification and preparation, including expanded online registration
- Voter education and manipulation prevention
- Each state establish an election pandemic task force
- Congress to immediately appropriate funding for states to make necessary adjustments to voting systems.

Election 2020: **Universal Vote-by-Mail**

EXCERPT FROM OPEN LETTER TO CONGRESS TO ENABLE MAIL-IN VOTING FOR ALL ELIGIBLE VOTERS, LAWYERS DEFENDING AMERICAN DEMOCRACY

Pursuant to Article I, Section 4, Clause 1 of the Constitution, the Elections Clause, States set the time and manner of elections, subject to such rules as Congress shall enact. “The Times, Places and Manner of holding Elections for Senators and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law made or alter such Regulations, except as to the Places of choosing Senators.” In a long string of precedents, the Supreme Court has held that the power of Congress to regulation the conduct of federal elections is paramount.

The President has stated his concerns that mail-in balloting will result in lost elections for the Republican Party. The research to date is that it makes it easier for older, more Republican voters to safely vote, and it also makes it easier for younger, infrequent Democratic voters to participate in elections. In other words, it increases turn out for both parties with little partisan advantage.

Election 2020: Are States Ready?

Visit brennancenter.org for data regarding state-by state preparations

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Preparing Your State for an Election Under Pandemic Conditions

Here's a 50-state breakdown of what policies states already have and still need in order to best protect the November 2020 election from the Covid-19 pandemic.



Alex Adelman/Getty

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Election 2020: Educate Yourself & Others, Stay Engaged, & Take Action



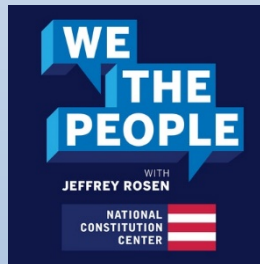
NATIONAL CONFERENCE OF STATE LEGISLATURES

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The Latino Legal Voice for Civil Rights in America.

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