



BRENNAN
CENTER
FOR JUSTICE
 NYU | LAW

2023

**The Brennan Center
for Justice works to
build an America that
is democratic, just,
and free — for all.**

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Illustration: Dan Bejar

LETTER FROM THE BOARD

Dear Friends,

This year will be a pivotal one for our democracy, and the Brennan Center for Justice at NYU School of Law will be a central player fighting for fair elections, freedom, and the rule of law.

The Brennan Center is now nearly three decades old. The clerks and family of Justice William J. Brennan Jr. founded it as a living memorial to his ideals. It has evolved and grown into a national force. Part think tank, part advocacy group, part communications hub, the Brennan Center is rigorous and nonpartisan. As you'll see in the pages of this report, it has deployed all those skill sets in the past year to arm policymakers, activists, and voters with the information they need to protect our elections in 2024 and beyond.

The Brennan Center approaches this moment with unprecedented strength. It is now twice the size it was in the last presidential election year. It has a 2024 budget of \$52 million, dedicated reserves to ensure long-term stability, and more than 40,000 generous supporters. Our staff of 160 attorneys, social scientists, writers, and others is unparalleled in the democracy movement. Our newsletters have 350,000 subscribers. Social media campaigns earned 23 million impressions in 2023, and 3.7 million people visited our website.

Last year was a year of achievement for the Brennan Center. We led a campaign to discredit and defeat the disastrous independent state legislature theory at the Supreme Court. We launched a multimedia campaign to establish term limits for Supreme Court justices. We published a field-leading analysis about how to incorporate the best of artificial intelligence in election administration while minimizing its threats. Our scholarship

launched a movement to ban guns from polling places. And we convened a blue-ribbon panel of historians to critique the Supreme Court's misuse of history in interpreting the Constitution.

We are both longtime members of the Brennan Center's Board of Directors. We are proud to step into our new roles as co-chairs of this extraordinary organization as it plays its ever more important role in the life of our nation. The Brennan Center receives no funds from governments or from NYU. It relies entirely on the support of committed citizens who care about defending democracy and justice. Your partnership is critical this year. Thank you for your support of the Brennan Center and your commitment to American democracy.

Kimberley D. Harris
Co-chair,
Board of Directors

Christine A. Varney
Co-chair,
Board of Directors



The Democracy Movement to Come

We are in a great fight for the future of American democracy. Nothing less. For years election deniers have mobilized a grievance-fueled backlash that aims to undermine American institutions.

Now there is a stirring response: a democracy movement, wide and diverse and deep, rallying citizens across party lines in defense of first principles. Today, for the first time in memory, the fight for American democracy is a central public issue. How can we turn alarm into action?

In 2023, the Brennan Center for Justice stood as the nation's leading, largest, and longest-standing nonpartisan hub for democracy. This Annual Report shares some of our work: A broad effort to discredit and defeat the election deniers' constitutional theory. A major book, *The Supermajority*, mapping a response to the Supreme Court's extremism. New work from historians and social scientists. We are now a vital national force with a large and growing audience.

To bolster our organization, we have been joined by Melissa Estok as our new executive director. She comes to the Brennan Center after a long career in the private and nonprofit sectors, including a decade as a principal at Albright Stonebridge and years promoting democracy around the world. She brings vision and leadership to the management of our growing staff.

And we are strengthening our capacity for research and analysis. Kareem Crayton, a political scientist and law professor, joined us as senior director for voting and representation, and Ben Nyblade signed on as research director, a new organization-wide position that works with the 11 social scientists now on our staff.

With this momentum, we will play our critical role in 2024 and beyond.

- *The fight for free and fair elections.* We will help lead the drive to deter election subversion, work with election officials across the country to fight disinformation, and document discriminatory voting rules that have led to a widening gap between the participation rates of white voters and voters of color.
- *A broad response to the federal courts.* We will press our proposal for an 18-year term limit for Supreme Court justices: nobody should have too much public power for too long. We have enlisted historians to debunk the misuse of history. Our *State Court Report* website highlights state constitutions as a bulwark for freedom. A new project on the future of the Constitution will articulate a vision of a charter for a democratic, changing country.
- *New work on technology.* Our experts are leading a national conversation about how technology, especially generative artificial intelligence, poses risks to democracy and freedom.
- *Amid public panic over crime, fighting fear with facts.* Our team of current and former law enforcement officials will relentlessly make clear that public safety and fairness go together.
- *Winning in the court of public opinion.* We will use our cutting-edge communications capacity to amplify our work and reach new audiences.

Yes, 2024 is an intense and consequential year. How can we prepare for 2025?

We must be ready to advance bold reform. If there is a chance to enact the Freedom to Vote Act — the landmark proposal that rests heavily on the Brennan Center's work — and the John R. Lewis Voting Rights Advancement Act, we will help lead a drive for action. At the same time, we will work to broaden our reach in state capitols, where so much policymaking takes place, for ill or for good.

We must also prepare for the possibility of an authoritarian in the Oval Office. Donald Trump has pledged to invoke the Insurrection Act and to use emergency powers to deport hundreds of thousands of people, to weaponize the Justice Department against his foes, and to fire tens of thousands of civil servants and replace them with loyalists. All who care about the Constitution must get ready. To help plan our response, the esteemed journalist Barton Gellman, a three-time Pulitzer Prize winner, left the *Atlantic* to join the Brennan Center as senior adviser.

Above all, the Brennan Center is committed to serving as a hub for policy innovation — to crafting the next wave of reform ideas that can fuel future movements for change. American democracy cannot be revived with old slogans and shopworn strategies. At a time when the country feels like it may splinter between angry voices of left and right, we will speak for the nation's enduring ideals. For the vital center. For the democracy movement to come.

We are grateful to all our supporters for making this vital work possible. If we all do our part, we can make this time of crisis a time of renewal for our democracy and the country we love.

“We are in a great fight for the future of American democracy. Nothing less.”



Michael Waldman

Michael Waldman
President and CEO

American democracy faces pressures it has not faced in decades, if ever.

We are confronting a powerful, coordinated plan to tilt elections, target voters of color, and subvert results. This year will test the strength of our election system.

The Brennan Center has a strategy to protect free and fair elections in 2024 and beyond — to prevent election subversion, support election officials, and fight voter suppression. Our efforts are concentrated in battleground states, such as Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Texas, where we have deep ties and demonstrated effectiveness.

Free & Fair Elections



PREVENTING ELECTION SUBVERSION

Election deniers largely failed to take over election administration in 2022. But they have not stopped their efforts to undermine democracy. They continue to press outlandish theories that aim to sow doubt and erode confidence in elections. One of the most dangerous: in 2023, they asked the Supreme Court to rule that the Constitution gives state legislatures the power to set federal election rules, with no checks and balances from state constitutions, state courts, governors, or voters.

The Brennan Center organized a multiyear campaign to block this “independent state legislature theory.” We began with comprehensive scholarship on the obscure constitutional clause at issue. We convened historians

and law professors in public and private sessions. We then conducted extensive opinion research, using focus groups and polling to assess public attitudes. The research found that citizens oppose the theory as a violation of checks and balances, a core constitutional value.

Then we coordinated dozens of friend-of-the-court briefs before the Court. The justices heard from top historians, state supreme court justices, election officials of both parties, and leading conservatives, including George W. Bush’s lawyer in *Bush v. Gore* and the co-founder of the Federalist Society. We waged a sweeping public communications campaign that featured videos and paid advertising.

By the time of the ruling, 65 percent of media stories on the topic mentioned the Brennan Center or cited our work.

A year before *Moore v. Harper* was heard, it seemed that a clear win for democracy was unlikely. But in June 2023, a 6–3 majority, led by Chief Justice John Roberts, rejected the theory.

Building on this success, the Brennan Center is working to shore up safeguards against election subversion in 2024. Our agenda lays out five steps that every state should take to prevent sabotage efforts. And we co-chair the Election Subversion Working Group, through which top voting rights and civil rights experts from around the country are preparing for lawsuits to require the certification of election results.

Illustration: Lincoln Agnew

ELECTION OFFICIALS AND LAW ENFORCEMENT PREPARE FOR '24

Election officials are under siege. Increasingly, they face abuse and threats of violence as they perform the vital work of election administration. Many veteran officials and poll workers have left their jobs as a result: according to the Brennan Center’s 2023 survey, approximately one in five local election officials will serve in their first presidential election in 2024. To mitigate this disturbing trend, our experts — including three former secretaries of state and a top Virginia election official — crisscross the country, preparing state and local officials for the most high-stakes election in memory.

The Brennan Center also partners with the Committee for Safe and Secure Elections (CSSE), a cross-partisan network that brings together election officials and members of law enforcement to safeguard election workers and voters from threats, intimidation, and violence. And we have organized crisis response drills and trainings that simulate various threats to election officials and law enforcement in states across the country, from California to Wisconsin to Maine. Training scenarios have included election officials being “swatted” (having police sent to their homes in response to fake emergencies) and receiving mail that contains a suspicious substance.

Ensuring that those serving on the front lines of our elections are safe and secure remains a top Brennan Center priority. As Arizona Secretary of State Adrian Fontes wrote about the crisis response drills in a December 2023 op-ed, “Voters should know that their election officials, despite many being new to the job, are receiving some of the most intensive and cutting-edge training anywhere in the country.”

One in five local election officials will serve in their first presidential election in 2024.



^ Leah Tulin (center) heading into the Texas courthouse with Patrick Berry (left) and Charles Gehrnich of Weil.

FIGHTING VOTER SUPPRESSION IN TEXAS

In 2021's torrent of anti-voter legislation, one law stands out from the rest: Texas's Senate Bill 1 (S.B. 1). The omnibus voter suppression law — one of the most sweeping enacted since 2020 — contains a litany of restrictive voting provisions establishing new hurdles in a state that already made voting difficult.

In *LUPE v. State of Texas*, the Brennan Center and the Mexican American Legal Defense and Educational Fund are challenging the law on behalf of election officials and voters. The lawsuit alleges that S.B. 1 violates the Voting Rights Act, hinders voting assistance for non-English speakers and people with disabilities, and intentionally discriminates against Black and Latino voters.

Last fall, a team of Brennan Center attorneys led by Democracy Program Senior Counsel Leah Tulin put election officials, poll workers, and voters on the stand during trial. Their testimony exposed S.B. 1's damaging repercussions during Texas's 2022 elections, the first with the law in effect. New civil and criminal penalties imposed by S.B. 1 intimidated veteran election workers; one told the court, "I can't in good faith suggest to people that they should go be a poll worker and fulfill the civic duty that they have been doing." For voters, a single ID provision triggered thou-

sands of mail ballot rejections and disenfranchised large numbers of Latino, Asian, and Black voters. The law also contributed to poll worker shortages and overall public distrust in election outcomes.

In the face of such a clear attempt to keep certain Texans from voting, the fight against our country's worst impulses is far from over.

NEW YORK STATE SMALL DONOR PUBLIC FINANCING PROGRAM

Big money unleashed by *Citizens United v. FEC* (2010) and other misguided court rulings has swamped American politics. Campaign funding is now essentially deregulated. In response, the Brennan Center has led the initiative to devise a countermeasure: small donor public financing. In 2024, New York State will implement the nation's most robust response to *Citizens United* in the form of its new Public Campaign Finance Program. In 2022, before public financing was available, the 200 biggest individual donors outgave all 206,000 small donors combined.

Public financing will shift that imbalance. Now, when constituents give \$5–\$250 to candidates who choose to use public financing, their donations can be matched with public funds. In legislative elections, donations from district residents are matched on a sliding scale, with the smallest amounts matched at the highest ratio of \$12-to-\$1. Had public financing been available in 2022, the financial power of small donors could have increased sixfold, from 11 percent of all donations to as much as 67 percent.

New York State will implement the nation's most robust response to *Citizens United* in the form of its new Public Campaign Finance Program.

GUNS AND VOTING

Firearms do not belong at polling places, yet most states lack basic gun violence protections for voters and election workers. In September 2023, the Brennan Center partnered with the Giffords Law Center to Prevent Gun Violence on a report analyzing the increased risk of gun violence in American elections. Remarkably, the report found that only 12 states and Washington, DC, prohibit both open and concealed carry of firearms at poll sites.

The current heated political climate demands action. Significant gun deregulation, heightened political polarization, and more frequent gun violence make elections increasingly vulnerable. Stricter regulation is constitutionally permissible, even under the current Supreme Court's extreme reading of the Second Amendment. In 2022, when the Court formulated an unprecedented and overbroad interpretation of constitutional gun protections, it still conceded that there

are "sensitive places" where firearms can be prohibited — which means that banning guns where votes are cast is entirely constitutional. Doing so is also popular: the majority of Americans support gun prohibitions at polling places.

Since the report's publication, New Mexico enacted a ban on open carry near polling places and drop boxes. Similar legislation, along with a ban on guns in locations where ballots are counted, has passed both houses of the Michigan legislature. Other states should follow suit.

To keep elections peaceful and to safeguard against efforts to undermine U.S. democracy, state legislatures must strengthen anti-intimidation laws to protect voters and election workers, and they must ban guns where voting and other election activities take place. ■

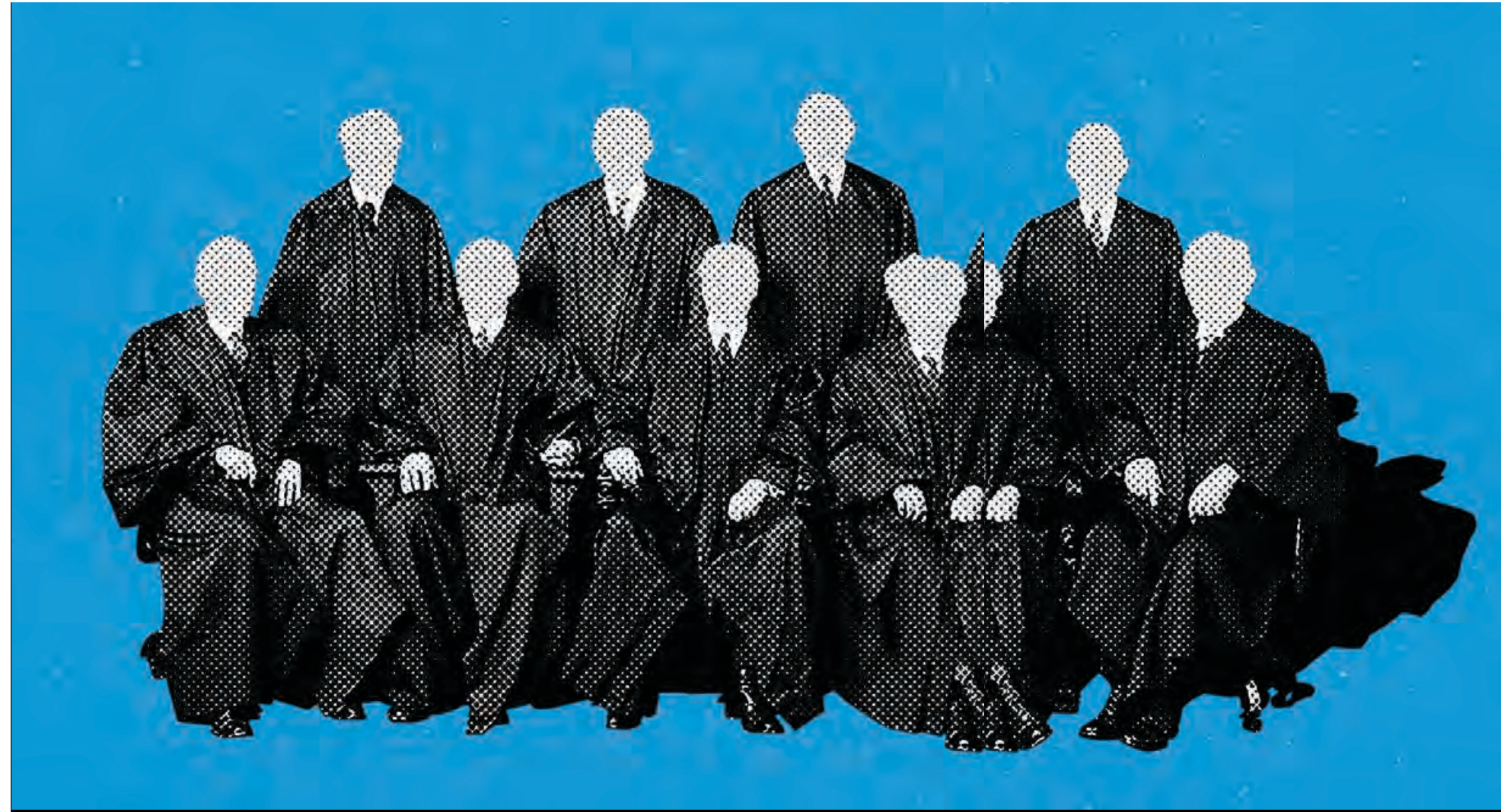
Only 12 states and Washington, DC, prohibit both open and concealed carry of firearms at poll sites.



Photo: Bria Woods; Illustration: Dan Bejar

FREE & FAIR ELECTIONS

Responsible Courts



SUPREME COURT REFORM

Federal courts have long played a critical role in the pursuit of justice, protection of rights, and defense of the Constitution. Yet today the U.S. Supreme Court is extreme, reactionary, and partisan — too often closed to advancing equality under the law.

The Court is dominated by six activist conservatives with lifetime tenure. The justices have withdrawn the constitutional right to abortion, struck down gun safety laws based on an unprecedented reading of the Second Amendment, and undermined the government’s ability to fight climate change. And there’s more to come. They have embraced an “originalism” that would bind the Constitution to the views of

property-owning white men from the 1700s — an odd way to run a modern, growing, diverse country.

In 2023, the Brennan Center launched an organization-wide strategic initiative to challenge the Supreme Court’s extremism. We are pursuing parallel and reinforcing strategies federally, in states, and in the court of public opinion. In June, Alicia Bannon and Michael Milov-Cordoba published a cogent report making the case for imposing 18-year term limits on Supreme Court justices.

The rationale: nobody should have too much public power for too long. Term limits would increase the Court’s link to the public.

They would bring the high court in line with all but one state supreme court as well as the constitutional courts of other countries, none of whose members have lifetime appointments.

Along with term limits would come a schedule of regular appointments, which would help drain toxicity from the confirmation process by giving the president a nomination every two years. Nominations would matter less. Once, nominees routinely won overwhelming votes of approval in the Senate. Today, only Chief Justice John Roberts won a majority of votes from senators not in the nominating president’s political party.

Illustration: Brand New School

“The Supreme Court has a staggering amount of power, and no individual justice should be able to hold sway over American law for a generation or more.”

Alicia Bannon
Director, Judiciary

Term limits can be imposed by statute, the Brennan Center argues. After 18 years, justices would assume senior status, hearing cases in lower federal courts and returning to the Supreme Court when required due to absences or recusals, lessening the possibility of deadlock in important cases.

“The Supreme Court has a staggering amount of power, and no individual justice should be able to hold sway over American law for a generation or more,” said Bannon. “Term limits would deepen the democratic link between the Supreme Court and the American public while still preserving judicial independence.”

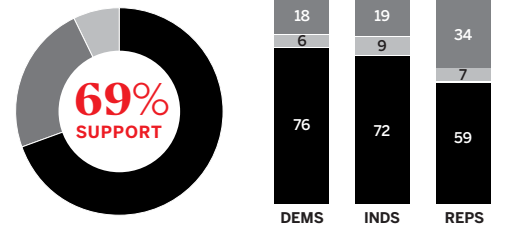
Some modern justices have stayed for nine presidential terms, allowing appointing presidents to project power over national policy far beyond their own time in office. One political party (Democratic) has won the popular vote in seven of the last eight presidential elections, the longest such winning streak in history. The other party (Republican) has appointed six of today’s nine justices.

MESSAGING RESEARCH RESULTS

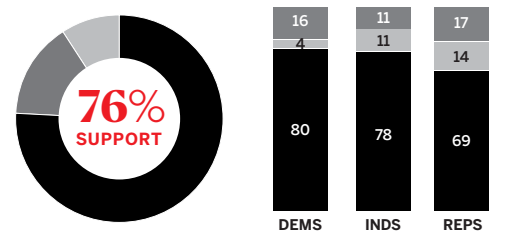
Term limits are broadly popular across party lines. That’s the finding of a cutting-edge opinion polling project that the Brennan Center undertook in partnership with Benenson Strategy Group. >>>

RESPONSIBLE COURTS

TERM LIMITS



CODE OF ETHICS



Overall, 69 percent of respondents supported term limits for Supreme Court justices, including 72 percent of independents and 59 percent of Republicans. Respondents recognized that a lifetime appointment to the Court confers far too much power on a single individual.

We developed a suite of advertisements advocating for Supreme Court term limits. The physical signage racked up more than 4 million views around DC.

Term limits are broadly popular across party lines.

Building on these findings, the Brennan Center launched a messaging campaign, its most sophisticated ever. Working with the creative agency Brand New School, we developed a suite of advertisements that blanketed the internet and key locations in Washington, DC. The campaign featured a stirring video reminding voters of the Court’s unparalleled power and how that power has been abused. Static advertisements, which appeared both online and in physical locations like bus shelters, employed everyday objects such as candles and milk cartons to emphasize that few things can (or should) last forever.

At the time of this writing, the video has earned more than 2 million views in both English and Spanish. The advertisements that were placed around DC have racked up more than 4 million views.



STATE COURT REPORT

State courts are an independent, under-appreciated bulwark to protect rights, equality, and democracy. An example: every state constitution but one includes a stronger explicit protection for voting rights than does the U.S. Constitution. As federal courts veer sharply to the right, state courts have stepped up with landmark decisions on issues ranging from abortion rights to partisan gerrymandering.

In September, the Brennan Center launched *State Court Report*, the first website dedicated to covering state constitutional cases and developments in high courts nationwide. The site features contributions from top academics, journalists, judges, and practitioners. They offer insight and commentary on notable cases, cutting-edge scholarship, and legal trends across more than a dozen issue areas. A case database tracks significant matters to watch in state high courts, and the *State Court Report* newsletter reaches 16,000 subscribers.

As part of *State Court Report’s* mission to foster awareness, understanding, and informed dialogue about state courts and constitutions, it has also produced events that explore the critical role that state judiciaries now play in the field of reproductive rights and the future of state constitutionalism. Working with an advisory board of prominent academics, journalists, and retired chief justices, *State Court Report* plans to expand its content in the year ahead while continuing to support and participate in symposia, conferences, educational training, panels, and other events aimed at promoting this essential but often underappreciated area of law.

SUPERMAJORITY TOUR

In June, Simon & Schuster published Michael Waldman’s book *The Supermajority: How the Supreme Court Divided America*, which traces how six highly conservative justices, moving largely in lockstep, transformed the Court. In June 2022, the Court overturned *Roe v. Wade*,



issued the most extreme Second Amendment opinion ever, and began to curb the power of regulatory agencies to protect the environment and public health. “The Court crammed decades of social change into three days,” Waldman wrote. He described other times in history when the Court was unduly activist or partisan, leading to a fierce response: “This regular cycle of overreach and backlash has shaped American history.”

The *Guardian* called the book “a terrific if chilling account of how conservatives hijacked US democracy. . . . Written with the verve of great campaign oratory.” In the *New York Review of Books*, Laurence Tribe wrote, “Waldman’s book devastatingly demonstrates that . . . the current Court has made clear that even the judiciary’s legitimacy as the law’s highest expositor cannot be presumed.” *The Supermajority* was launched with Waldman’s appearance on ABC’s *Good Morning America*, NPR’s *Fresh Air*, and MSNBC’s *Morning Joe*, among other venues, including podcasts such as *Armchair Expert*.

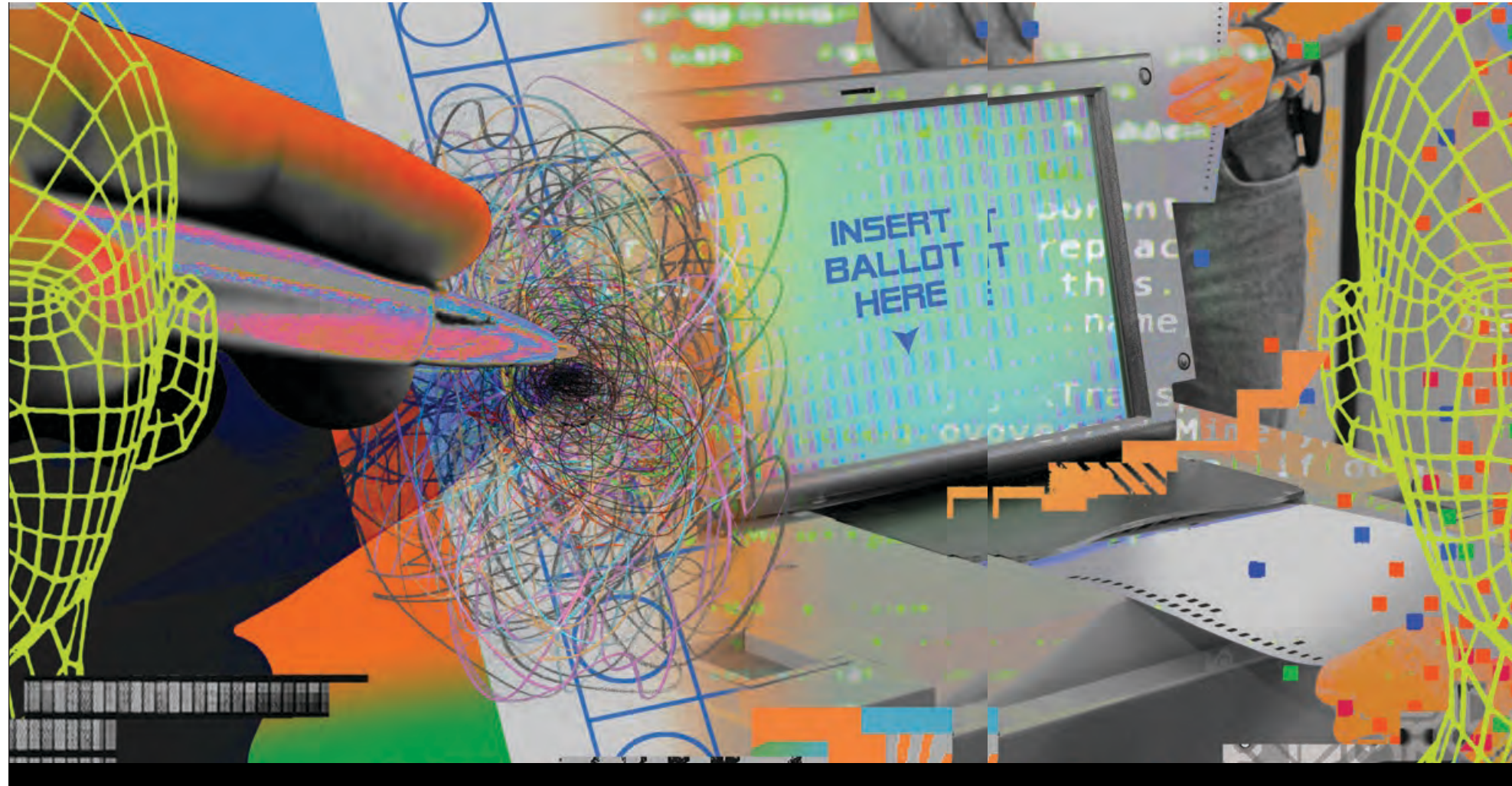
The Brennan Center organized a multi-month promotional tour that brought its work and argument for court reform to audiences around the country. In-person events took place in New York City; Washington, DC; Seattle; Cleveland; Boston; San Francisco; Madison, Wisconsin; and many more cities across the country. The tour also included conversations at larger gatherings, including the Texas Tribune Festival in Austin and the Chautauqua Forum on Democracy in western New York State.

“We believe books are a powerful way to inject arguments into the public debate,” Waldman said. ■

^ Michael Waldman (left) with George Stephanopoulos on ABC’s *Good Morning America*.

Photo: Kent Nishimura (left)

Grappling with Tech



SAFEGUARDING ELECTIONS FROM AI THREATS

The launch of ChatGPT created a sensation. Every sector of society has had to grapple with the rapid adoption of artificial intelligence. Will AI be a breakthrough akin to Gutenberg's printing press? Or is it a threat that we must contain? The Brennan Center focuses on one immediate concern: how AI can affect elections. This will, after all, be the first presidential election of the generative AI era.

"We realized that rapid advances in AI were poised to transform American democracy," said Lawrence Norden, senior director of the Brennan Center's Elections and Government Program. "We want to give election officials and policymakers tools to minimize the dangers and harness the benefits."

To learn about the threats that AI could pose and how to guard against them, the Brennan Center partnered with top experts at Georgetown University's Center for Security and Emerging Technology. The AI and Democracy essay series that premiered in October 2023 detailed our findings. Authors looked at election security and administration, public input into policy decisions, political advertising and fundraising, election misinformation, and the freedom to vote, among other topics.

One big worry: generative AI can distort reality. Deepfake images, audio, and videos have been used to deceive the public about the statements and actions of political leaders. The Slovakian presidential election may have been turned by a fake audio recording. Such technologically enhanced fraudulent content is especially dangerous as elections approach.

Illustration: Chris Burnett

Yet for all the buzz about AI, many risks are not new. They are old concerns now supercharged by this evolving technology. Cyberattacks were a worry, but AI can make them faster, stealthier, and more destructive. It can impersonate authoritative sources to make lies more believable. It can be used to challenge voters' eligibility on a massive scale.

One of the answers is to double down on long-recommended election security best practices. Legislative reforms aimed at preventing deceptive practices and voter intimidation would also help blunt AI's worst impact.

At the same time, AI itself could be deployed to fortify the electoral system. It could strengthen defenses against cyberattacks, make routine election administration tasks more efficient, and more. Much can be gained if election offices and policymakers implement guardrails.

As Brennan Center counsel Mekela Panditharatne noted, "The essay series highlights the threats, but it ultimately focuses on how to move forward. Innovation isn't only the domain of tech titans — our system of elections must evolve in tandem with developments in the broader national context." But long-term solutions aside, our focus in the short term is ensuring that the first presidential election of the generative AI era is free and fair.

In the coming months, the Brennan Center will publish resources and conduct tabletop exercises with election officials to share recommendations for confronting AI threats. Equally vital is the fight against false election information, including AI-generated deepfakes. Working alongside experts nationwide, the Brennan Center will track misinformation, rebut the most damaging rumors and AI-generated deepfakes and falsehoods with accurate data about how elections work, document the facts, and test the best ways of communicating those facts so that election officials and others are prepared to debunk damaging lies and give voters accurate information. All of this will be published in monthly reports on our website and shared in regular meetings of election officials representing major metropolitan areas collectively serving more than 100 million registered voters.

SECTION 702

Section 702 of the Foreign Intelligence Surveillance Act allows the government to spy on foreign nationals outside the United States without a warrant. But this surveillance inevitably sweeps in Americans' phone calls, texts, and emails, and federal agencies routinely run warrantless searches on these communications, effectively sidestepping the Constitution. The law will expire on April 19 unless reauthorized. The Brennan Center is urging Congress not to reauthorize Section 702 without adding strong privacy protections for Americans. "The Fourth Amendment demands no less," said Noah Chauvin, counsel in the Brennan Center's Liberty and National Security Program. ■

Criminal Justice Reform



AMPLIFYING LAW ENFORCEMENT SUPPORT FOR JUSTICE REFORM

More than 60 percent of Americans described the crime problem in the United States as either extremely serious or very serious at the end of 2023 — the highest percentage since Gallup began tracking in 2000.

While most categories of crime are decreasing, Americans' perceptions mean that public safety will be a high-priority issue in 2024 political campaigns. Unfortunately, demagogues too often characterize criminal justice reform as part of the problem rather than an integral part of keeping the public safe.

Centering reform in public safety discussions is a focus of Law Enforcement Leaders to Reduce Crime and Incarceration, a bipartisan

coalition of approximately 200 current and former police chiefs, sheriffs, prosecutors, and correctional officials. The group advocates for a smaller and fairer justice system and educates the public on the need for systemic change. Launched in 2015 as a project of the Brennan Center, Law Enforcement Leaders is dedicated to supporting practical, tested policies that reduce incarceration without jeopardizing public safety.

Members hail from around the nation, like executive director Ronal Serpas, a former police chief in Nashville, Tennessee, and New Orleans, Louisiana; John Choi, the county attorney in Ramsey County, Minnesota; Paul Fitzgerald, the sheriff in Story County, Iowa;

and Brett Tolman, a former U.S. attorney for the District of Utah. The group's priorities include promoting alternatives to arrest such as diversion and treatment, reducing excessive sentences, facilitating reentry for people leaving prison, and rebuilding trust between law enforcement and communities.

Rosemary Nidiry, formerly an assistant U.S. attorney in the Southern District of New York and deputy director of a nonprofit focused on prosecutorial reform, joined the Brennan Center as senior counsel in the Justice Program last year. Her intention was to bring a renewed focus to the mission of Law Enforcement Leaders at a time when many fear that the criminal justice reform

Illustration: Adria Fruitós

“It is so important, especially when people are concerned about crime rising and the issue is becoming polarizing, to bring the law enforcement perspective on why justice reform is important for public safety.”

Rosemary Nidiry
Senior Counsel, Justice

movement is losing momentum. The 2024 election cycle will offer ample opportunity to remind candidates that criminal justice reform has been and should remain a bipartisan issue, she said.

“It is so important, especially when people are concerned about crime rising and the issue is becoming polarizing, to bring the law enforcement perspective on why justice reform is important for public safety,” Nidiry said, adding that law enforcement experience gives members unique credibility when discussing the problems with our justice system and what keeps us safe.

In 2023, Law Enforcement Leaders published quarterly newsletters highlighting members' innovations, including implementing alternatives to police response for mental health calls, transforming law enforcement training, and improving opportunities for incarcerated individuals. The group also launched a webinar series that brought national experts together with members for discussions. Speakers included a prominent crime data analyst demystifying trends in crime and violence and group member and former New York City probation commissioner Vincent Schiraldi in conversation with an expert on mass incarceration about possible reforms to probation and parole. >>>

Law Enforcement Leaders has been influential at both the state and national levels. Nidiry and Brendan Cox, a member who previously served as police chief of Albany, New York, coauthored an op-ed in the *New York Daily News* in June urging passage of New York's historic Clean Slate Act, which will seal many conviction records after a certain amount of time. The bill, the authors said, would facilitate employment and aid successful reentry after incarceration. Lawmakers cited the op-ed on the floor of the state legislature as proof that law enforcement supported the bill. The bill passed shortly thereafter and was later signed into law.

To highlight the power of bipartisan cooperation, at the end of 2023, Law Enforcement Leaders organized a congressional briefing to mark the five-year anniversary of the First Step Act, a law that cut unnecessarily long federal sentences and improved federal prison conditions. Two members joined other advocates and experts to discuss how this landmark bipartisan legislation has made us safer.

In 2024, Law Enforcement Leaders will continue these avenues of outreach and work with groups across the political spectrum to determine how the coalition can be more impactful in efforts to promote criminal justice reforms.

When public safety is under the campaign spotlight in 2024, Nidiry and Law Enforcement Leaders will be at the ready to help Americans understand that criminal justice reform is central to improving community safety and fairness. Nidiry also hopes the end of 2024 will bring opportunities to support newly elected lawmakers in fulfilling the ultimate goal: enacting bipartisan criminal justice reforms.

THE PUBLIC SAFETY AND PRISON REDUCTION ACT

The administration of criminal justice is overwhelmingly a state matter, yet federal policy has played an outsize role in the explosive growth of the number of Americans behind bars. Billions of dollars in grants that

The Public Safety and Prison Reduction Act calls for Congress to appropriate \$1 billion to entice states to reduce prison populations by 20 percent or more while maintaining public safety.

Washington has doled out since the late 1960s to state and local law enforcement agencies have spurred them to imprison more people and impose longer sentences.

An innovative Brennan Center policy proposal seeks to use that very tool to roll back mass incarceration. The Public Safety and Prison Reduction Act calls for Congress to appropriate \$1 billion to entice states to reduce prison populations by 20 percent or more while maintaining public safety. At full force, it would return incarceration levels to those not seen since the early 1990s.

The model bill builds on the Reverse Mass Incarceration Act, crafted by the Brennan Center in 2015 and subsequently introduced in Congress. After the racial justice protests of 2020 reinvigorated calls for reform, the Justice Program's Hernandez Stroud, Lauren-Brooke Eisen, and Ram Subramanian refined the proposal, consulting with stakeholders ranging from White House officials to formerly incarcerated people.

States would receive up to \$40 million to spend on any of 21 policies related to sentencing and recidivism reduction, tailoring their approach in consultation with officials and community members. Twenty percent of funds would be allocated to local nonprofits, which play a critical role in maintaining public safety but have been excluded from previous federal programs. States that achieve 20 percent reductions within three years would receive additional funds to make further progress.

Sen. Cory Booker and Rep. Tony Cárdenas introduced a bill modeled on the proposal (S. 1352/H.R. 2931) in April 2023.

THE CLEAN SLATE ACT

In 2023, New York State enacted the Clean Slate Act, a victory for racial and economic justice. It joined 11 other states that passed similar legislation aimed at improving opportunities for people with criminal convictions. The law automatically seals most criminal records for those who have not committed a new offense after a set waiting period (three years for misdemeanors and eight for felonies).

According to Brennan Center research, a criminal record causes significant economic hardship, especially for those who are poor or Black. It can lead to people being passed over for work or even housing and prevent them from obtaining professional licenses, gating off sectors of the economy. Even a conviction for a misdemeanor, a relatively low-level offense, reduces a person's annual earnings by an average of 16 percent. Worse, the effect does not appear to fade with time. Similarly, people who spend time in prison miss out on roughly half the future income they might otherwise have earned, losing an average of half a million dollars over the course of a lifetime. Criminal records also weaken state and local economies, as states with more felony records tend to have lower statewide employment.

The Clean Slate Act automates the previously costly and complicated administrative procedure of record sealing, ensuring that as many people benefit from having their records sealed as possible. At the same time, the act includes public safety protections: licensing agents and law enforcement can still access sealed records in special cases, such as applications for firearm permits, and crimes such as first-degree murder or sex offenses are not eligible. In passing the bill,

A criminal record causes significant economic hardship, especially for those who are poor or Black.

New York joined other states, including Michigan, Pennsylvania, and Utah, in offering meaningful second chances. Clean slate legislation is part of a national, bipartisan movement to enact common-sense reforms that help break the cycle of poverty, crime, and incarceration, making the criminal justice system fairer and communities safer.

ANALYZING NATIONAL CRIME DATA

The FBI's latest annual report on crime statistics offers useful insight into how crime trends are developing in the wake of the Covid-19 pandemic. Every year, the Brennan Center analyzes the national FBI numbers, keeping in mind not only the context but also how law enforcement agencies collect and report the data, which has changed recently. This careful analysis is essential for informing the public, reporters, and policymakers. The goal is to create strategies that reduce crime while building a more fair and effective criminal justice system.

The most recent numbers showed some encouraging signs after the sharp rise in violence in 2020. In 2022, murder rates dropped by 6.5 percent from the year prior — not enough to undo 2020's 30 percent jump but still significant. Violent crime generally also fell.

Motor vehicle theft rates, however, climbed by more than 10 percent from the year prior, likely driven in part by online videos exposing vulnerabilities in millions of vehicles. And larceny — which includes shoplifting — rose nearly 8 percent. Although these rates remain below 2020 levels, there have been more serious increases in cities such as New York and Los Angeles that may call for local policy responses.

Overall, there is no single reason why violent crime fell after rising so steeply in 2020. It may be that several factors combined that year, simultaneously destabilizing communities and weakening the systems that keep them safe, and those same factors may now be receding. But it is notable that 2022's drop in violent crime further undermines politicized explanations for crime, such as blaming criminal justice reforms. ■

Making the Case

Brennan Center experts blanketed traditional and new media in 2023 to promote democratic reform.



“The Court has been the agent of its own reputational destruction.”

Sen. Sheldon Whitehouse (D-RI) at our October event **Supreme Court: Ready for Reform?**. Senator Whitehouse and Brennan Center President **Michael Waldman** discussed important proposals for term limits and ethics reform with **Kenji Yoshino**, Brennan Center board member and the Chief Justice Earl Warren Professor of Constitutional Law at NYU Law.



Joanna Zdanys, senior counsel, Elections and Government, talked about landmark New York public campaign finance legislation on Spectrum News NY1.

STANDING UP FOR EQUAL VOTING RIGHTS

In September 2023, on National Voter Registration Day, **Rep. Terri Sewell** (AL-07) and House Democrats introduced the John R. Lewis Voting Rights Advancement Act. **Kareem Crayton** (right), senior director, Voting Rights and Representation, joined with **Owen Bacskai** (left) and **Ashleigh Maciolek** (middle) to support the bill. Both are policy associates in the Brennan Center’s Democracy Program.




“The false claims of widespread voter fraud that fueled efforts to overturn the 2020 presidential election continue to drive attacks.”

Wendy Weiser, vice president, Democracy, in testimony before the House of Representatives.

Crayton/Bacskai/Maciolek: Maya Efrati; Weiser: Anna Moneymaker/Getty



Liberty and National Security Fellow **Michael German** (right) argued that independent federal oversight is needed for fusion centers on *PBS NewsHour*.



Faiza Patel (right), senior director, Liberty and National Security, discussed police departments’ use of social media as a surveillance tool on CNN’s *Smerconish*.



“Overclassification undermines the rule of law by providing a shield for government misconduct.”

Elizabeth Goitein, senior director, Liberty and National Security, testified before the Senate in a hearing on modernizing the government’s classification system.

“These are just public officials who wield power, and we need to treat them that way.”

Michael Waldman (middle) discussed the Supreme Court with *Armchair Expert* cohosts Dax Shepard and Monica Padman.



Armchair Expert Podcast/Rob Holysz



U.S. V. TRUMP

After former President Trump was indicted in both federal and Georgia state courts for conspiring to overturn the results of the 2020 election, the Brennan Center hosted a special event. **U.S. v. Trump: The Big Lie on Trial** brought together experts to discuss what the indictments would mean for our democracy. Panelists included **Andrew Weissmann** (above), professor of practice, NYU Law, and MSNBC legal analyst; and Brennan Center experts **Sean Morales-Doyle**, director, Voting Rights; **Gowri Ramachandran**, deputy director, Elections and Government; and **Michael Waldman**, president.

OUR REACH

11M
website views

48
New York Times mentions

324K
social followers

40K
donors

350K
newsletter subscribers

23M
impressions across social platforms

Constitutional Amendments

In an era when the possibility of winning the supermajority support needed to adopt new amendments seems remote at best, the Brennan Center hosted an academic symposium in February 2023 in which participants explored prospects for amending the Constitution in our time.



“All Americans benefit when judges — and especially justices — are truly free of financial entanglements and indifferent to political or policy pressures.”

Senior Fellow **Caroline Fredrickson** in testimony before the House Judiciary Committee.



Director of Elections and Government **Daniel Weiner** explained the Federal Election Commission’s likely response in the case of former Rep. George Santos.



Inside Congressional Committees

Elections and Government Research Fellow **Maya Kornberg** is the author of a new book, *Inside Congressional Committees: Function and Dysfunction in the Legislative Process*, which examines the legislative process beyond polarized voting patterns.

“30% OF ELECTION OFFICIALS HAVE BEEN ABUSED, THREATENED, OR HARASSED”

Larry Norden, senior director, Elections and Government, spoke with Byron Pitts on ABC’s *Nightline* about the issue and what we can do to protect election workers in 2024.



Hernandez Stroud, senior counsel in the Justice Program, discussed conditions on Rikers Island on Spectrum Local’s *Inside City Hall*.



TOO MUCH TIME. TOO MUCH POWER.

In December 2023, we developed a national digital campaign to build public support for Supreme Court term limits. We partnered with the agency Brand New School to develop a campaign video highlighting the regressive and antidemocratic rulings of the Supreme Court and the urgent need for a Court that reflects and protects the values and needs of the American people. The campaign video ran on YouTube, Hulu, and Univision and across social media platforms. In addition to promoting our campaign nationally, we geotargeted members of Congress and their staff (see more on p. 18).

CAMPAIGN VIDEO BY THE NUMBERS

5.8M
views

12.5M
impressions

72%
of geotargeted members of Congress and their staff watched the entire video

OUR VIDEO DROVE ACTION. SINCE OUR CAMPAIGN LAUNCH, 25K PEOPLE HAVE SENT 73K EMAILS AND CALLS TO DC LAWMAKERS.

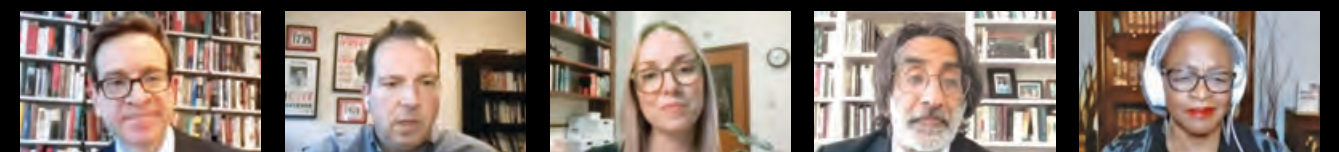


“Together, these efforts represent an existential threat to the administrative state — one that we must guard against to preserve the government’s ability to regulate, respond to national crises, [and] administer critical public programs.”

Mekela Panditharatne, counsel, Elections and Government

Disinformation Nation

We hosted a conversation about the book *Myth America: Historians Take On the Biggest Legends and Lies About Our Past*, edited by Princeton University professors (from left) **Julian Zelizer** and **Kevin Kruse**. The book examines how the right has used revisionist history to fan the flames of politicization and unravel the seams of democracy. The discussion featured (from right) Emory University African American studies professor **Carol Anderson**, Yale University law and political science professor **Akhil Reed Amar**, and Northwestern University history professor **Kathleen Belew**.



Constitutional Amendments: ©Slezak courtesy of NYU Photo

“Relationships play an essential role in being effective.”

Former Rep. **Adam Kinzinger** (R-IL) at our event **Making Congress Work in a Divided Nation**. Other panelists included political correspondent **Daniel Strauss** and Elections and Government Research Fellow **Maya Kornberg**. As one of the two Republicans on the House January 6 committee, Kinzinger is no stranger to calling out Congress for allowing partisanship to breed dysfunction.



SAYING IT LOUD

In February 2023, the Brennan Center hosted its first in-person event in almost three years. Journalist and author **Mark Whitaker** (left) discussed his book *Saying It Loud: 1966—The Year Black Power Challenged the Civil Rights Movement*, which tells the story of the Black Power generation while showing why the lessons of 1966 still resonate in the era of Black Lives Matter and continuing battles over voting rights. The conversation was moderated by **Eugene Robinson**, Pulitzer Prize-winning columnist for the *Washington Post* and MSNBC contributor.

“Just as election officials needed your help to protect technology, they now need your help to keep them, their families, and their staff safe.”



Elizabeth Howard, deputy director, Elections and Government, testified before the Senate.

STATE COURT REPORT LAUNCH

State Court Report, a resource on state constitutions and courts launched by the Brennan Center in September 2023, has already amassed:

31K
website visitors

11K
newsletter subscribers

195K
views on YouTube

The Supermajority

New York Gov. **Kathy Hochul** (inset) spoke at a celebration to mark the launch of Brennan Center President **Michael Waldman**'s book *The Supermajority: How the Supreme Court Divided America* at the Century Association in New York City in May. Also in attendance were former New York State Attorney General and current Solicitor General **Barbara Underwood**, along with Brennan Center Board members **Troy McKenzie**, **Melissa Murray**, and **Leslie Bhutani**.



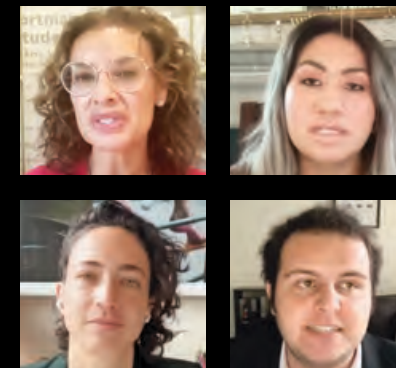
Brennan en español (BEE) ramped up its production of short videos, garnering thousands of views for our experts on TikTok, Instagram Reels, and YouTube shorts.

BRENNAN CENTER

en español

Youth Rising: The Power of Latinx Voters

BEE entered into a partnership with **Voto Latino**, the national get-out-the-vote organization, to cosponsor **Youth Rising: The Power of Latinx Voters**. The virtual event explored the most critical issues driving Latinos to vote and what the future holds as the electorate grows. The panelists were (from top left) Voto Latino's **Maria Teresa Kumar**, Arizona State Rep. **Alma Hernandez**, and **Santiago Mayer** of Voters of Tomorrow. Journalist **Paola Ramos** moderated. The partnership included promoting Voto Latino's National Voter Education Week campaign to help voters register or check the status of their registration.



EL VOTO LATINO EN 2024: REPORTE ESPECIAL EN VIVO

BEE's ongoing partnership with Impremedia and its national Spanish-language newspaper *La Opinión* led to the Brennan Center's first "live" events on Facebook, X, and YouTube. BEE's elections adviser, **Ricardo Ramírez** (left), and *La Opinión*'s political editor, **Jesús García**, discussed the Trump indictments and the Latino vote in the upcoming presidential election and answered questions from the audience.



COLLABORATION WITH IMPREMEDIA



Our collaboration with Impremedia also produced a Brennan Center monthly column for *La Opinión* throughout the year on topics such as vote restoration for the formerly incarcerated, the need for the FBI to track white supremacist violence, and the Freedom to Vote Act.

BRENNAN EN ESPAÑOL

El Newsletter

BEE launched a monthly newsletter and significantly expanded its social media reach in 2023. The first *El Newsletter* went out on October 4, during Hispanic Heritage Month, to an email list of more than 18,000 decision-makers and allies with large Spanish-speaking constituencies to keep them informed about the latest research and analysis of the Brennan Center. As part of the newsletter offering, BEE increased its original content to highlight the stakes of our experts' work for Latinos and other people of color.

Questions & Answers



KAREEM CRAYTON

The Racial Turnout Gap 10 Years After *Shelby County*

Kareem Crayton, senior director of voting rights and representation in the Democracy Program, discusses the harmful effects of the Supreme Court’s dismantling of the Voting Rights Act.

What happened to the Voting Rights Act?

Chief Justice John Roberts justified gutting the Voting Rights Act in the *Shelby County* case by pointing to representational and participation gains by communities of color across the country. Many of us argued that doing so was a reckless gamble and that, without the protections provided by the landmark voting law, voter suppression

targeting these communities would accelerate. Ample evidence from the last decade has shown that we were right.

Several of the states once covered by the Voting Rights Act’s preclearance rules — which required states with an established pattern of discrimination to obtain federal permission before altering voting rules — have reduced or eliminated features that improved minority participation, like same-day registration and early voting. The first round of redistricting since *Shelby County* ignored the interests of growing nonwhite populations. And court decisions after *Shelby County*, like *Brnovich v. Democratic National Committee*, either created hurdles for plaintiffs to prove voting rights infringements or increased the wait time for effective remedies to take hold.

Has *Shelby County* changed voting patterns?

The most disturbing result of *Shelby County* is that the turnout gap between white voters and voters of color has grown throughout the country, which represents hundreds of thousands of missing voices in our democracy. We spent much of the last year doing pathbreaking research on this very question. Senior Research Fellow Kevin Morris compiled a database with one billion pieces of data. We believe it is the most comprehensive pool of voter records in the country. It shows that the racial turnout gap has increased nationwide since 2013. However, in preclearance jurisdictions, the gap has grown twice as fast. This finding suggests strongly that *Shelby County* made things far worse in much of the country.

How can we level the playing field for voter participation?

The Brennan Center has advocated for two crucial pieces of federal legislation to counter *Shelby County*’s negative effects. The John R. Lewis Voting Rights Advancement Act includes a retooled oversight system and expands the mechanisms available for voting rights attorneys to vindicate the franchise. The Freedom to Vote Act, another pivotal legislative proposal, is designed to fight gerrymandering by developing a better, more uniform district-drawing process that helps assure that the interests of voters and not those of politicians drive election outcomes.

States across the country are also establishing local voting rights act provisions that can help to avoid decision-making that, whether purposeful or not, denies minority communities a fair shot at electing representatives that respond to their needs.

What about 2024? Is there anything we can do right now?

We must make sure we have a free and fair election process that promotes public confidence. To make that happen, we need to work with election officials, voters, and legislatures to protect both the polling place and the people casting their ballots. That means guaranteeing accessible and safe

polling sites, ensuring that voters and poll workers understand the applicable rules and laws, and, when necessary, holding people accountable when they choose to disrupt the secure functioning of this process.

Are you hopeful?

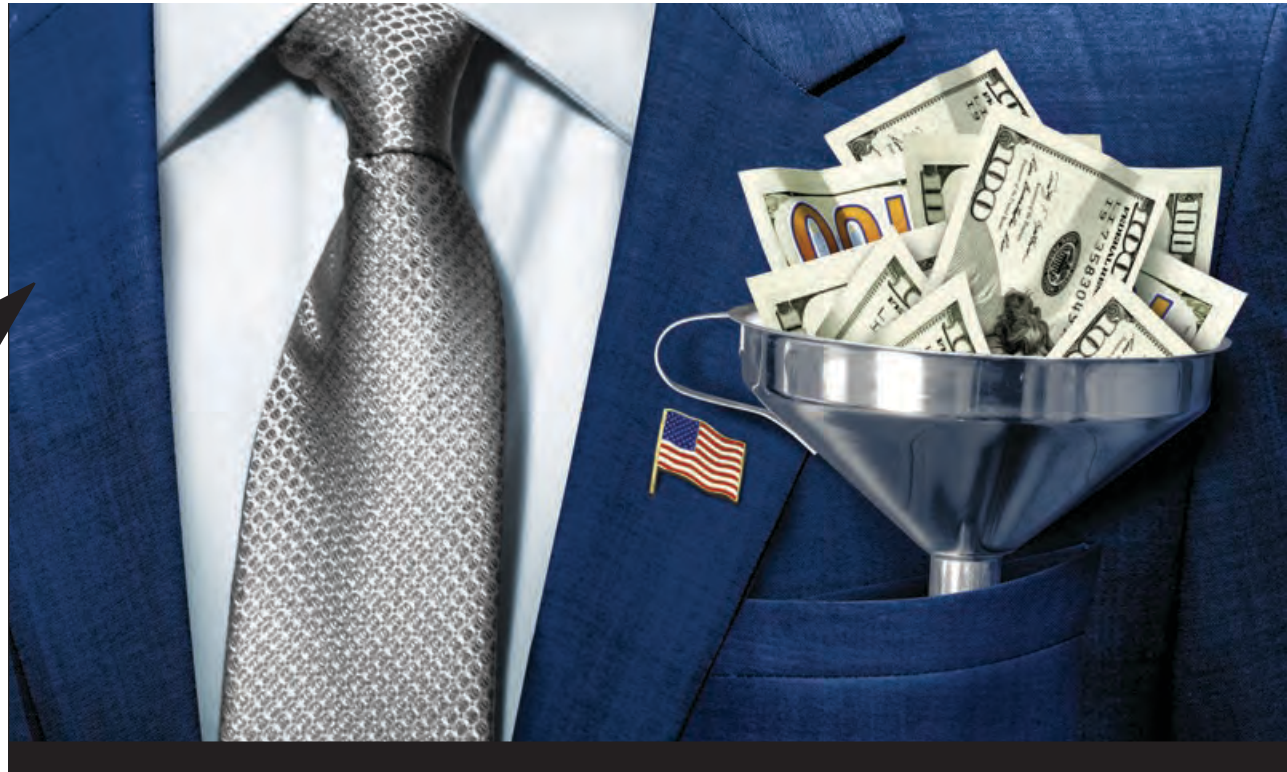
To paraphrase a fellow voting rights attorney: without the preclearance system, we are working hard just to stay above water. The absence of Section 5 of the Voting Rights Act is forcing us to use our energy to stop backsliding wherever possible rather than moving law and policy forward.

I have spent my career of scholarship and advocacy working to make voting equally accessible to all and to ensure that voters have the opportunity to elect candidates who will represent their communities’ interests and respond to their needs. It is of course terribly frustrating — even if it was predictable — to see how *Shelby County* has increased the racial turnout gap. But it is also important to remember that the Voting Rights Act took several attempts to pass before 1965. These present challenges reinforce the need to continue to fight for reforms, and I am certain that we have developed clear ways to push for and implement the necessary changes.

“The turnout gap between white voters and voters of color has grown throughout the country, which represents hundreds of thousands of missing voices in our democracy.”

Kareem Crayton
Senior Director,
Voting Rights and Representation

Illustration: Lincoln Agnew



DANIEL WEINER

A Changing Campaign Finance Landscape

Daniel Weiner, director of the Brennan Center’s Elections and Government Program, breaks down the evolving state of money in politics and the reforms needed to make our democracy more inclusive and functional.

Big money in campaigns has always been with us. Why should we worry about it now?

American campaign finance has been transformed since 2010, the year the Supreme Court swept away more than a century of law in the *Citizens United* decision. Together with other court rulings and aided by legislative gridlock and regulatory paralysis, that decision largely deregulated campaign money. A small handful of very wealthy donors now wield much more power than before. And this new reality has become so ubiquitous that it is easy to lose sight of it.

What are some of the most significant trends shaping campaign finance right now?

Giving by small donors has increased, which is good. But it is misleading too. Giving by big donors has grown even more. In the 2022 midterms, the top 100 donors to federal races together spent more than \$1.2 billion, mostly through super PACs. That’s roughly 60 percent more than the total amount from the millions of Americans who gave small donations. This is a sharp reversal from 2010, the year *Citizens United* was decided, when small donors overwhelmingly outspent the 100 largest donors. In some key races, a handful of billionaires are able to essentially sponsor candidates like prize racehorses.

In addition, there’s an overall trend toward nationalization of campaign fundraising for both congressional and state offices. The surge in big money coming from a few

centers of wealth, combined with the emergence of online fundraising via social media and platforms like ActBlue and WinRed, has increasingly made it possible for candidates in marquee races or who have national profiles to rely on partisans from across the country to fund their campaigns. In 1998, House candidates overall raised more than 80 percent of their campaign money from their home states; in 2022, that percentage was down to just over 60 percent — not counting nationalized super PAC spending. Thanks in part to super PACs and other outside groups, there are many marquee races where the vast majority of money spent comes from out of state. The push to appeal to a more partisan national donor base can incentivize some candidates to take extreme positions or engage in norm-breaking behavior to gain notoriety and win a national following.

A third trend is that it is becoming harder to track dark money from groups that keep their donors secret thanks to legal loopholes and lax enforcement of existing rules. One factor is that more and more money is being spent online, where only minimal disclosure is required by law. The spending data, though sparse, suggests that dark money spending continues to break records and is concentrated mostly in the most competitive races.

With so many other problems, why should people care about money in politics?

The public is extraordinarily angry about the role of money in politics. This is a consistent fact uniting Democrats, independents, and Republicans. The system distorts who runs and who can win and what issues they embrace. That obviously creates a risk of corruption. Decades of social science research has also shown that when the priorities of wealthy donors conflict with those of most voters, donor priorities tend to win out, if for no other reason than because elected officials are more exposed to what donors think. Candidates who lack access to significant wealth — including many women, people of color, and LGBTQ+ people — face special challenges in raising enough money to compete.

What are the priorities for reform?

It is critically important that democracy reform legislation address the role of money in politics to the same extent that it addresses voting rights and gerrymandering. That is one of the most exciting things about the Freedom to Vote Act, comprehensive legislation that came close to passing in the last Congress and remains a top priority for the Brennan Center. It includes key reforms to boost campaign transparency, tighten rules for super PACs, and improve enforcement — changes supported by an overwhelming majority of voters.

It is also critical to lift up the voices of everyday citizens, ideally in ways that deepen elected officials’ ties to their own constituents. One of the most powerful reforms that would do that is small donor matching, in which small, private contributions are matched with public funds. This policy makes it possible for candidates to raise the money they need to compete without depending on the biggest donors, as we have seen in New York City, which has had a matching system for decades. The version that recently went into effect in New York State, which offers a very high match for in-district donations, is especially appealing because it incentivizes state legislative candidates to raise money primarily from their own voters.

“The system distorts who runs and who can win and what issues they embrace. That obviously creates a risk of corruption.”

Daniel Weiner
Director,
Elections and Government



Illustration: Doug Chayka



ELIZABETH GOITEIN

The Antiquated Law Endangering Democracy

Elizabeth Goitein, senior director of the Brennan Center’s Liberty and National Security Program, explains why reforming the Insurrection Act can’t wait.

What is the Insurrection Act and what makes it dangerous?

The Insurrection Act is what we call an amalgamation of statutes passed by Congress between 1792 and 1871. It authorizes the president to deploy federal military forces inside the United States to suppress insurrections, rebellions, or domestic violence or to enforce the law when it is being obstructed. Under the 1878 Posse Comitatus Act, federal military forces are generally barred from participating in civilian law enforcement activities. The Insurrection Act is the most significant exception to that rule.

The act was intended for use in emergencies in which civilian law enforcement is

overwhelmed. But the criteria for deployment are set forth in vague and archaic language that provides few clear constraints. There are no meaningful checks against abuse. The original version of the law included requirements for congressional and judicial approval, but these provisions were later deleted. Today, the president has sole discretion to determine when the criteria for deployment are met.

As a result, the act grants presidents extremely broad and effectively unreviewable discretion to use the federal armed forces as a domestic police force. Such power creates undeniable dangers to individual liberties and to democracy itself.

How has the law been used in the past?

Presidents Dwight D. Eisenhower and John F. Kennedy used the act multiple times to enforce desegregation and civil rights laws.

Those are the best-known examples of its appropriate use. But in the 19th century, presidents frequently invoked it to help quash labor movements, intervening in strikes on employers’ behalf. It was also used to quell so-called race riots sparked by local authorities’ mistreatment of Black people in the 1960s in Newark and Detroit.

On balance, though, it is remarkable how little abuse there has been of this potent authority. In recent decades, presidents have shied away from using the act at all. It was last invoked in response to the 1992 Los Angeles riots over the acquittal of police officers for beating Black motorist Rodney King, and it has not been used without the request of a state governor since 1965. This reticence likely results from a combination of factors, including the increased capacity of civilian law enforcement agencies and the likelihood of political blowback.

Despite these strong norms, Donald Trump considered using the law to suppress protests against the police killing of George Floyd in 2020. And he has threatened to invoke it to crack down on protests if he takes office again. So there is ample reason to worry about potential abuse.

How should Congress change the law?

The Brennan Center has published a multi-pronged proposal for comprehensive reform of the Insurrection Act. First, the law should more clearly and narrowly define the criteria for military deployment, and it should stipulate that such deployment is reserved for emergencies that civilian law enforcement authorities cannot or (in the case of state or local governments) will not handle.

Second, the law should specify what actions federal armed forces may and may not take once deployed. For instance, invoking the Insurrection Act should not entitle the president to suspend habeas corpus. Similarly, federal troops should always act in support of, and remain subordinate to, civilian authority. In short, the Insurrection Act should make federal troops available to supplement civilian law enforcement efforts, but it should not be a license to declare martial law.

Third, the law should establish checks against abuse, including requirements for congressional approval and judicial review. The authority to deploy troops should automatically expire after a short period unless extended by Congress. And judicial review should be available, albeit with a very deferential standard of review to ensure that judges are serving as checks against abuse rather than substituting their judgment for the president’s in a true emergency.

What are the prospects for reform?

Change will require bipartisan support. The Insurrection Act is a dangerous tool in the hands of any president, and it should be reformed regardless of who occupies the White House in 2025.

There is reason for optimism. In recent years, emergency powers reform has attracted broad bipartisan support under both the Trump and the Biden administrations. The Insurrection Act is an emergency power in all but name, and it triggers the same fundamental concerns. There is thus real potential for a successful, bipartisan effort to reform the Insurrection Act.

“The act grants presidents extremely broad and effectively unreviewable discretion to use the federal armed forces as a domestic police force.”

Elizabeth Goitein
Senior Director,
Liberty and National Security



Illustration: Dan Bejar



THOMAS WOLF

Opposing Originalism

Thomas Wolf, director of democracy initiatives in the Brennan Center's Democracy Program, explains the problems with the Supreme Court's originalist turn and how the Brennan Center is pushing back.

There's a lot of talk about the Supreme Court's use of originalism. Let's start there. What is originalism, and why is it coming up now?

Originalism is a way of interpreting the Constitution that requires judges to follow its so-called original meaning at the time it was written. So it limits the constitutional rights and guarantees that we enjoy today to the views and values of the earliest generations of Americans. Originalism is not the only way to interpret the Constitution; it's just one among many. It's not even an especially time-tested one. Conservative movement lawyers unleashed it on the world in the 1980s as a way of advancing their policy goals under the guise of law. Justice Barrett's ascent to the Supreme Court in the fall of

“The Court started using originalism to upend the law — overturning *Roe v. Wade*, dramatically expanding gun rights, and barring affirmative action in higher education.”

Thomas Wolf
Director, Democracy Initiatives



2020 resulted in a 6–3 conservative supermajority of justices who were sympathetic to this approach. Shortly thereafter, the Court started using originalism to upend the law — overturning *Roe v. Wade*, dramatically expanding gun rights, and barring affirmative action in higher education. The swiftness and seriousness of this originalist turn have made it a major concern.

Is originalism an inherently inappropriate way to interpret the Constitution, or is there something problematic about the way the Court is applying it?

Originalism was mainstreamed as an ideological project, not a scholarly one. It was aimed at yoking our constitutional rights to an extremely regressive political and social agenda. The simple fact that originalism forces courts to look to the past for binding rules for dealing with today's questions accounts for some of its regressive impact. However, conservative lawyers and judges have also distorted the past they use to support their originalist arguments, reading out of the historical record the progressive potential of the Constitution, certain moments in history, or older ways of thinking. Some of that distortion is willful. But it's also the result of judges and lawyers being unequipped to make accurate statements about the past. They're not historians, after all, and litigation is generally not the best way to arrive at conclusions about the past that historians would consider reliable. That has not stopped the Court, though, from claiming the mantle of “History” to justify its damaging decisions.

How is the Brennan Center involved in the debate over originalism?

Brennan Center experts have been responding to originalism for quite a while. For example, the scholarship that Brennan Center President

Michael Waldman and Fellow Eric Ruben have produced over the years to address the Supreme Court's radical expansion of gun rights grapples with some of originalism's most serious inroads. The work that the Brennan Center's staff do to develop and promote alternative views of the Constitution is also a response, in part, to originalism's creep through the courts and the academy.

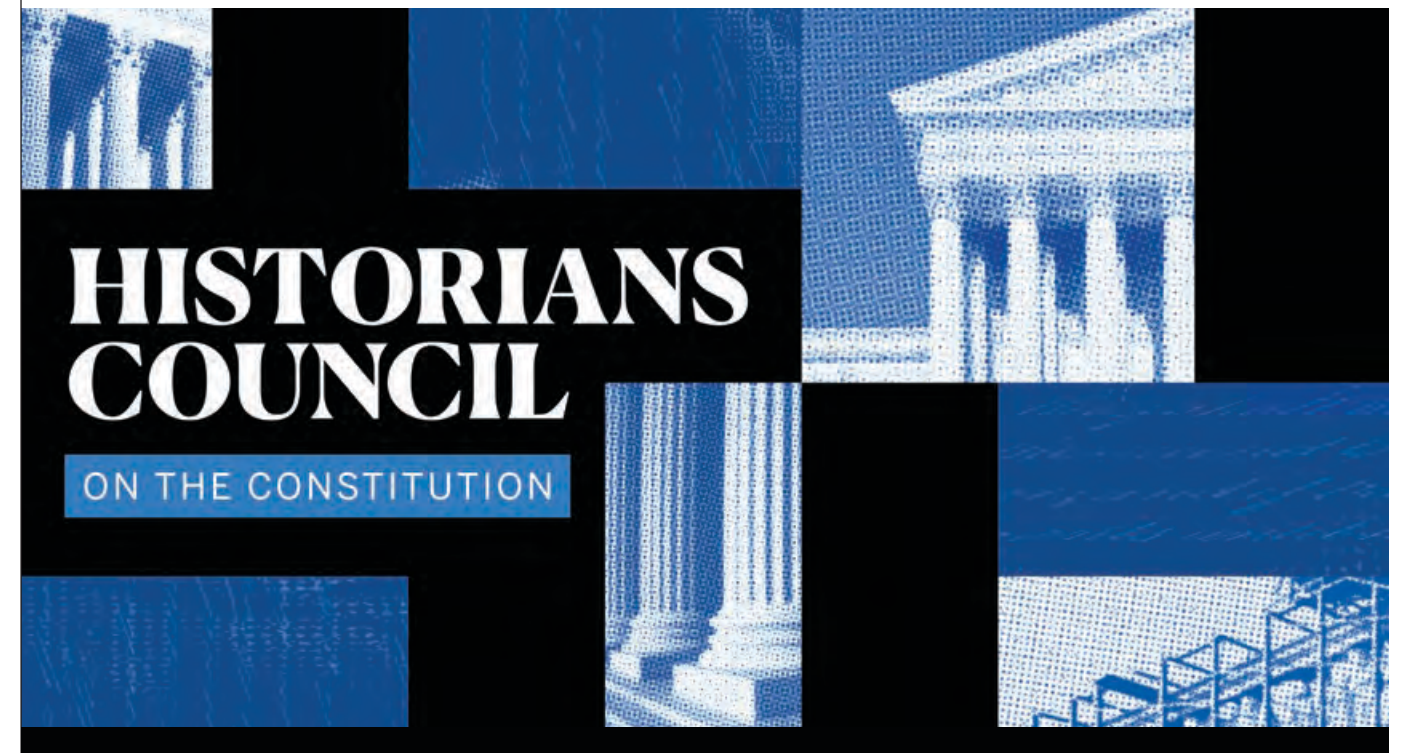
Our latest project, the Historians Council on the Constitution, carries on that Brennan Center tradition. One of the council's goals is to address historical falsehoods coming out of the Court. But the council isn't seeking just to correct the record. It is trying to change how history matters to the law by challenging the assumptions undergirding the Court's originalist turn. Those assumptions range from the notion that the way things were should determine how they should be to the claim that originalist judges and lawyers are actually doing history and doing it accurately. There have been many criticisms of the Court's originalism, but historians are particularly well placed to speak to it given how tightly the Court has wrapped its biggest originalist decisions in the robes of history.

How have historians been responding to the Court's originalist turn?

Historians — and especially members of the Historians Council — are engaging more actively with the Court. They have filed briefs in major cases like *Moore v. Harper* (on the so-called independent state legislature theory), *Students for Fair Admissions* (on affirmative action), *Bruen* and *Rahimi* (on gun control laws), and *Relentless* (on *Chevron* deference). Their briefs have sought to bring rigorous historical perspectives to bear on these critical issues. But they have also called the Court to task for investing history with dispositive force and modeled different, more flexible ways to think about the past when deciding cases. Meanwhile, they have begun a public education campaign to expose how the Court is misusing and mischaracterizing history. I'd encourage folks to check out a panel we hosted this fall with the *Atlantic's* Adam Serwer and several members of our council that delves into the many layers of problems with originalism — it's an engaging presentation that makes the issues tangible and immediate.

STEVEN M. POLAN FELLOWS

In 2024, we will launch the Steven M. Polan Fellowship in Constitutional Law and History to spur visionary scholarship and advocacy in the fight against the U.S. Supreme Court's radical use of history to diminish constitutional rights. This critical effort is made possible by the generosity and lifelong commitment to social justice of the late Steven M. Polan.





LAUREN-BROOKE EISEN AND RAM SUBRAMANIAN

Improving Prisons

Lauren-Brooke Eisen is the senior director and Ram Subramanian is the managing director of the Brennan Center's Justice Program. They describe a new initiative to fundamentally change the experience of incarceration to one that is more constructive and humane.

What principles does a dignity-first approach to incarceration entail?

The twin organizing principles are normalization and rehabilitation. Life inside prison should approximate life outside as much as possible. This means giving people access to education, recreation, and treatment; maximizing their interactions with family and friends; and allowing them a certain amount of autonomy in their daily activities.

Currently, life in American prisons is characterized by total, all-encompassing control: the prison dictates

the activities someone is allowed to do, the treatment they may receive, where they are allowed to go in the facility, even where they walk along a corridor.

Incarceration should enable people to lead a life of social responsibility after release, which requires a recognition that people can change. Providing productive and meaningful activities, such as education or work opportunities with fair compensation, is central to this new approach. In many northern European countries, incarcerated people have their own rooms with a private bathroom, and they often have a key to their living area. Corrections staff are encouraged to engage with them, share meals with them, and see them as human beings.

What are the biggest obstacles to implementing this approach here?

Northern Europe uses prisons sparingly; the United States has more than 1.2 million people in prison and more than half a million in local jails. Each of the 50 states and the

federal government manage their own prisons, which makes it difficult to overhaul correctional culture writ large.

Implementing a new corrections philosophy in the United States is challenging because institutional culture is very ingrained. In American prisons, anti-fraternization policies regulate contact between staff and prison residents, either limiting or altogether prohibiting interactions between corrections employees and incarcerated people. The U.S. corrections culture is focused primarily on security and discipline.

Additionally, corrections officers in the United States often receive only weeks of training — usually focused only on safety, security, and control — whereas northern European corrections staff get multiple years of training that focuses on social and behavioral management of human beings and includes topics such as psychology, social education, and human rights. Trainings stress a therapeutic approach to correctional management that emphasizes positive reinforcement and prioritizes strategies to defuse tension and de-escalate dangerous situations.

What types of programs and innovations has your team seen so far?

The programs and units we have visited reimagine the relationship between corrections officers and those who are incarcerated. In Washington State and Oregon, the non-profit organization Amend brings a public health mindset to changing the culture in

U.S. prisons. In Indiana prisons, the Last Mile runs coding and web development programs. We also spent time in Connecticut and North Dakota with staff and incarcerated people in the Restoring Promise initiative, which creates housing units for young adults where they receive coaching from incarcerated people over the age of 25 on financial literacy, conflict mediation, and other supports to improve reintegration into their communities when released from prison.

Our visits also took us to Pennsylvania, where we learned about the Little Scandinavia unit, which is modeled after prisons in Norway. Residents live in single-person rooms, share a kitchen, have access to outdoor green space, and go to work, treatment, and school across the facility. Officers on the unit act more like counselors than prison guards, sharing meals and giving advice. We were struck by the incredible partnerships that have developed between correctional leaders, researchers, and technical assistance providers despite challenging politics both inside corrections departments and in state legislatures.

What do you hope to achieve with your forthcoming report?

People say that prison reform in the United States is unachievable. This report will rebut that assumption. There are many ways to approach reform. It can happen in select units but also in whole facilities. We hope that the report will inspire others to make further investments. Educating the public about how improving conditions can reduce violence in both prisons and jails and in the broader community will be central to reforming the U.S. correctional model.

“Northern Europe uses prisons sparingly; the United States has more than 1.2 million people in prison and more than half a million in local jails.”



Illustration: Alex Nabaum/TheisSpot

**Thank
You to Our
Supporters**

Michigan Secretary of State **Jocelyn Benson** was honored for serving as a model for the nation by safeguarding the vote through her fierce protection of fair elections.



Heather Higginbottom, accepting an award on behalf of JPMorgan Chase, with **Sheena Meade**, CEO, The Clean Slate Initiative.



Brennan Legacy Awards Dinner

Brennan Legacy Awards Dinner

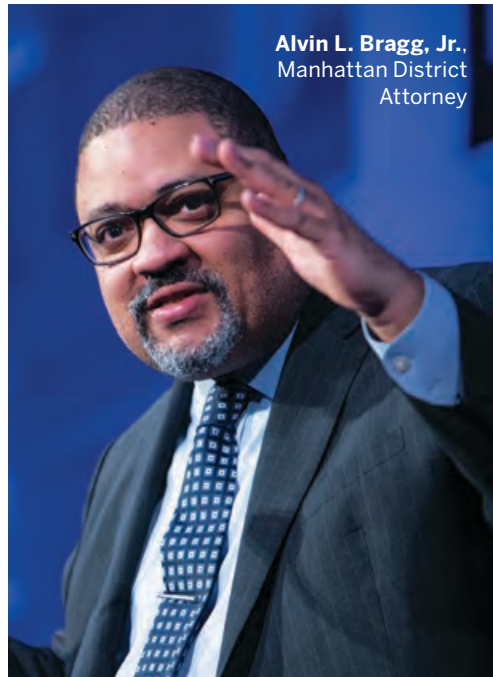
The 2023 Brennan Legacy Awards Dinner brought together 500+ from the ranks of law, business, philanthropy, civic society, and government to celebrate leaders in the fight for democracy and justice. Awards were given to Michigan Secretary of State Jocelyn Benson for protecting the vote, and to JPMorgan Chase for championing a fair justice system.



Robert Atkins, Brennan Center Board Co-chair and Partner at Paul, Weiss



Alvin L. Bragg, Jr., Manhattan District Attorney



Jocelyn Benson with **Paul Tagliabue**, NFL Commissioner, 1989-2006



Mireya Navarro (left) of Brennan en Español with **Tamoa Calzadilla**, Editor-in-Chief, Factchequeado



Troy McKenzie, Dean, NYU School of Law



Photos: Clark Jones

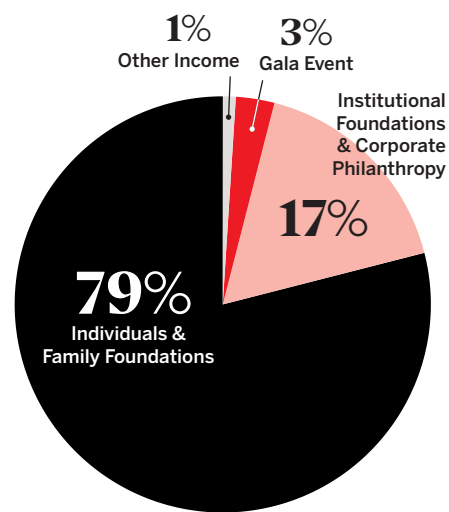
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As the Brennan Center approaches its 30th anniversary, we are proud to have grown from a start-up to the national force we are now. Our 40,000 supporters have made this possible. We receive no funding from NYU or from any government entity. We are proud to have received the highest marks on transparency and effectiveness from Charity Navigator and Candid.

Our community's donations, both for our immediate needs and for long-term sustainability, provide the financial foundation that enables us to operate at full strength. We are deeply grateful.

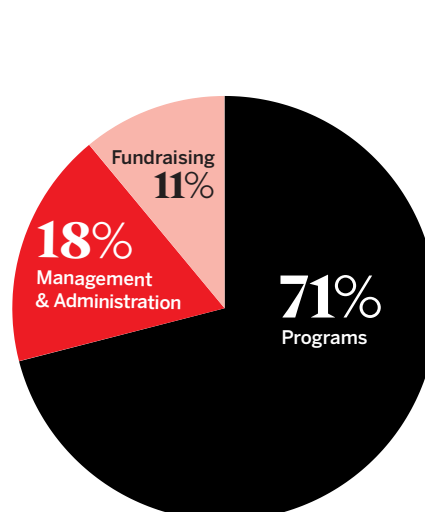
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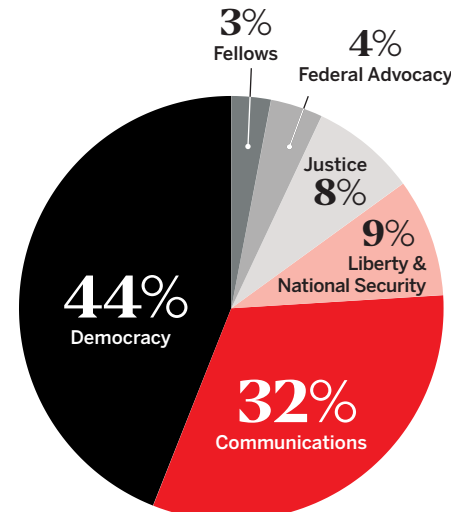
Individuals & Family Foundations	\$31,073,125
Institutional Foundations & Corporate Philanthropy	\$6,822,792
Gala Event	\$1,104,943
Other Income	\$178,012
Total	\$39,178,872*



EXPENSES

ORGANIZATIONAL EXPENSES

Programs	\$29,329,846
Management & Administration	\$7,523,108
Fundraising	\$4,431,764
Total	\$41,284,718



EXPENSES BY PROGRAM

Democracy	\$12,838,677
Communications	\$9,459,125
Liberty & National Security	\$2,696,532
Justice	\$2,437,022
Federal Advocacy	\$1,018,519
Fellows	\$879,971
Total	\$29,329,846

The Brennan Center regularly partners with law firms that provide generous pro bono legal support (list on p. 59). The monetary value of those services is not reflected here.

*This total includes the full amount of multiyear grants and gifts awarded during the fiscal year to be spent down in future periods. Not included in this chart: funds available from multiyear grants awarded in past years.

PLANNED GIVING

A growing list of supporters committed to a thriving democracy have included the Brennan Center in their estate planning as members of our Brennan Legacy Circle. We also received significant gifts through surprise bequests in fiscal year 2023 — including gifts to ensure we stay strong into the future. Learn more about how to pledge your intent and join the Circle at brennancenter.org/plannedgiving.

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In recent years, amid unprecedented threats to our democracy, we have garnered extraordinary support for our future sustainability.

BRENNAN LEGACY FUND \$125M

While the Brennan Center has never had a formal endowment, we now have meaningful long-term reserves. In 2023, we received a \$25 million gift for the Brennan Legacy Fund, growing it to a robust \$125 million. A board-designated fund, it operates as a quasi-endowment that generates income, with the corpus to be drawn from only in emergencies.

SOUTHERN STATES PROJECT FUND \$25M

We received a \$25 million bequest in 2023 to use flexibly over any period greater than five years. It will support work to strengthen our democracy and reform the criminal justice system affecting people of color in southern states.

STATE AND FEDERAL COURTS PROJECT \$20M

In 2023, we received a \$20 million gift to be used over five years to launch our work on state and federal courts, as well as to continue our work on the U.S. Supreme Court.

BRENNAN FUTURE FUND \$25M

A substantial gift awarded in 2020 established this fund, to be used over a limited period and to begin at a flexible future date upon board approval. It is intended to spur bold, innovative thinking to advance democracy and justice.

INEZ MILHOLLAND ENDOWMENT FOR DEMOCRACY \$2M

This dedicated fund awarded in 2016 generates income to support democracy initiatives.

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The Brennan Center’s work is made possible through the generous support of our community of donors and their commitment to an America that is democratic, just, and free. With deep gratitude for their partnership in 2023, we are pleased to recognize some of our most dedicated supporters — individuals and families, charitable foundations, law firms, and businesses.*

We sincerely regret any omissions or incorrect listings. Please contact us at donations@brennan.law.nyu.edu with updates.

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* Funding levels represent annualized giving.

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