



# The State of Voting 2018

by Wendy Weiser and Max Feldman

## Introduction

This fall, voters will head to the polls for the first time since our presidential election was decided by a margin of just 80,000 votes across three states. Clearly, every vote counts.

Nevertheless, on November 6, voters will face serious challenges to making their voices heard at the ballot box. These obstacles include voter ID laws and curbs on early voting. Extremely gerrymandered electoral maps and unresolved concerns regarding foreign interference in our elections also undermine the free and fair vote that is essential to our democracy.

As in previous election years, the Brennan Center has been tracking not just the laws but the political forces that may impact this year's midterms.

In 2018, voters in at least eight states will face more stringent voting laws than they did in the last federal election. These restrictions are a continuation of a trend, beginning in 2011, of states passing laws making it harder to vote. Overall, voters in 23 states will face tougher restrictions than they did in 2010. Lawsuits and legal campaigns have in some cases mitigated a number of the most pernicious new laws, and future court decisions could still impact the voting landscape before November. Regardless, *more* voters in *more* states will face unnecessary hurdles to casting a ballot this fall.

Restrictive laws, however, are not the only challenges to the vote.

The electoral landscape is still highly skewed by gerrymandering. Earlier in the decade, partisan legislatures drew extremely gerrymandered legislative maps, using modern data and technology to manipulate electoral lines for political advantage. The resulting maps have tilted electoral outcomes, producing dramatic incongruities between what voters want and what they get out of their elections and making it difficult to hold representatives accountable. Despite recent legal victories against political and racial gerrymanders, most of those flawed maps will still be in place in November.

In addition, nearly three-quarters of Americans are **worried about foreign interference** in our elections — worries that could create a **crisis** of legitimacy. The story is by now well-known: Agents connected to the Russian government targeted election systems in 18 states in 2016, and the threat hasn't dissipated. State actors and even rogue hackers continue to have our election systems in their sights.

Still, there is reason for optimism. Voters and their allies have taken to the courts to throw out unfair laws. Lawsuits challenging skewed legislative maps have recently resulted in a wave of victories, and for the first time in decades, the Supreme Court is set to rule in a case that could put real limits on partisan gerrymandering. Lawmakers and government officials are waking up to the fact that our election systems are vulnerable and that they can and *must* be repaired.

The electoral pressure-cooker has spurred many Americans to action. This November, citizens will be able to vote on ballot measures to end partisan gerrymandering in Michigan, to end lifetime felony disenfranchisement in Florida, and to adopt automatic voter registration in Nevada. Even amid the highly partisan battle over the franchise, bills to expand voting have been moving through state legislatures with broad bipartisan support — far more than bills to restrict access. We are at an inflection point.

In this piece we take stock of the state of voting in 2018, plotting where we are in the fight over voting rights and fair maps and evaluating and offering context for key issues that will affect not only the November election but also our democracy going forward. The most significant takeaways are:

- This is the first election where there is widespread awareness of the risk of foreign hacking of our election systems. In 2016, Russian agents manipulated our electoral process and attempted to interfere with our voting systems. While there is no evidence that they succeeded in tampering with our systems, the threat is significant going into 2018. There is a race to spur states to upgrade the security of their systems, but millions of Americans will vote this November using vulnerable voting systems.
- Many voters' voices will be unfairly muted this November because numerous jurisdictions, several of which are critical to the control of Congress and statehouses, are extremely gerrymandered. The Supreme Court could soon find that these districts are not only unfair but also unconstitutional. A decision striking down extreme partisan gerrymandering would be a win for voters in the longer term, but it will change little for voters this November.
- The decade-long battle over restrictions to the franchise continues, with neither side yielding significant ground. But more than a dozen lawsuits challenging these restrictions are ongoing. This fight will likely remain at an impasse — with states implementing restrictions, courts blocking some of them in whole or in part, and states responding with new restrictions — until there is a more definitive consensus in the courts.
- There is new public energy for positive change in voting. This is the first election where many voters will benefit from automatic voter registration: Seven states and the District of Columbia will have AVR in place by November. (Only Oregonians were able

to take advantage of AVR in a significant way prior to the 2016 election.) In addition, a broad swath of states will have significant voting referendums on the ballot this November, many put there by citizens themselves.

## Election Security

In the lead-up to the 2016 election, Russia launched an unprecedented attack on our election infrastructure. According to the recent [report](#) issued by the Senate Select Committee on Intelligence, Russian agents targeted election systems in 18 states, conducted malicious access attempts on voting-related websites in at least six states, and gained access to voter registration databases in a small number of states. While there is no evidence that the attempt to tamper with our voting systems was successful (unlike the attempt to manipulate the election discourse), the incident laid bare the serious security vulnerabilities of our nation's voting machines and voter registration databases. Intelligence officials [unanimously conclude](#) that Russia and other hostile foreign powers will continue to try to interfere in American elections, using what they have learned to hone more sophisticated and effective techniques.

Since 2016, states and the federal government have taken some important steps to increase election system security. But unfortunately, very little progress has been made in two critical areas: (1) few states or localities have replaced the voting machines most vulnerable to hacking; and (2) few states have mandated manual post-election audits, which use the paper records of votes to check voting machine software totals, thereby enabling officials to discover and recover from cyberattacks. In addition, while we have not fully assessed how many states have upgraded their voter registration systems since last year, progress on that front appears insufficient as well. As a result, we are approaching the 2018 elections with many voting systems vulnerable to attack.

Here is the current overview of the largest threats related to voting machines:

- [Thirteen states](#) still use paperless Direct Recording Electronic (DRE) voting machines — which do not provide a record that can be reliably audited after an election — as their primary voting equipment in some or all polling places. (Those states are Arkansas, Delaware, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, New Jersey, Pennsylvania, South Carolina, Tennessee, and Texas.) Five of those states use paperless DREs statewide, while eight use them in at least some of their counties.

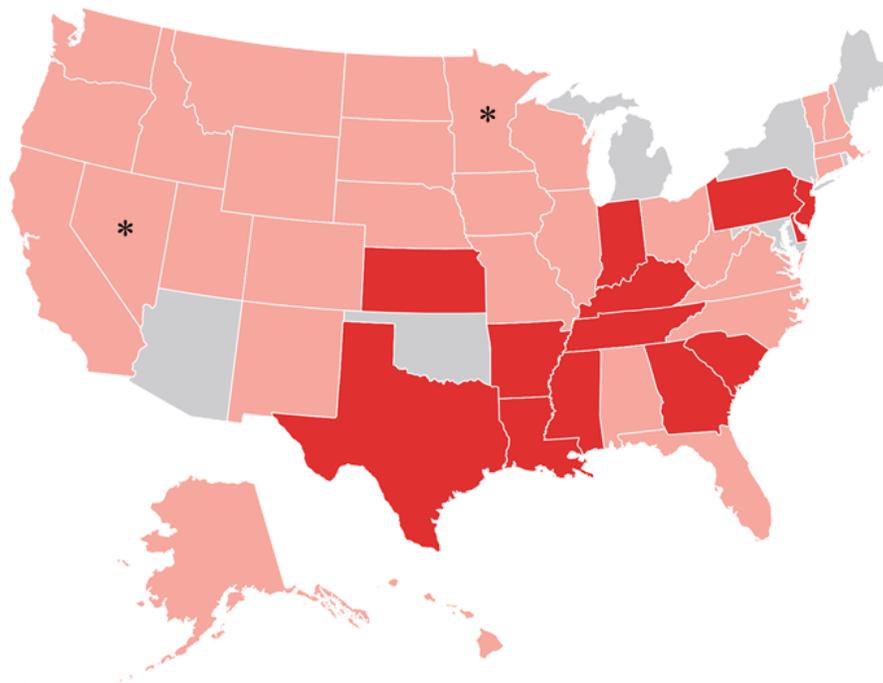
- Forty-three states will be using voting machines that are no longer manufactured. Officials in 33 states say they must replace their machines by 2020. In most cases, elections officials do not yet have adequate funds to do so.
- Only one state — Colorado — will mandate “risk-limiting” audits, which are post-election audits designed to provide a high level of statistical confidence that a software hack or bug could not have produced the wrong outcome.

A number of states that are likely to have closely watched competitive midterm elections have vulnerable voting systems. Of the states that are likely to have a competitive **House**, **Senate** or **gubernatorial** election, according to

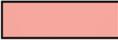
Cook Political Report, or a contest for control of **the state legislature**, according to Ballotpedia:

- Six with House, Senate, or gubernatorial toss-up races or close races for state legislative control still use paperless DREs (Delaware, Indiana, New Jersey, Pennsylvania, Tennessee, Texas), as do three with somewhat less competitive races (Georgia, Kansas, Kentucky); and
- Three states with toss-up races have voter-verifiable paper trails but do not mandate *any* post-election audit, risk-limiting or otherwise (Maine, Michigan, and North Dakota), as do two states with somewhat less competitive races (Nebraska and New Hampshire).

## States with Vulnerable Voting Systems



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-  Paperless DREs and voting machines no longer manufactured
-  Voting machines no longer manufactured
-  These states have started funding voting machine replacements and may replace some or all of their voting machines by the 2018 election

Voter registration systems are also still at risk:

- As of June 2017, 41 states were still using voter registration databases that were initially created a decade ago or longer. These outdated systems were not designed to withstand current cybersecurity threats. A number of those states have since taken steps to upgrade their registration systems. While we have not yet assessed the full extent of progress, Michigan and New Jersey expect to complete upgrades before November's election, Virginia is completing the first phase of a three-year upgrade plan, and North Carolina and Washington have at least started an upgrade process. Additional states may soon join this list, using new federal funds to bolster registration list security before November. In Minnesota, however, Gov. Mark Dayton **vetoed** the budget bill that was needed to authorize the secretary of state to use new federal funds for this purpose, even though the secretary said that it was the state election system's highest security need.

Unless significant steps are taken to bolster the security of our election infrastructure over the remaining months, there is a serious risk of additional successful attacks that will erode the public's confidence in the legitimacy of our elections. Attacks by cybercriminals or nation states could take down election websites with important information — including polling location information, voter registration status, and unofficial election results — or even potentially change the software-generated vote totals on individual voting machines. Worse, existing vulnerabilities leave open the possibility that control of our federal government could be determined by voting machines that are hackable and provide no auditable paper trail. While unlikely, this scenario is certainly possible. Virginia narrowly avoided this nightmare in 2017 when control of the state House was determined after a recount of paper ballots in a city that had decertified its paperless DREs right before the election.

### Progress So Far

Although there has not been sufficient movement to upgrade our nation's voting equipment in advance of the 2018 elections, there has been some progress in addressing election security issues. Specifically:

- At the federal level, Congress recently appropriated **\$380 million** to help states upgrade their voting systems — the first significant step at the federal level on election security and the most significant investment in election security since 2002. Unfortunately, this money came too late for states to be able

to use the money to upgrade systems by the 2018 elections. In addition, two **major** pieces of bipartisan legislation were introduced in Congress to ensure vital election security reforms: the Senate's **Secure Elections Act** (S. 2261), co-sponsored by Sens. James Lankford (R-Okla.) and Amy Klobuchar (D-Minn.), and the House's bipartisan **PAPER Act** (H.R. 3751), co-sponsored by Reps. Mark Meadows (R-N.C.) and James Langevin (D-R.I.). While these bills are critically important, their passage at this point would not impact election security in 2018.

- The **U.S. Election Assistance Commission** (EAC) and the **Belfer Center** at Harvard University have provided cybersecurity training to hundreds of state and local election officials, while the Department of Homeland Security, the EAC, and state and local officials have established a coordinating council to allow them to share threat information and pool security resources.
- At the state level, since the 2016 election, **only** Virginia has stopped using its paperless DREs. In Pennsylvania — a critical battleground state — Gov. Thomas Wolf has ordered all counties to select new voting systems by the end of 2019, but this order obviously will not halt the use of paperless DREs in time for the 2018 elections. Only four states have enacted laws improving their post-election audit systems since 2016. No states have taken significant action to upgrade their outdated voter registration systems. Legislation to improve election security was **introduced** in at least 26 states, but most of those bills did not advance during this legislative cycle.

### What Can Be Done Before November?

Although the 2018 elections will almost certainly move forward with aging, vulnerable voting equipment, it is not too late to significantly reduce election security risks. Here is what needs to happen between now and November to bolster election security:

- While unlikely, it is still possible for enterprising states to replace their antiquated voting machines with new, auditable voting systems before November. In 2017, Virginia decertified and replaced its DRE machines only two months before its state-wide elections. There is a chance that this could happen in New Jersey, too: New Jersey lawmakers recently introduced a **bill** that would halt the use of DREs in certain counties this November. States that do not replace paperless DREs before November should still move expeditiously this year so that

they can upgrade their voting equipment before the 2020 elections.

- States that do not replace paperless DREs should take several basic steps to secure their voting machines for 2018, including adding strong passwords and two-factor password authentication, engaging in rigorous systems testing, ensuring that all PC and server operating systems and software have the latest security patches, and providing cybersecurity training. Similar defenses are needed for voter registration systems.
- Where possible, states should implement effective post-election audits. Legislatures can still mandate such audits, and in many states, elections administrators have the authority to audit vote tallies after an election even if they are not required to do so by state law. They should do so.
- State elections officials should engage in detailed contingency planning in case of a system breach or failure, including preparing backup paper ballots and paper voter registration lists.

At this point, there is reason for optimism that many states will, in fact, take at least some of these interim steps to secure their voting systems. At least 17 states have formally requested that the Department of Homeland Security (DHS) conduct risk assessments of their election systems. In each state, DHS should be able to identify cybersecurity risks and best practices for securing election systems ahead of this November's election. In the coming months, many more states plan to request this DHS review or will use private vendors to do so. These assessments will almost certainly result in the application of additional security patches and the revamping of contingency plans. In addition, election officials in several counties and states are working with outside experts to develop new post-election audit protocols.

### Restrictive Voting Laws

Over the past decade, states **enacted** a **wave** of laws restricting access to voting. This fall, voters in at least eight states will face more stringent voting laws than they did in the last federal election cycle in 2016. Voters in 23 states will face tougher restrictions than they did in 2010. The most common restrictions involve voter ID laws, but they also include additional burdens on registration, cutbacks to early voting and absentee voting, and reduced voting access for people with past criminal convictions. If these laws remain in effect, they have the potential to make it harder for millions of Americans to vote. Even with an expected wave of enthusiasm this November, a growing body of research

shows these laws reduce participation, particularly among communities of color, low-income voters, young people, older citizens, and people with disabilities.

These laws are part of a broader trend: Following the 2010 wave election, there were two shifts that continued to distort our electoral system. First, as discussed at length below, state legislatures drew extremely gerrymandered maps following the 2010 Census. Second, states started to enact a series of laws that made it markedly more difficult for some of their citizens to register and vote. Lawsuits and legal campaigns helped block or mitigate most of the harshest new restrictions prior to the 2012 election. But the Supreme Court's 2013 *Shelby County v. Holder* ruling, which neutered the strongest legal protection against voting discrimination, changed the landscape. A flood of new barriers to voting that would have otherwise been blocked were implemented at once, and newly unfettered legislatures were incentivized to press forward with additional restrictions. The new laws were again met with legal challenges, and voters experienced a seesaw effect as new voting rules were imposed, blocked by courts, and then reinstated in modified form, only to be challenged again. Throughout, thousands upon thousands of would-be voters were thwarted at the ballot box over the course of multiple elections.

Here is where things stand now:

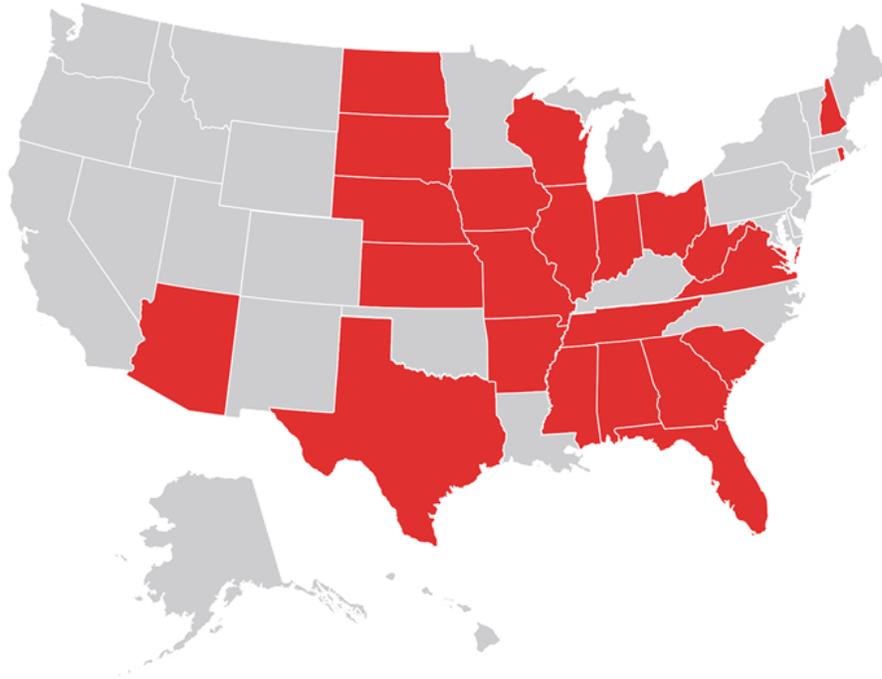
### Changes in Voting Restrictions Since 2016

Since 2016, at least **eight** states have enacted new voting restrictions. Four of those states — Arkansas, Iowa, Missouri, and North Dakota — enacted new voter ID laws (but as noted below, a court has partially halted the North Dakota law for now). Texas also passed a new voter ID law, though its earlier strict voter ID law was partially in effect in 2016. Georgia, Indiana, Iowa, and New Hampshire imposed new burdens on voter registration. And Iowa cut back on early and absentee voting. In addition to these new laws, there have also been new lawsuits that may impact which restrictive voting laws are in effect in 2018. These are discussed in the next section, below.

Looking ahead, it is not clear whether state legislatures will continue their almost decade-long trend of passing restrictive voting laws, at least in the face of a steady stream of courtroom wins for voting rights. Indeed, **this year**, states have not enacted any significant new voting restrictions — at least not yet. That could change if legislators sense that courts are growing less vigilant in protecting voting rights.

# Restrictive Voting Laws Since 2011

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## Overview of Restrictive Laws Since 2011

Going into the 2018 elections, voters in **23 states** — nearly half the country — will face additional restrictions on voting as compared to 2010, the year before state legislative efforts to cut back on voting access first mushroomed. These 23 states are in red on the map above.

Strict voter ID requirements are the most common type of new restriction. Overall, 13 states have harsher voter ID laws than they did in 2010, and 15 states have toughened their laws since 2006. Before 2006, **no state** had a strict photo ID requirement in effect.

## List of New Voting Restrictions

Below is the complete list of new voting restrictions since 2010, taking into account changes as a result of successful lawsuits, ballot initiatives, and legislative efforts. An asterisk (\*) denotes a voting requirement that will be in place for the first time in a federal election this November.

## Potential Impact

If these laws remain in effect, they will make it harder for millions of Americans to vote. The cumulative effect of a decade of voting restrictions could be substantial, but their depressive effect may be masked this November by a spike in electoral enthusiasm and new candidates bringing voters to the polls. Still, the new laws will likely thwart many.

As stated above, a growing body of **research**, although still nascent, finds that voting restrictions reduce participation, especially among communities of color, low-income voters, youth, older voters, and voters with disabilities. In 2016, for instance, Wisconsin's voter ID law disenfranchised about 17,000 registered voters, according to one **study**. Overall, roughly 300,000 eligible Wisconsinites lacked IDs that could be used for voting that year, according to a federal **court's findings**. Another **analysis** found that local cutbacks to early voting in North Carolina depressed African-American turnout in 2016 even though a federal court had blocked statewide cutbacks as discriminatory. The U.S. Government Accountability Office

State	Voting Restrictions
<b>Alabama</b>	<ul style="list-style-type: none"> <li>• Strict voter ID requirement (2011 law)</li> <li>• Documentary proof of citizenship (2011 law; not yet implemented)</li> </ul>
<b>Arizona</b>	<ul style="list-style-type: none"> <li>• Documentary proof of citizenship to register (2004 ballot initiative; currently blocked for registrations using federal form)</li> <li>• Polling place consolidation (2016 law)</li> <li>• Limitations on mail-in ballot collection (2016 law)</li> </ul>
<b>Arkansas</b>	<ul style="list-style-type: none"> <li>• Voter ID requirement (2017 law) *</li> </ul>
<b>Florida</b>	<ul style="list-style-type: none"> <li>• Reduced early voting period (2011 law, mitigated by 2012 court ruling and by subsequent 2013 statute restoring some early voting days)</li> <li>• Curbed voter registration drives (2011 law, mitigated by court decisions)</li> <li>• Reduced access to rights restoration for those with past criminal convictions (2011 gubernatorial action)</li> </ul>
<b>Georgia</b>	<ul style="list-style-type: none"> <li>• “No match, no vote” limit on access to voter registration (2017 law) *</li> <li>• Reduced early voting period (2010 law)</li> <li>• Documentary proof of citizenship to register (2009 law)</li> <li>• Strict voter ID requirement (2006 law)</li> </ul>
<b>Illinois</b>	<ul style="list-style-type: none"> <li>• Curbed voter registration drives (2011 law)</li> </ul>
<b>Indiana</b>	<ul style="list-style-type: none"> <li>• Aggressive voter purge requirements (2017 law) *</li> <li>• Documentary proof of citizenship for certain individuals (2013 law)</li> <li>• Strict voter ID requirement (2006 law)</li> </ul>
<b>Iowa</b>	<ul style="list-style-type: none"> <li>• Voter ID requirement (2017 law; will be partially implemented in 2018) *</li> <li>• Restrictions on voter registration drives (2017 law) *</li> <li>• Limited access to election-day registration (2017 law) *</li> <li>• Limited early and absentee voting (2017 law) *</li> <li>• Stricter voting rights restoration policy for the formerly incarcerated (2011 reversed executive action)</li> </ul>
<b>Kansas</b>	<ul style="list-style-type: none"> <li>• Strict voter ID requirement (2011 law)</li> <li>• Documentary proof of citizenship (2011 law; currently blocked for registrations at motor vehicle offices and those using federal voter registration forms)</li> </ul>
<b>Mississippi</b>	<ul style="list-style-type: none"> <li>• Strict voter ID requirement (2011 ballot initiative)</li> </ul>
<b>Missouri</b>	<ul style="list-style-type: none"> <li>• Voter ID requirement (2016 law and ballot initiative) *</li> </ul>
<b>Nebraska</b>	<ul style="list-style-type: none"> <li>• Reduced early voting period (2013 law)</li> </ul>
<b>New Hampshire</b>	<ul style="list-style-type: none"> <li>• Restricted student voting and registration (2017 law) *</li> <li>• Voter ID requested, but not required (2017 law)</li> </ul>
<b>North Dakota</b>	<ul style="list-style-type: none"> <li>• Voter ID requirement (2017 law, partially halted by court, and less restrictive than earlier law struck down by court) *</li> </ul>
<b>Ohio</b>	<ul style="list-style-type: none"> <li>• Reduced early voting period and abolished same-day registration period (2014 law)</li> <li>• Restricted absentee and provisional ballot rules (2014 law)</li> </ul>
<b>Rhode Island</b>	<ul style="list-style-type: none"> <li>• Voter ID requirement (2011 law)</li> </ul>
<b>South Carolina</b>	<ul style="list-style-type: none"> <li>• Voter ID requirement (2011 law, mitigated after lawsuit)</li> </ul>
<b>South Dakota</b>	<ul style="list-style-type: none"> <li>• Stricter voting rights restoration policy for the formerly incarcerated (2012 law)</li> </ul>
<b>Tennessee</b>	<ul style="list-style-type: none"> <li>• Strict voter ID requirement (2011 law)</li> <li>• Reduced early voting period (2011 law)</li> <li>• Proof of citizenship required for certain individuals (2011 law)</li> </ul>
<b>Texas</b>	<ul style="list-style-type: none"> <li>• Voter ID requirement (2017 law, which is less restrictive than 2011 law struck down by court but more restrictive than the temporary ID requirement in place in 2016) *</li> <li>• Curbed voter registration drives (2011 law)</li> </ul>
<b>Virginia</b>	<ul style="list-style-type: none"> <li>• Strict voter ID requirement (2012 law)</li> <li>• Restricted third-party voter registration (2012 law)</li> </ul>
<b>West Virginia</b>	<ul style="list-style-type: none"> <li>• Reduced early voting period (2011 law)</li> </ul>
<b>Wisconsin</b>	<ul style="list-style-type: none"> <li>• Voter ID requirement (2012 law, implemented for the first time in 2016)</li> <li>• Added longer residency requirement before a person could register to vote (2012)</li> </ul>

**found** that new voter ID laws depressed turnout by about 2 to 3 percent in Kansas and Tennessee in 2012.

The impact of new laws will likely be especially pronounced in states with highly competitive elections. Missouri, for example, enacted a voter ID law **last year** and soon will hold a closely watched U.S. Senate election. A court **rejected** a challenge to the measure earlier this year, and absent a victory on appeal, the law will be in place this November. North Dakota will also hold a very competitive Senate election with a **new voter ID law**. A court has temporarily blocked part of that law, but its order has been appealed. Indiana will hold a very competitive Senate election, and unless a court strikes down the state's new aggressive **voter purge law**, many eligible voters could show up to the polls to vote only to find that they have been mistakenly removed from the rolls. And **Iowa** will administer a broad new set of voter restrictions in November, coinciding with a highly competitive election for U.S. Congress.

Voting problems will likely be compounded because many of the restrictions will be in place for the first time this

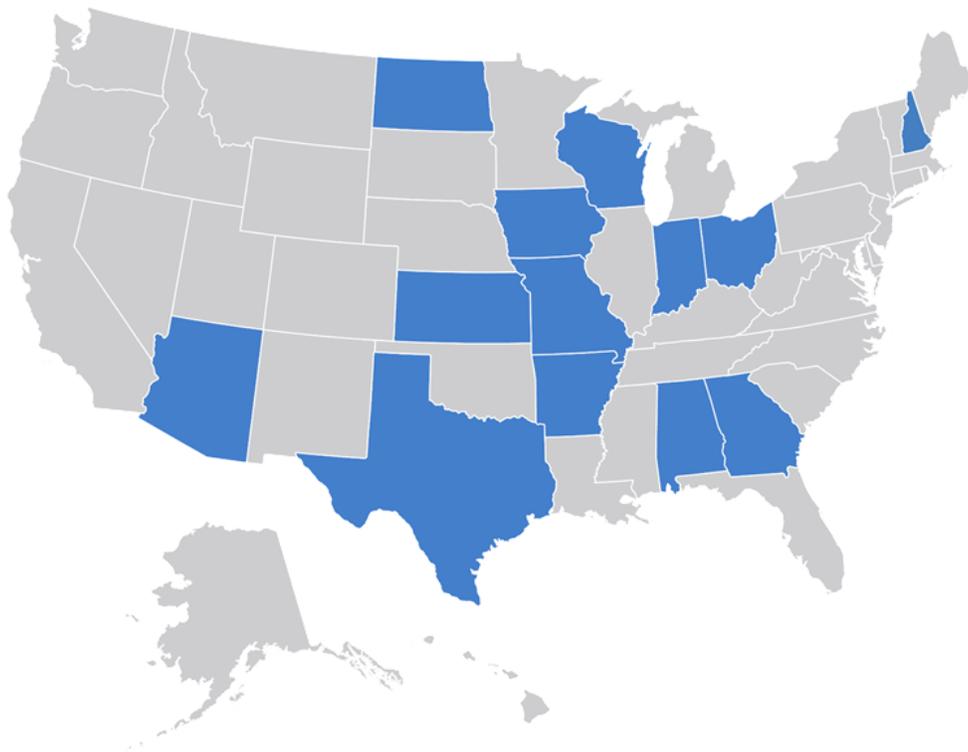
November. Overall, voters in eight states will face more onerous voting hurdles for the first time this year. Major changes to voting rules often cause voter confusion and errors by poll workers and election officials when they are first implemented, exacerbating their negative effect.

### **What Can Be Done Before November?**

The most effective way to prevent a restrictive voting law from marring an election is to obtain a judicial order stopping it from going into effect. As discussed in the next section, courts in a number of states could issue decisions in pending lawsuits that could impact voting in November. Additional cases may be filed. Where voting restrictions cannot be limited or eliminated by courts, voter education and mobilization are a necessary line of defense to ameliorate the disenfranchising effects of these laws. Voters must be made aware of new voting requirements, election officials must be trained to implement the restrictions fairly and lawfully, and state and non-state actors should assist eligible voters in overcoming the restrictions on or before election day.

## **Ongoing Litigation Against Voting Restrictions**

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## Litigation That Could Impact Voting Access

Over the past few years, the voting rights landscape has been shaped by both victories and losses in cases challenging new voting barriers. Particularly since 2013, when the Supreme Court's *Shelby County v. Holder* decision effectively eliminated the U.S. Department of Justice's oversight of state voting regulations, the courts have been the primary venue for reversing or limiting the effects of burdensome and discriminatory voting laws. This year, the courts continue to play a critical role in shaping Americans' access to the franchise.

### Ongoing Litigation Against Voting Restrictions

Major litigation against restrictive voting laws is currently ongoing in at least 13 states (pictured in blue on the map above), and other lawsuits against state election administration practices could impact voting as well. There are active cases challenging voter ID laws in Alabama, Arkansas, Iowa, Missouri, North Dakota, Texas, and Wisconsin; voter registration restrictions in Alabama, Arizona, Georgia, Kansas, and New Hampshire; early voting restrictions in Wisconsin; and voter purge practices in Indiana and Ohio. The most common claims are that new laws are discriminatory, in violation of the federal Voting Rights Act or the Constitution; that they impermissibly burden the right to vote in violation of the federal or state constitutions; and that they violate voter protections under the National Voter Registration Act. The fate of these laws could substantially affect the voting landscape and the composition of the electorate in 2018.

Here are some key cases to watch:

- **U.S. Supreme Court/Ohio:** A case **challenging** Ohio's voter list maintenance practices awaits decision by the U.S. Supreme Court. Specifically, Ohio is using a voter's failure to vote over a two-year period, by itself, as a basis to start a process of removing that voter from the rolls. The plaintiffs argue that this practice, which has resulted in thousands of eligible voters being removed from the rolls, violates the National Voter Registration Act of 1993. While the case's outcome could impact how states conduct voter purges and whether there are sufficient protections against improper purges, the legal issues involved are distinct and will not directly impact the vast majority of legal challenges to new voting laws.
- **Alabama:** The federal Court of Appeals for the Eleventh Circuit expedited an appeal from a decision rejecting a challenge to Alabama's voter ID law and has tentatively scheduled oral argument for the end of July. A decision may be issued before the election. Unless the appellate court reverses the district court's decision before the election, Alabamans will be required to show photo ID to vote again this November. In 2014, Alabama's Secretary of State estimated that roughly 280,000 Alabama voters lacked the requisite ID, according to the plaintiffs' **complaint** in this case.
- **Arizona:** Plaintiffs are **challenging** the state's "dual registration" system, which it put in place following a Supreme Court decision that prevented it from requiring documentary proof of citizenship in connection with the federal voter registration form. The system requires documentary proof of citizenship in order to vote in state elections.
- **Arkansas:** A state trial court issued an order halting enforcement of the state's voter ID law. But the state Supreme Court **stopped** the trial court's order from going into effect for the May 22 primary election, even though the high court had struck down a previous iteration of the voter ID law as inconsistent with the state Constitution. Unless the state Supreme Court upholds the trial court's order on appeal, Arkansas voters will face a photo ID requirement for the first time in a federal election this November. In addition, perhaps to hedge its bets, the Arkansas Legislature has put a ballot initiative amending the state Constitution to require voter ID on the November ballot.
- **Indiana:** A federal court will likely soon issue a **decision** on whether to freeze a new state purge program. Under a new Indiana law, election officials must purge voters from the rolls if their records are flagged by the controversial "Crosscheck" data repository. A recent study estimated that up to 99.5 percent of Crosscheck flags for double-voting in a sample of 800,000 were inaccurate. While the state has agreed to hold off on these purges before July 1, if the law is not blocked before then, a major purge of the voter rolls could occur prior to this year's election.
- **Iowa:** Voter groups filed a **lawsuit** on May 30 challenging the state's new restrictive voting law, including its voter ID, absentee ballot counting, and early voting provisions.
- **Kansas:** There are at least two court cases challenging the state's documentary proof of citizenship requirement for voting awaiting decision. A federal district court in Kansas held a **trial** in March on the state's requirement that individuals registering at the department of motor vehicles must present proof of citizenship. And a federal court in the District of

Columbia heard arguments before the 2016 election in a [case](#) challenging the decision by a federal agency to apply Kansas's documentary proof of citizenship requirement to applicants using the federal voter registration form. (This case also applies to **Alabama** and **Georgia** applicants.) In both cases, the courts have temporarily blocked the state's requirements as applied to relevant applicants. If either court reverses course before November, it could have a major impact: When the proof of citizenship requirement was in place from 2013 through 2015, it prevented more than [35,000 Kansans](#) from registering.

- In **Missouri**, a trial court dismissed a challenge to the state's new voter ID law, but that decision has been [appealed](#), and a decision in the appeal is expected prior to the election.
- In **New Hampshire**, there is a [bench trial](#) on a restrictive voter registration law scheduled for August. If that schedule holds (and there is currently some jockeying over whether the judge in the case will recuse himself), then a decision could be issued before November. Critics claim that the law was designed to prevent students from voting in a state where the 2016 Senate election was decided by roughly [1,000](#) votes.
- In **North Dakota**, a federal district court has issued an order temporarily halting the state from enforcing parts of its voter ID law that could disenfranchise significant numbers of Native Americans. The state has appealed that decision and is seeking a stay of the district court's order, pending resolution of the appeal. If the order is reversed, thousands of Native Americans could be disenfranchised, according to the [court](#).
- **Texas**: The Fifth Circuit Court of Appeals recently issued a decision permitting Texas's new [photo ID law](#) to go into effect. Texas has been applying that law since the beginning of the year, and even if there is a further appeal of the Fifth Circuit's decision, the law will likely govern this November's elections.
- **Wisconsin**: The Seventh Circuit Court of Appeals heard oral argument well over a year ago in [two challenges](#) to various aspects of Wisconsin's election law, including voter ID and early voting restrictions enacted earlier this decade. The court is likely to decide these appeals before November. (For context, the appeals were noticed nearly two years ago — the median time from the filing of a notice of appeal to a decision in the Seventh Circuit is about eight [months](#).) Most of the restrictions have been temporarily halted by a court order, although the voter ID law is largely in place.

Groups have also challenged administrative decisions that disenfranchise voters. Earlier this year, a district court judge in Florida [struck down](#) the state's cumbersome process of restoring voting rights to individuals convicted of felonies, although that decision is on appeal. In May, a lawsuit was [filed](#) challenging Florida's decision to block state university campuses from hosting early voting sites.

With some notable exceptions, voters have fared reasonably well in lawsuits challenging the most onerous new voting laws over the past decade. A litigation scorecard, tracking the outcomes of the decade's major cases against voting restrictions, is included in the appendix.

### Look Ahead: The U.S. Supreme Court

Looking ahead, the Supreme Court is poised to take up a major voting rights case. The Court's last effort to consider the legality of a state voting restriction — a decade ago in [Crawford v. Marion County Election Board](#) — left key questions unresolved. The issue of discrimination was raised in the case, and so the Court did not clarify the contours of laws protecting against voting discrimination. Nor did the Court definitively address the scope of constitutional protections for voting. When the Court does take up a new voting case, it will likely determine the strength of voting rights protections for years to come.

Over the past few years, the Court has sent strong signals that it is inclined to take up such a case. It took the unusual step of weighing in on orders from two separate [lower courts](#) (involving challenges to North Carolina's major voting restriction law and Wisconsin's voter ID law) — something the Court typically does only if there is a ["reasonable probability"](#) it will take the case. And while the Court ultimately refused to [hear both cases](#) (twice in the North Carolina case), Chief Justice Roberts took the unusual step of issuing a special statement explaining that the Court's refusal to hear the North Carolina case did not reflect an opinion on the merits of the case.

A number of major cases that appeared to be barreling toward the high court over the past two years did not or have not yet reached it. In Texas, a challenge to the state's voter ID law appeared to be first in line for Supreme Court review, but the state Legislature amended the law in 2017, changing the course of the litigation against the state's original law. (The Brennan Center represents a group of plaintiffs in the Texas case.) A widely watched challenge to a package of North Carolina voting restrictions also appeared to be teed up for Supreme Court review, but the Court denied review, after a newly elected governor tried to withdraw the state's petition seeking review. In addition, challenges to a set of restrictions

passed in Wisconsin were also expected to be in the mix for Supreme Court review, but the federal court of appeals has not yet issued a decision that the Court could review.

The only case the Court took up this year is the case challenging Ohio's voter list maintenance practices, discussed above. While the case could impact state practices for purging voter rolls, it will not address the main legal questions at issue in typical cases against new voting restrictions. We will likely know by the end of the year whether next year's docket will include a blockbuster voting case.

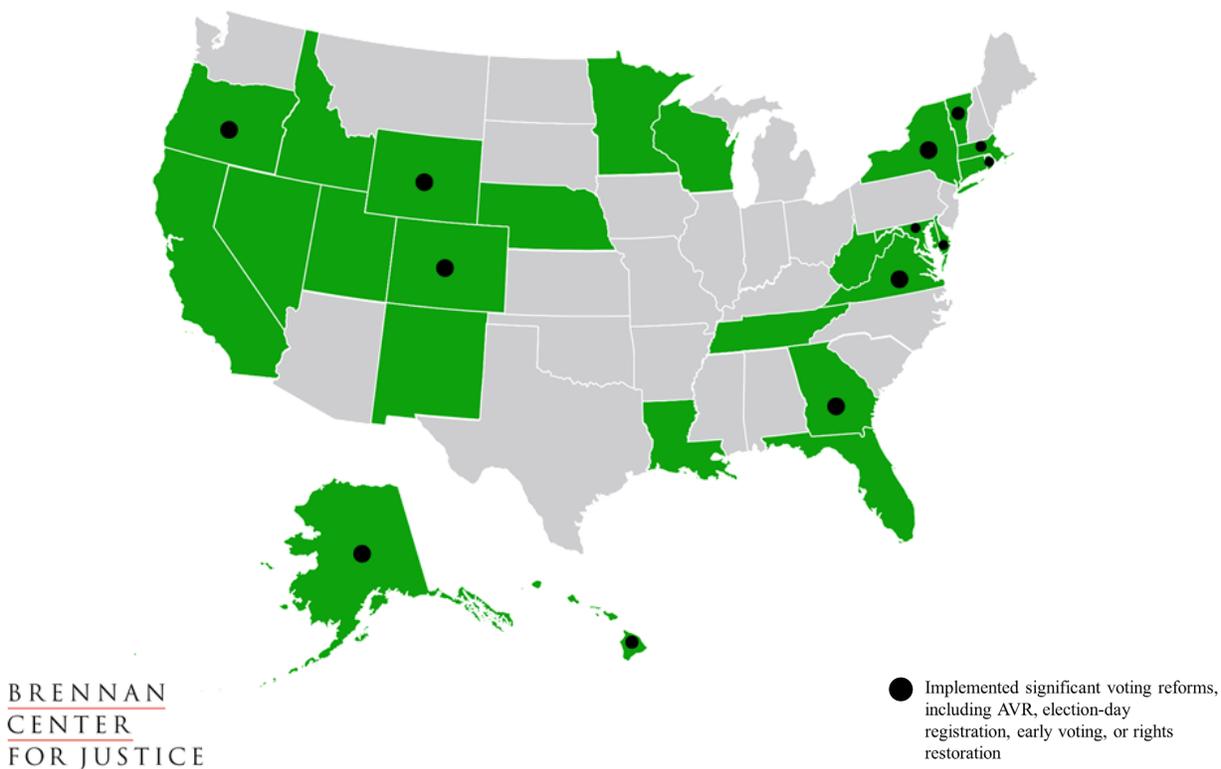
### Expansive Voting Laws

While many states have moved to restrict their citizens' access to the ballot in the past decade, others have expanded access to their voting process. These recent pro-voter victories form an important part of the overall voting landscape going into 2018. Most significantly, new automatic voter registration (AVR) systems will be in place in seven states and the District of Columbia this year, five of them for the first time.

### New Laws in Place

- This year, five states — Alaska, California, Colorado, Rhode Island, and Vermont — and the District of Columbia will have **automatic voter registration** (AVR) in place for the first time in the lead-up to a federal election. In total, seven states and the District of Columbia will have up-and-running AVR systems prior to the 2018 elections, including Georgia and Oregon, which implemented AVR in advance of the 2016 elections. (Two additional states are scheduled to, but may not have, AVR in place by the 2018 elections, and three states will not implement the reform until after the election.) AVR is transformative, yet simple: When eligible citizens visit a government office, such as a state's department of motor vehicles, they are automatically registered to vote unless they decline.
- So far this year, three more states have enacted AVR laws: Maryland, New Jersey, and Washington. That brings the total number of states that

## Major Expansions to Voting Access Since 2013



have adopted AVR to 12 plus the District of Columbia.

- AVR could significantly increase the number of people who register and vote in these states this November. In **Oregon**, which adopted AVR in 2016, the rate of new registrations at the department of motor vehicles quadrupled, and the overall registration rate jumped by nearly 10 percent after it was implemented. Many of these new registrants turned out to vote. While Oregon had no competitive statewide races, its voter turnout **increased** by 4 percent in 2016, which was 2.5 percentage points **higher** than the national average.
- AVR is a rare voting reform to have garnered broad bipartisan support. For example, West Virginia's largely Republican Legislature passed an AVR bill, and its Democratic governor signed it into law; conversely, Illinois's Democratic-majority Legislature passed AVR with unanimous support, and its Republican governor signed it into law. Alaskans passed AVR via ballot initiative with nearly 65 percent of the vote in 2016, the same year they gave Donald Trump a 15-point victory over Hillary Clinton.
- Also this year, thousands of New Yorkers who had previously lost their voting rights because of a criminal conviction could newly be eligible to vote as a result of an executive order that Gov. Andrew Cuomo issued in April, indicating he will restore voting rights to certain New Yorkers on parole. As of May 2018, approximately **24,000 New Yorkers** have had their voting rights restored, and there are plans to restore voting rights on a monthly basis going forward.
- In Louisiana, Gov. John Bel Edwards recently signed a law restoring voting rights to individuals on probation and parole if they have been out of prison at least 5 years. According to state officials, this reform could enfranchise roughly 2,000 citizens of Louisiana, but it will not take effect until 2019.
- Since the 2016 elections, three other states have also expanded the right to vote for the formerly incarcerated. In **Virginia**, right before the last election, voting rights were restored with great fanfare to more than 61,000 citizens, but not until after the voter registration deadline had passed for the 2016 election. This will be the first federal election in which those citizens can

vote. In Alabama, the Legislature passed clarifying legislation that had the effect of reducing the number of crimes for which citizens can be disenfranchised. And in **Nevada**, the governor signed a law restoring voting rights to those who committed certain crimes and previously would have been permanently disenfranchised; that law will not go into effect until January 2019.

- Florida is seriously considering a significant reform that could add to that total. Its citizens, as explained below, have collected enough signatures to qualify a referendum for the ballot that would end the state's lifetime ban on voting for individuals with criminal convictions. This reform will not affect the composition of the electorate in November.
- More broadly, compared to the 2016 election, at least 16 states will have implemented significant new laws that will make it easier to register or vote this year. This count includes states that passed laws before November 2016 but did not put them into effect for the 2016 election. (Since we started tracking legislation expanding voting access in 2013, 25 states and the District of Columbia have implemented significant reforms expanding access, and four states have eased their ID requirements for voting or registration.) In addition to the AVR and rights restoration laws discussed above, these reforms include same-day and election-day registration, online voter registration, and expanded early voting opportunities. Online registration is among the most common reforms implemented in the past two years — five states implemented online registration, bringing the total number of states with **online** registration to 37 plus the District of Columbia (Oklahoma has enacted online registration, but does not expect to implement it until **2020**.) This reform, which was a major innovation last decade and early into this one, is now the norm. Beyond the states that have implemented reforms, other states, like **Washington**, have enacted pro-voter reforms that will not be in effect this year.

## Other Voting Issues to Watch

### Voter Roll Purges

This year, there is a heightened **risk** that elections officials will mistakenly remove large numbers of eligible voters from the rolls. Properly done, efforts by election officials to clean up the voter rolls by removing names that should not be there promotes election integrity and efficiency. But when done hastily or incorrectly, the resulting

“purges” can sweep in and disenfranchise large numbers of eligible voters. An upcoming Brennan Center report finds that states are now purging many more people than they did a decade ago, without marked improvements in their techniques, and with fewer legal protections for voters. There are two main dangers to watch this year.

First, watch for whether local elections officials capitulate to a threat campaign launched by private groups promoting aggressive — and reckless — removals of voters from the rolls. This past September, a group called the Public Interest Legal Foundation threatened or filed lawsuits against 248 jurisdictions, claiming their list maintenance practices were inadequate. Other groups, including the American Civil Rights Union and Judicial Watch, have similar lawsuits pending in three states. (Voter advocacy groups, including the Brennan Center, have **pushed back** against this effort by providing guidance to jurisdictions about how to properly comply with their list maintenance obligations under federal law and by intervening in their lawsuits.)

Second, watch for whether the U.S. Department of Justice tries to force states to remove voters from the rolls. In June 2017, the Department of Justice took the unusual step of sending letters to 44 states demanding that they provide detailed information on their list maintenance practices. **Some** have understood this as a possible prelude to legal action and recalls **efforts** undertaken by the George W. Bush administration in the mid-2000s to pressure U.S. attorneys to sue states for failing to purge their voter rolls aggressively enough.

### Ballot Security Operations

There is also a risk of improper ballot security and vote suppression efforts at the polls this November. “Ballot security” is a term used to describe a set of practices by private groups, candidates, or political parties with the stated goal of preventing voter fraud. These practices include efforts to identify improperly registered voters, often using unreliable methods; efforts to formally challenge the eligibility of individual or groups of voters; and efforts to discourage voters from committing fraud. In the heated environment of political campaigns, there is a high **risk** that these kinds of operations will lead to voter intimidation or deception.

There is reason to worry about an increase of these types of efforts this year. This election may be the first in more than 30 years that the Republican National Committee (RNC) is not bound by a **consent decree** requiring it to get approval from federal court before conducting any ballot security operations. Before the consent decree effectively stopped it, the RNC was the nation’s premier

organizer of these suppressive efforts. Smaller organizations have tried to mobilize ballot security efforts in recent years, but they lacked the RNC’s reach and resources. If the RNC gets back into the ballot security game, we may see a revival of these vote suppression efforts at the polls. Indeed, the party’s standard-bearer, President Trump, has personally championed ballot security measures. As a candidate in 2016, he encouraged vigilante monitoring of polling places, and since then he has continued to fan unfounded fears of widespread voter fraud. In addition, the Department of Justice, which is our nation’s leading bulwark against voter intimidation, has signaled a broad retreat from enforcing voting rights. The consent decree is not dead yet, though — the Democratic National Committee has appealed the court’s decision to dissolve it.

### Redistricting and Gerrymandering

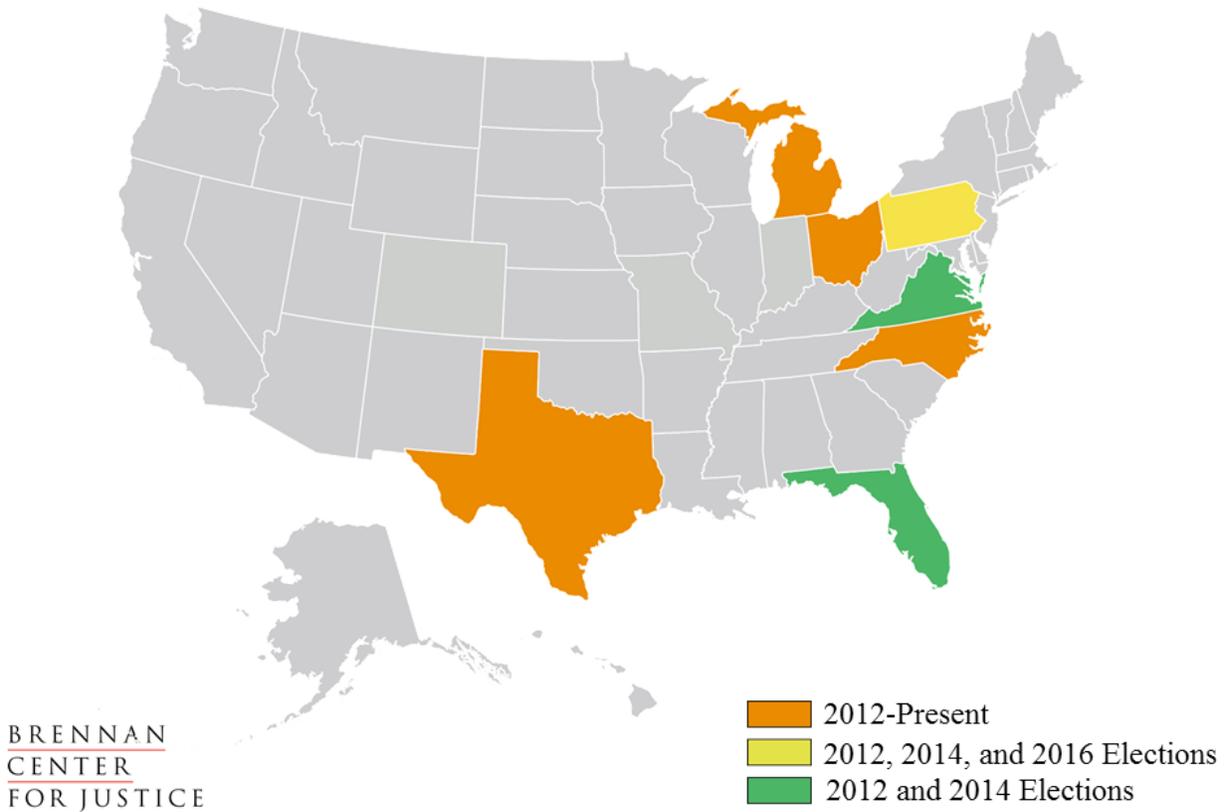
Historically, midterm elections have offered the chance for American voters to change course in the country’s political path. But because of the pervasive gerrymandering that took place after the 2010 Census, the impact of the 2018 midterms could prove to be far more muted.

A Brennan Center **study** found that extreme partisan gerrymandering in half a dozen key states provides Republicans with an **advantage** of up to 16 or 17 seats in the current House of Representatives — a significant share of the 24-seat majority that Republicans held at the start of this Congress. That advantage will decrease somewhat after the 2018 midterm election because of a court-ordered redrawing of Pennsylvania’s congressional map in February. But even with a new Pennsylvania map, Democrats face significant structural barriers to winning their first House majority since maps were redrawn in 2011.

According to the Brennan Center’s estimates, Democrats would have to win the national popular vote by **10.6 percentage points**, or benefit from extraordinary shifts in partisan enthusiasm, in order to win a majority in the next House. While **some** have estimated Democrats’ structural disadvantage to be somewhat smaller, the consensus is that even a historically large popular vote win will yield far fewer House seats than similarly sized, or even smaller, past popular vote wins. There is a real **risk** that Democrats will win the national popular vote but will not win a majority of House seats — something that also happened in 2012. In other words, biased maps could be determinative in the outcome of November’s elections for control of the U.S. House of Representatives, as well as of **several** state legislatures.

The problem of gerrymandering is not new this year; indeed, many Americans will vote this November in the

## Extremely Gerrymandered Congressional Maps



fourth election in a row under severely gerrymandered maps. This is both because the gerrymanders of this decade have been much more extreme and durable than those of the past and because in most of the country there has been no judicial or other mechanism to rein them in. That could change this summer. While there will likely be few changes to any maps before November, there are some important stories to watch over the course of the summer and fall.

### A New Map in Pennsylvania, but Not in North Carolina

- In Pennsylvania, voters will go to the polls this November using a new congressional map as the result of a [decision](#) of the Pennsylvania Supreme Court in January that found that the state's original map was a partisan gerrymander in violation of the Pennsylvania Constitution. That ruling resulted in the replacement of a map that locked in a 13-to-5 Republican advantage — in a state that is roughly evenly divided between Democrats and Republicans — with a new map drawn by a court-appointed special master. The new map is substantially more responsive to electoral shifts, making Pennsylvania a central 2018 battleground and potentially the key to control of the House. According to a Brennan Center estimate, Democrats and Republicans each have the opportunity to win between [7 and 11](#) seats, and the respected Cook Political Report currently includes eight Pennsylvania congressional districts on its [list](#) of competitive races (the second highest number of competitive races of any state after much larger California).
- By contrast, voters in North Carolina will go to the polls for the second election in a row using a map drawn in 2016 to replace an earlier map found by courts to be an unconstitutional racial gerrymander. Like the original map, the replacement map, which lawmakers described as a “[political gerrymander](#),” locks in a 10-to-3 Republican advantage in a state where there is robust competition between the parties at the statewide level. Although a three-judge panel [struck down](#) the replacement map in January as a partisan gerrymander, the Supreme Court put the

drawing of a new map on hold while it considers North Carolina lawmakers' appeal (likely to be heard in the fall of 2018 — see below).

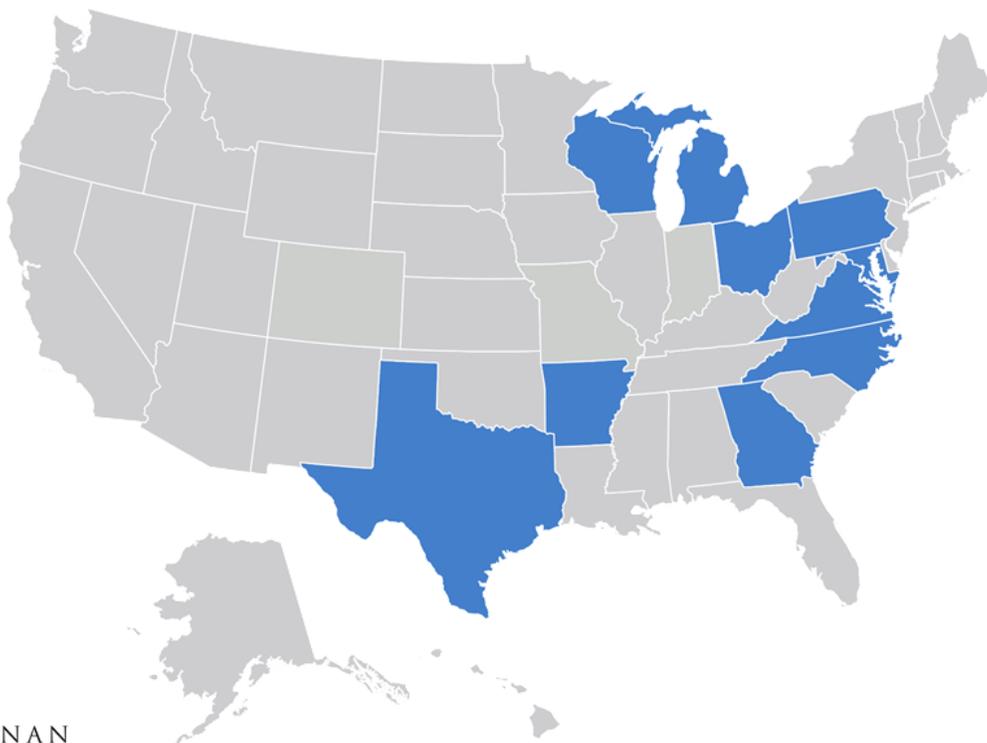
### Redistricting Cases at the Supreme Court

- While decisions will likely come too late to affect the 2018 midterms, the U.S. Supreme Court could set the stage for further redrawing of the nation's electoral maps this summer when it is expected to rule in closely watched partisan gerrymandering cases from [Wisconsin](#) and [Maryland](#). The former challenges a Republican gerrymander of Wisconsin's state assembly map and the latter a Democratic gerrymander of Maryland's 6th Congressional District. The two decisions will be the Supreme Court's first partisan gerrymandering opinions since it badly deadlocked on the question of the constitutionality of partisan gerrymandering in the mid-2000s in *Vieth v. Jubelirer* and *LULAC v. Perry*. Together, the Wisconsin and Maryland decisions will give the high court an opportunity to finally establish a standard for gauging when a map is unconstitutional.
- The Supreme Court also will rule this summer in a [Texas redistricting case](#) that could result in several congressional and state house districts being redrawn for the 2020 elections because of unconstitutional racial gerrymandering and/or violations of the Voting Rights Act. This case is significant because it also could set the stage for Texas to be placed back under preclearance coverage using the "bail in" provisions of section 3 of the Voting Rights Act. If this happens, Texas would once again be required to get certain election-related laws preapproved before putting them into effect — something it has not had to do since the Supreme Court's 2013 decision in *Shelby County v. Holder*.

If the court does rule that there are constitutional limits to partisan gerrymandering, the impact would be significant both in the near and long term. Not only would the rulings result in changes to maps used in the 2020 elections, they, more importantly, would radically change the legal framework in place for the next round of redistricting in 2021.

## Ongoing Redistricting Litigation

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- The Supreme Court also is expected to decide before the end of June whether it will hear North Carolina’s appeal of a lower-court decision striking down that state’s 2016 congressional map as a partisan gerrymander. Most observers expect the high court to set the case for argument in the Supreme Court term that starts October 2. However, the court also could decide the case without oral argument (as requested by the plaintiffs) or send the case back to the trial court for consideration in light of the Supreme Court’s decisions in the Wisconsin and Maryland cases.

### Other Noteworthy Redistricting Cases

- In addition to the Wisconsin, Maryland, and North Carolina partisan gerrymandering cases at the Supreme Court, partisan gerrymandering challenges are in their early stages in federal district court in [Ohio](#), challenging the state’s congressional map, and in [Michigan](#), challenging both congressional and legislative maps. Rulings could be possible this fall in either or both cases.
- In Virginia, a decision could come from a three-judge panel this spring or summer in a [racial gerrymandering challenge](#) to 11 of the state’s house of delegates districts. The panel previously rejected the challenge, but the Supreme Court reversed, ruling that the panel had used the wrong standard in assessing the claims.
- Also in Virginia, on May 31, the state Supreme Court rejected a challenge to the state’s legislative maps under the Virginia Constitution, terminating hopes that the maps would be redrawn in advance of the 2019 state elections.

### Redistricting Reform Efforts

There also is significant momentum toward redistricting reform in the states. As discussed below, voters in four states have succeeded in putting initiatives on their state ballots to reform the redistricting process, either by creating an independent redistricting commission to draw political boundaries or by constraining map drawers. In May (during the primary election), Ohio voters, by a 3-to-1 margin, passed a referendum reforming the redistricting process for congressional seats. Starting in 2021, new congressional maps will require either support of a supermajority in the Ohio Legislature, as well as a minimum level of support from the minority party in each chamber, or compliance with strict new rules, including a prohibition on maps that unduly favor a political party.

## November Ballot Measures That Could Impact Voting Access

November’s election is also remarkable for the sheer number of ballot initiatives that address voting issues — far more such ballot initiatives than in any election in recent memory. Voters in nine states will have the opportunity this year to vote on ballot initiatives to change voting and redistricting processes. Initiatives in Arkansas and Montana would make it more difficult for citizens to vote. Initiatives in Florida, Maryland, and Nevada would substantially expand access to the franchise. And initiatives in Colorado, Michigan, Missouri, and Utah would improve the redistricting process. Voters’ decisions on these ballot measures could have a major impact on voting for years to come. Here is an overview of those measures:

### Initiatives restricting voting access

- In **Arkansas**, voters will decide whether to enshrine a strict voter ID requirement in their state constitution, on top of the voter ID law enacted by the state Legislature last year. The Arkansas Supreme Court struck down the state’s previous strict voter ID law as unconstitutional in 2014.
- In **Montana**, voters will vote on a measure that prevents civic groups and individuals from helping others vote absentee by collecting and delivering their voted ballots. Opponents claim that the measure will create [unnecessary](#) barriers to voting and could impact [student](#) voters in particular.

### Initiatives expanding voting access

- In **Florida**, voters will vote on a citizen-initiated ballot measure to automatically [restore](#) the voting rights of individuals who have been convicted of felonies (other than murder and sexual offenses) when they complete all terms of their sentences. If the referendum passes, it has the potential to transform Florida’s electorate: 1.4 million Floridians would regain their eligibility to vote. Florida’s law currently disenfranchises, by far, the [most people](#) in the country. It is also an outlier in terms of its punitiveness. Florida is currently one of only three states that disenfranchises all people with felony convictions for life. If the Florida law is amended, only Iowa and Kentucky will have lifetime voting bans.
- In **Maryland**, voters will cast their ballot on a proposed constitutional amendment authorizing the Legislature to permit election-day voter registration. Maryland already allows same-day registration during its early voting period. This would make Maryland

the 19th state (plus the District of Columbia) to enact election-day registration, according to the National Conference of State **Legislatures**. Experts believe that this reform increases turnout by 5 to 7 **percent**.

- In **Nevada**, voters will **weigh in** on whether to adopt automatic voter registration. This reform could be particularly transformative in a state that has a history of scandals over voter registration drives as well as one of the lowest voter registration **rates** in the nation. AVR was first put before the state Legislature by a citizen-initiated **petition** supported by tens of thousands of **Nevadans**. The bill was passed by the state Legislature with substantial bipartisan support. Nevertheless, Gov. Brian Sandoval vetoed it, setting up this year's ballot initiative. If enacted, AVR could help to get many of the more than 770,000 eligible citizens who are not registered onto the rolls.
- In **Michigan**, a coalition is collecting signatures to put a constitutional amendment on the ballot that would include a variety of pro-voter reforms, including AVR at the secretary of state's office, election-day registration, and no-excuse absentee voting, as well as requiring post-election audits. This suite of reforms could transform voting in Michigan, improving the way people register and vote and how their votes are counted.

### Initiatives improving redistricting

- In **Colorado**, two amendments on the ballot this November would put a 12-member commission in charge of drawing the state's congressional and legislative districts. (Congressional districts are currently drawn by the state Legislature and legislative districts are drawn by a commission of political appointees.) The commission would have an equal number of Democrats, Republicans, and unaffiliated members. A majority of eight commission members, including at least two unaffiliated members, would be required to approve a map. The commission would be required to hold at least three public hearings in each congressional district before approving a redistricting map. The proposals also establish new substantially stronger criteria for map drawing, including provisions barring partisan gerrymandering and rules favoring competitive districts. If adopted, the amendments would guarantee unaffiliated voters a role in the redistricting process for the first time.
- In **Michigan**, a grassroots ballot initiative that began with a single Facebook post in November 2016 would create a 13-member citizens' redistricting com-

mission, consisting of four Democrats, four Republicans, and five members not affiliated with a major party, to draw both the state's congressional and legislative boundaries. (Both congressional and legislative districts are currently drawn by the state Legislature.) A majority vote of the commission would be required to approve a plan, which must include at least two commissioners affiliated with each major political party, and two commissioners affiliated with neither party. Any map approved by the commission would be subject to new rules, including a requirement that the map not unduly favor a political party as determined by accepted measures of partisan fairness.

- In **Missouri**, a citizen-proposed constitutional amendment will be on the 2018 ballot that would give a nonpartisan state demographer primary responsibility for drawing state legislative lines for consideration by the state's existing legislative apportionment commissions (one for the state House and one for the state Senate). Although the legislative apportionment commissions can modify the demographer's maps, any changes will require a supermajority of the commission. If voters approve the measure, Missouri would be one of the first states in the nation to require that proposed maps be tested using a specific statistical measure of partisan fairness.
- In **Utah**, voters will weigh in this November on a citizen-led ballot initiative that would create a seven-member advisory redistricting commission to propose redistricting plans for consideration by Utah lawmakers, starting in 2021. (Congressional and legislative districts are currently drawn by the state Legislature.) The commissioners, who would be appointed by the governor and legislative leaders, would be required to follow ranked-order criteria to draw the state's congressional and legislative districts, which would include preserving local communities of interest and traditional neighborhoods. The proposal also would prohibit the commission and the Legislature from considering partisan political data unless necessary to comply with other redistricting criteria. To ensure that maps are not gerrymandered, the amendment requires map drawers to use best available scientific and statistical methods, including measures of partisan bias, to test maps. Uniquely among states that use advisory commissions, the Utah amendment would require the Legislature to issue a written report if it rejects a commission-drawn map. The report would have to explain both why the Legislature rejected the commission's proposed map and why the map adopted by the Legislature better satisfies the amendment's map-drawing criteria.

## Appendix: Voting Litigation Scorecard

Here is a summary of the outcomes of major lawsuits challenging new voting restrictions over the past decade. They are mostly federal cases, except where otherwise indicated:

### LITIGATION VICTORIES

State	Year of Key Ruling	Law Blocked/Mitigated	Outcome
<a href="#">Alabama, Georgia, Kansas</a>	2016	Documentary proof of citizenship for registration	Blocked for use on federal voter registration form.
<a href="#">Georgia</a>	2016	“No match, no vote” purge practice	State agreed to suspend the practice before a hearing was held. New “no match, no vote” bill subsequently enacted in 2017.
<b>Kansas</b>	2014, 2016	Documentary proof of citizenship for registration	Documentation requirement for the <a href="#">DMV voter registration form</a> , the <a href="#">state voter registration form</a> (challenged in state court), and the <a href="#">federal registration form</a> all blocked.
<a href="#">North Carolina</a>	2016	Single legislative package of restrictions: strict voter ID; cutbacks to early voting; elimination of same-day registration, preregistration, and out-of-precinct voting	Struck down
<b>Texas</b>	2012, 2016	Strict voter ID	Struck down, both <a href="#">before</a> and <a href="#">after</a> the <i>Shelby</i> ruling. Legislature subsequently passed an amended voter ID law in 2017.
<a href="#">Wisconsin</a>	2016	Strict voter ID; early voting, residency, absentee ballot distribution, and student voting restrictions	Process for obtaining free voter ID modified and restrictions on use of certain types of ID struck down. Other challenged restrictions struck down.
<b>Arizona</b>	2013, 2014	Documentary proof of citizenship for registration	Blocked for <a href="#">state</a> and <a href="#">federal</a> voter registration form
<a href="#">Arkansas</a>	2014	Voter ID	Struck down by state court. New voter ID law subsequently enacted in 2017.
<a href="#">Pennsylvania</a>	2014	Strict voter ID	Struck down by state court
<b>Florida</b>	2006, 2007, 2008, 2012	Cutbacks to early voting; restrictions on voter registration drives; restrictions on processing voter registration forms	Cutbacks to <a href="#">early voting</a> struck down in part. Restrictions on <a href="#">registration drives</a> and <a href="#">form processing</a> blocked.
<a href="#">South Carolina</a>	2012	Voter ID	Blocked for 2012 election, and most harmful effects mitigated for future elections
<a href="#">Georgia</a>	2005, 2006	Strict voter ID	Blocked for 2006 elections by <a href="#">state</a> and <a href="#">federal</a> courts, but an amended version of the law was subsequently upheld
<a href="#">Missouri</a>	2006	Strict voter ID	Struck down by state court
<a href="#">Ohio</a>	2006	Documentary proof of citizenship for naturalized citizens at the polls	Struck down

## UNSUCCESSFUL LITIGATION

State	Year of Key Ruling	Law Challenged
<a href="#">Ohio</a>	2016	Cutbacks to early voting
<a href="#">Ohio</a>	2016	Hurdles to counting provisional and absentee ballots
<a href="#">Virginia</a>	2016	Strict voter ID
<a href="#">Tennessee</a>	2015	Strict voter ID
<a href="#">Wisconsin</a>	2014	Strict voter ID (challenged in both <a href="#">state</a> and <a href="#">federal</a> court)
<a href="#">Texas</a>	2012	Third-party voter registration restrictions
<a href="#">Indiana</a>	2008, 2010	Strict voter ID (challenged in both <a href="#">state</a> and <a href="#">federal</a> court)

Voters have also been successful in challenging state administrative decisions. A pair of lawsuits brought in 2016 [successfully challenged](#) election officials' decision to reduce the number of polling sites in Maricopa County, Arizona. And in 2013, a state court in Colorado [rejected](#) the secretary of state's incorrect interpretation of the state's vote-by-mail statute, which would have obstructed thousands of Coloradans from voting.