



CLASSROOM LAW PROJECT

PRESENTS

ELECTION 2022: ENVISIONING OREGON'S FUTURE

Section 4: Voting Rights



Voting Rights

Essential Questions:

- How have voting rights expanded and contracted throughout U.S. history?
- Who is left out of voting in the United States, and why?
- What does the future of voting in the United States look like?

Objectives:

Students will be able to

- discuss how the U.S. Constitution and federal legislation address voting rights
- identify major moments in the history of voting rights in the U.S.
- explain current debates around voting rights in the U.S.

Vocabulary:

act

amendment

clemency

disenfranchisement

felon

gerrymandering

incarcerated

naturalization

poll tax

suffrage

Activity 4.1

Who Really Gets To Vote?

Overview:

This activity provides a historical overview of voting rights in the United States. Activity 4.2, “Who Really Gets To Vote?” explores the question of how lawmakers and courts have expanded and/or restricted voting rights at different times in U.S. history. By looking at key pieces of voting legislation, students will begin to get an overall picture of the debates over voting rights since the nation’s founding.

Opener:

Begin with a **Four Corners** exercise to get students thinking about major voting issues in U.S. history. Place four signs (Strongly Agree, Agree, Disagree, Strongly Disagree) at different points around the room. Ask students to stand up, and each time you read a statement, they should move to the part of the room that most aligns with their beliefs. It’s important to emphasize that there are no right or wrong answers in this activity—this is a chance for students to share their views or, if these are things they’ve never thought about before, start to make sense of their own opinions. Here are statements for the teacher to read and for students to respond to by walking to the sign that fits their reaction:

1. If people want to vote, they should have to pass a basic literacy test in order to do so.
2. I think that the system we have for voting in Oregon (with mail-in ballots for all) is a more reliable way to get more people to vote.
3. I believe that voter fraud is a real problem that needs to be addressed in current and future elections.
4. Only people who are educated on the issues should be able to vote.
5. The more people who vote, the better chance there is that views like mine will be adopted.
6. Voting is so important to the functioning of our society that if people don’t vote, they should be required to pay a fine, do community service, or spend time in jail as a consequence.

After discussing each of these points, provide students with an overview of what you’ll be focusing your conversations on around voting rights. Explain some basic background on each of these points:

- (1) there used to be literacy tests for people to vote (primarily to exclude Blacks from voting);
- (2) states with mail-in voting consistently have much higher rates of voter participation than those where people have to vote in person;
- (3) there was virtually no fraud at all in the 2020 election (one election official said the odds of voter fraud were about as likely as a person being struck by lightning), and despite vocal debates about voter fraud, it has been documented over and over that it is exceedingly rare in the U.S.;
- (4) historically, landowners or people with a certain level of wealth could vote since the general public wasn’t trusted to make good decisions;

- (5) there isn't any hard and fast evidence in one direction or another about rates of voter participation—sometimes high rates of participation lead to conservative/Republican policies, other times high rates of participation favor more liberal/Democratic policies;
- (6) voting has never been required in the history of the United States—it has never been widely discussed that people should be required to vote.

Activity:

This activity asks students to delve into the history of voting in the United States. Students will read over a comprehensive timeline of the history of voting and, per the instructions provided in the timeline, annotate key information for future discussion and reference.

In pairs or small groups, students should complete Who Really Gets To Vote? Voting Rights Expansion & Contraction in the U.S. (Each student should fill out their own version of the handout.)

Supplemental activity: if students are keeping a K-W-L (Know-Wonder-Learned) chart, once they have finished filling in the interactive timeline, they can add information they have collected into the timeline into their overall working document.

NAME _____

DATE _____

Who Really Gets To Vote? Voting Rights Expansion & Contraction in the United States

Directions:

On the following pages, you will find a timeline that covers some of the major events related to voting rights in the United States. With your group, you will do the following:

- (1) Read each entry of the timeline out loud with your group.
- (2) As you read each entry in the timeline, annotate the section with (a) unfamiliar vocabulary, adding the definition, (b) a quick summary if the time period expanded or contracted voting rights, and (c) any questions or “wonders” about the entry in the timeline.
- (3) You may want to use two different color highlighters on the timeline- one color to show time periods when voting rights were expanded, and another color to show when voting rights were contracted.

Each member of the group fills out their own timeline, but group members should work together to annotate and highlight the entries.



Who Really Gets To Vote?

Voting Rights Expansion & Contraction in the U.S.

| Highlighting key <ul style="list-style-type: none"> • <i>Expansion of voting rights</i> • <i>Contraction of voting rights</i> | annotations: define, explain, wonder | Highlighting key <ul style="list-style-type: none"> • <i>Expansion of voting rights</i> • <i>Contraction of voting rights</i> | annotations: define, explain, wonder |
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| <p>1776 – White men with property can vote. Free Black men can vote in New Jersey, Pennsylvania, and Connecticut. (In Maryland, between 1776 and 1783, free Black men could vote; after 1810, no Black men at all were allowed to vote.)</p> <p>1789 – First U.S. government under the U.S. Constitution. The Constitution, as originally written, did not define a citizen. Any citizen of a state was deemed a citizen of the nation. At the time, most states only grant the right to vote to white male property owners. Poor people, women, Native Americans, and African Americans cannot vote.</p> <p>1790 – 1790 Naturalization Act. The right to vote is tied directly to citizenship status; it is only for whites who have lived in the country for two years. In 1798, the law is changed so immigrant whites have to live in the U.S. for 14 years before they can become citizens. This changed to five years after 1902.</p> <p>1820 – The property laws are taken off the books and whites can vote even if they do not own property. But they must pay a poll tax or be able to read, and, in some places, they must pass religious tests before they can vote.</p> <p>1848 – The Treaty of Guadalupe-Hidalgo ends the Mexican-American War. The treaty guarantees citizenship to Mexicans living in the newly acquired territories</p> | | <p>1848 (continued)- of Arizona, California, New Mexico, Texas, and Nevada. However, Mexican-Americans are not allowed to vote despite having U.S. citizenship. Property laws, language, and literacy requirements are the favored way of keeping people from voting. There are also the Night Riders who use intimidation and violence.</p> <p>1861 – 1865 – U.S. Civil War</p> <p>1865 – 13th Amendment. In the aftermath of the Civil War, three amendments (collectively known as the Reconstruction Amendments) were ratified that expressly addressed the role of Blacks in America: the Thirteenth, Fourteenth, and Fifteenth Amendments. The Thirteenth Amendment was the first step towards full suffrage for Black adult males, because it abolished slavery in the U.S.</p> <p>1866 – Civil Rights Act of 1866 grants citizenship to native-born Americans but excludes Native Americans.</p> <p>1868 – 14th Amendment. The Fourteenth Amendment defines the U.S. citizen, and thus clarifies who may vote: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” Children of immigrants, even illegal immigrants, are citizens and may vote when they come of age. However, this amendment does not</p> | |

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| <p>1868 (continued) – expressly grant suffrage to non-whites and women. It does set the legal age for voting at 21. This amendment also allows a state to remove the right to vote for “participation in rebellion, or other crime.” As a result, most states still ban incarcerated felons from voting, and several states extend that ban to ex-felons.</p> <p>1870 – 15th Amendment. The Fifteenth Amendment forbids the federal government and the states from using a citizen’s race, color, or previous status as a slave as a disqualification for voting. By this amendment, suffrage is granted for Black adult males, but not females. Many in the women’s suffrage movement condemned the Fourteenth and Fifteenth Amendments as unfair to women.</p> <p>1870 – After the 15th Amendment establishes the right of African American males to vote, states (especially in the South) found ways to keep most African Americans from voting, both through legislation and through violence and intimidation. Methods included: poll taxes, reading requirements, physical violence, property destruction, hiding the polls, and economic pressures. The Ku Klux Klan (KKK) is a major part of the violence and intimidation used to keep African Americans from voting.</p> <p>1882 – The Chinese Exclusion Act bars people of Chinese ancestry from becoming citizens. They cannot vote.</p> <p>1887 – The Dawes Act gives citizenship only to Native Americans who give up their tribal affiliations.</p> <p>1920 – 19th Amendment. By the turn of the century, women were voting in</p> | | <p>1920 (continued) – many western states, but most states still banned them from the voting booth. In 1920, after several failed attempts, the Nineteenth Amendment was ratified. This amendment prohibits states or the federal government from restricting suffrage based on gender; however, due to state laws and both state and extralegal violence against African Americans in many states, the Nineteenth Amendment only guarantees white women the right to vote.</p> <p>1921 – The Sons of America are organized to fight for equality and the rights of Mexican Americans as citizens, including the right to vote. It will be 1975 before the right to vote is available to all Mexican Americans.</p> <p>1922 – In the case of <i>Takao v. United States</i>, the U.S. Supreme Court upholds the 1790 Naturalization Act that barred Asian Americans from becoming citizens. This enforces the policy of no voting rights for Asian immigrants.</p> <p>1923 – A court ruling decides that Asian Indians are eligible for citizenship. Technically, as citizens, they can now vote. However, almost all immigrants who are people of color continue to be denied the right to vote.</p> <p>1924 – The service of Native Americans during World War I helps to bring about the 1924 Indian Citizenship Act. The Act grants Native Americans citizenship, but many western states refuse to allow them to vote. Some of the tactics used to discourage voting include physical violence, destruction of property, economic pressures, poll taxes, hiding the polls, and reading requirements.</p> | |

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| <p>1943 – The Chinese Exclusion Act is repealed, making immigrants of Chinese ancestry eligible for citizenship.</p> <p>1946 – Filipinos are now allowed to become citizens.</p> <p>1952 – The McCarran-Walter Act repeals racial restrictions of 1790 Naturalization Law. First-generation Japanese can now become citizens.</p> <p>1961 – 18th Amendment. This amendment, for the first time, grants District of Columbia voters the ability to participate in presidential elections.</p> <p>1964 – 24th Amendment. In the century that followed the Civil War, racial tension persisted. Five southern states still had a poll tax, which was eliminated by this amendment. The Supreme Court declared that even a \$1.50 poll tax was an unfair burden.</p> <p>1965 – The Voting Rights Act. After Blacks were granted the right to vote in 1871, literacy requirements, physical violence, property destruction, hiding the polls, and economic pressures still kept many Blacks from voting, particularly in the South. In some states, a voter could vote in primary elections only if his grandfather had been able to vote in primaries; other states only allowed whites to vote in the primaries. The Voting Rights Act of 1965 was enacted in direct response to the Civil Rights movement, led by Dr. Martin Luther King, Jr. and others. The Act bans literacy tests in the Deep South and provides federal enforcement of Black voter registration and voting rights. This Act affects Virginia, Alabama, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina. It also applies in Alaska.</p> | | <p>1970 – The 1970 Voting Rights Act bans literacy tests in 20 states, including New York, Illinois, California, and Texas.</p> <p>1971 – 26th Amendment. The 26th Amendment gives voting rights to 18 year olds in response to protests about men under 21 drafted for the Vietnam War but not able to vote. This amendment sets the voting age at 18 across the nation for all elections.</p> <p>1975 – Voting Rights Act Reauthorization. By 1972, most adult citizens of the U.S. had the right to vote based on provisions in the Constitution. Congress amended the Voting Rights Act in 1975 to include language assistance for minority voters, who often could not vote if ballots and instructions were only available in English. Because of the Reauthorization of the Voting Rights Act, the right to vote is now available to all Mexican Americans.</p> <p>1990 – Americans with Disabilities Act. The ADA addressed the need for physical access to the ballot and to the polls for all Americans.</p> <p>2000 – Vote fraud scandals in Florida and elsewhere. Thousands of eligible voters are prevented from voting. Over one million ballots are never counted.</p> <p>2001 – Help America Vote Act (HAVA) is passed and requires states to upgrade to electronic voting.</p> <p>2013 – In the Supreme Court’s 5-4 decision in <i>Shelby County v Holder</i>, the 1965 Voting Rights Act is altered to remove restrictions on states which historical had limited voter access and immediately states began enacting policies that limit access to voting polls.</p> <p>Sources: <i>CNN’s Student News One Sheet: The Right To Vote</i>; Karen Rouse</p> | |

Activity 4.2

Voting Laws: The 2022 Landscape

Overview:

In recent decades, each election cycle brings on a new set of legislative proposals to expand or restrict voting rights at the state level. As partisanship intensifies and recent Supreme Court rulings have relaxed several key oversight provisions of the Voting Rights Act, the most intense battles over who gets to vote have happened more locally. This lesson provides students with an up-to-date overview of voting laws in advance of the 2022 election and asks them to consider some of their own views about laws recently enacted or currently under consideration.

Opener:

Hand out the Voting Issues Survey: Expansionist or Restrictionist? and have each student complete the survey individually.

After students have finished the survey, provide them with the following key so they can understand what their responses to these questions say about their voting beliefs:

If your score is 10–16, you tend to hold views similar to Voting Expansionists.

If your score is 17–23, you tend to hold views of both Voting Expansionists and Voting Restrictionists.

If your score is 24–30, you tend to hold views similar to Voting Restrictionists.

Then, ask students about their views on some of the statements. In addition to inquiring about what views they took on specific statements, question students about which policies they would be most likely to pursue or be against if they were an elected lawmaker.

Activity:

Provide a brief overview about the role that lawmakers play in setting voting laws. From the previous activity, students may remember that the Voting Rights Act (passed in 1965 and most recently reauthorized in 2006 for 25 years) provides federal guidelines over voting. In 2021, two key pieces of legislation (the Freedom To Vote Act and the John L. Lewis Voting Rights Advancement Act) passed the House but failed to receive enough votes in the Senate. While these debates played out at the national level, states took an active role in determining the rules for their own elections.

Students should read the Brennan Center’s May 2022 Voting Laws Roundup for a recent analysis of state-level legislation. As they read, they should chart out the various voting proposals addressed in the article and categorize them into Expansionist or Restrictionist (see Voting Laws Roundup – Analysis).

Because this is a long article, consider dividing students into groups or assigning different parts of the article to individual students. Students can do a jigsaw or complete mini-presentations to share what they learned in the section of the article they read in order to move quickly through detailed information.

Voting Issues Survey: Expansionist or Restrictionist?

Below is a short survey about voting policies that have been proposed or enacted in different states throughout the country. For each statement listed below, please enter a score based on how much you agree with the statement. Fill in 3 if Agree, 2 if you are Neutral/Neither Agree Nor Disagree, and 1 if you Disagree.

| <i>Statement</i> | <i>Score</i> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| 1. Voters should be required to show a photo ID when they cast their ballot. | |
| 2. In states where people vote in person, Election Day should not be a holiday—if voting is important to people, they need to make the time to go to the polls. | |
| 3. Mail-in voting creates too many opportunities for voter fraud. States should not be allowed to use it, and people who vote need to do so in person, at a polling location. | |
| 4. Poll workers should not be able to pass out water and snacks to people who have to wait in long lines. There is too much risk of influencing people’s votes. | |
| 5. In many places currently, when elderly people or people with disabilities are unable to get to the polling locations themselves, they can give an absentee ballot and have someone else deliver it. (It’s sometimes known as ballot harvesting.) This is another practice that encourages voter fraud, and it should be outlawed. | |
| 6. When people turn in their ballots, their vote should be disqualified if their signature does not match exactly to the one that’s on file. | |
| 7. Voting hours should be the same everywhere, even if it means shutting down polling locations at times when some people can’t vote. | |
| 8. College students need to vote from their parents’/guardians’ home address. They should not be able to vote from campus, even if it means they need to return home in order to vote. | |
| 9. Anyone who wants to observe voters as they wait in line should be able to ask people questions to help make sure that no one is cheating or casting a ballot for another person. | |
| 10. Ballot drop boxes (similar to large metal blue mailboxes) create too much risk of fraud and should therefore be outlawed. | |
| TOTAL SCORE (add your score from lines 1–10; it will be somewhere between 10 and 30 points) | |

Voting Laws Roundup: May 2022

(Source: The Brennan Center,

<https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-may-2022>)

This year, state lawmakers, who spent 2021 passing laws that made it harder to vote, have focused more intently on election interference, passing nine laws that could lead to tampering with how elections are run and how results are determined.

Election interference laws do two primary things. They open the door to partisan interference in elections, or they threaten the people and processes that make elections work. In many cases, these efforts are being justified as measures to combat baseless claims of widespread voter fraud and a stolen 2020 election.

Between January 1 and May 4, six state legislatures — Alabama, Arizona, Florida, Georgia, Kentucky, and Oklahoma — have passed nine election interference laws. As of May 4, at least 17 such bills introduced this year are still moving through five state legislatures. Moving bills are those that have passed at least one chamber of the state legislature or have had some sort of committee action (e.g., a hearing since the beginning of 2022, an amendment, or a committee vote). In total, lawmakers in 27 states have proposed at least 148 election interference bills.

In many of the same state legislatures, lawmakers have continued to introduce or enact laws that restrict access to the vote. Legislation is categorized as restrictive if it would make it harder for eligible Americans to register, stay on the rolls, and/or vote as compared to existing state law. In addition to two such laws enacted in Arizona and Mississippi, a restrictive ballot initiative in Arizona passed both houses and will be placed on the ballot for voters in the November general election.

As of May 4, at least 34 bills with restrictive provisions are moving through 11 state legislatures. Overall, lawmakers in 39 states have considered at least 393 restrictive bills for the 2022 legislative session. Since the beginning of 2021, 18 states have passed 34 restrictive voting laws, which can [disproportionately affect voters of color](#)

At the same time, Arizona, Connecticut, New York, and Oregon enacted five laws that expand access to the vote. Legislation is categorized as expansive if it would make it easier for eligible Americans to register, stay on the rolls, and/or vote as compared to existing state law. As of May 4, at least 48 bills with expansive provisions are moving through 16 state legislatures and the DC City Council. Overall, lawmakers in 44 states and

Washington, DC, have considered at least 596 expansive bills for the 2022 legislative session.

Almost half of the state legislatures meeting in 2022 have now ended their legislative sessions. Legislatures are in the second year of their two-year sessions, when they generally tend to pass fewer laws than in the first year. This year follows that trend.

Election Interference Legislation

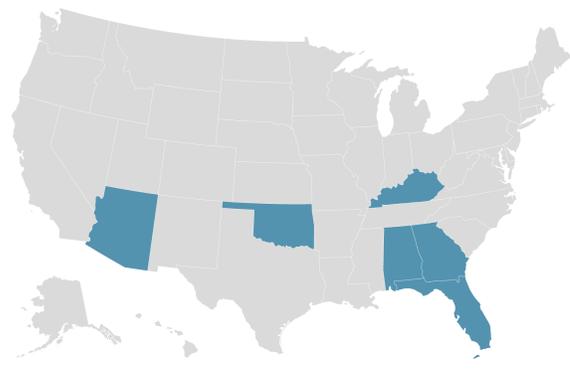
Between January 1 and May 4, six states (Alabama, Arizona, Florida, Georgia, Kentucky, and Oklahoma) have enacted nine election interference laws. As of May 4, at least 17 election interference bills are moving through five state legislatures. Overall, lawmakers in 27 states have introduced at least 148 election interference bills in the 2022 legislative session.

This legislation is fueled by [election denialism](#) and falsehoods about voter fraud. The passage of election interference legislation is part of an alarming trend that emerged in state legislatures in 2021 and represents a direct legislative attack on fair election administration.

Enacted Election Interference Legislation

The nine enacted election interference laws permit partisan actors to interfere with elections operations or overturn election results, direct new resources toward prosecuting election crimes, and threaten election officials with criminal penalties. Seven of these laws will be in place for the 2022 midterm elections.

New Election Interference Laws



- Three laws in Georgia create a risk of partisan interference with elections and election results. Two of

the bills, GA H.B. 1368 and GA H.B. 1015, replace current election superintendents and create new county boards of elections in Miller and Montgomery counties. The members of the boards will be appointed by partisan county commissioners. A similar bill, GA H.B. 1432, changes the makeup of the Dawson County Board of Elections so that one party can effectively control a majority of the five seats. This legislation is part of a [particular trend where the Georgia Legislature has given county partisan commissioners more control over election administration](#). Similar Georgia laws from 2021 led to the ouster of several [Black election officials](#).

- Two laws in Georgia and Florida create new entities dedicated to pursuing election crimes. Florida's, FL S.B. 524, creates a new election crimes office within the Florida Department of State, tasked with investigating and referring for prosecution violations of election law. The law also requires the governor to appoint dedicated special officers to receive and investigate election law complaints in each law enforcement region across the state. Similarly, GA S.B. 441 grants the Georgia Bureau of Investigation authority to investigate election crimes and refer any violations for prosecution. Both pieces of legislation expand existing authority and direct more resources toward investigating and prosecuting election crimes, risking the intimidation or harassment of voters and election officials. This legislation is fueled by the [false pretense of voter fraud](#), which itself rarely occurs but continues to be used as a baseless justification for additional state investigative and prosecutorial resources.
- Four laws in four states create new criminal penalties for election officials. In Alabama, Kentucky, and Oklahoma, three new laws make it a criminal offense to solicit, accept, or use private funding for election-related expenses. In 2020, election officials' acceptance and use of private funding [enabled](#) them to run safe and secure elections. Criminalizing that action prevents election officials from accessing funding beneficial for election administration and puts them at risk for prosecution for otherwise ordinary conduct. And in Arizona, a new law establishes a felony offense for an election official who fails to comport with new restrictive citizenship verification requirements and inadvertently accepts a noncitizen's voter registration. Imposing criminal penalties on ordinary election administration conduct or inadvertent mistakes could deter individuals from serving as election officials. At a time when election officials are [already fearful for their safety](#), the prospect of new criminal penalties adds another deterrent to staffing elections.

Election Interference Bills That Are Moving

Bills initiating biased election reviews

Five bills moving in three states (Arizona, New Hampshire, and Rhode Island) would initiate biased, suspect reviews of elections and election results. These reviews would lack transparency and [fail to satisfy](#) basic security, accuracy, and reliability measures. They are also part of a movement in state legislatures to undermine faith in the electoral process.

- Four of the bills moving in two states (Arizona and Rhode Island) would require or authorize suspect audit processes for future elections. This legislation uniformly lacks basic security, accuracy, and reliability measures for these suspect reviews, bestowing inordinate discretion on individuals, imposing no transparency requirements, or failing to mandate clear guidelines for how results are reviewed. For example, in Arizona, AZ S.B. 1259 would give the attorney general, the secretary of state, and the legislative council, as well as any Arizona resident, the broad power to demand a recount of an election or of specific precincts, voting centers, or election districts, despite the vote margin not meeting the recount threshold.
- Three of the bills moving in Arizona would allow for citizens either to initiate flawed review processes or conduct their own reviews of voted ballots. These bills fail to satisfy security and reliability measures and would open the door to attempts by outside groups to delegitimize the election process. For example, AZ S.B. 1629 would require digital images of all voted ballots in federal elections to be made publicly available within 48 hours of an election district's canvass results being published. This would allow outside groups to publish their own misleading audits of any election and would also risk exposing voters' personal information.

Bills that expand prosecutorial authority related to elections

Three bills moving in two states (Arizona and Oklahoma) would expand law enforcement's power over election-related matters or would direct additional resources toward investigating or prosecuting alleged election-related crimes. Given that actual voter fraud is [vanishingly rare](#), these new powers could easily be misused to harass or intimidate voters and election officials for partisan gain, threatening fair elections. For example, AZ S.B. 1475 would grant the attorney general new election-related investigative powers.

Bills that impose new criminal or civil penalties on election officials

Five bills moving in three states (Arizona, Oklahoma, and New Hampshire) would impose new criminal or civil penalties on election officials for actions to expand

voter access or for minor mistakes during their ordinary course of conduct, adding the risk of prosecution to already burdened election officials and contributing to [pressures](#) that are pushing election officials to leave the profession. For example, AZ S.B. 1574 would make it a misdemeanor for any county recorder to fail to comply with an unclear and complicated recordkeeping requirement about “irregularities” on Election Day, and OK H.B. 3677 would make it a felony to obstruct the view or restrict the free movement of a poll watcher, which could empower more aggressive poll watcher interference at polling places.

Bills that transfer authority of elections

Five bills moving in two states (Arizona and Kansas) would transfer authority over specific aspects of election administration to different actors in ways that could open the door to political interference. For example, AZ S.B. 2379 would allow the legislature to appoint its own field personnel to review electronic voting systems on Election Day and recommend changes to voting procedures. These field personnel would be duplicating existing statutorily mandated efforts by the secretary of state and would not be subject to any clear transparency or security requirements.

Restrictive Legislation

Between January 1 and May 4, Arizona and Mississippi enacted two laws that restrict access to the vote. Missouri, New Hampshire, and Oklahoma each have a restrictive bill that passed both chambers and was ready for the governor’s signature or veto as of May 4. Additionally, the Michigan Legislature passed two bills with restrictive provisions, but the governor vetoed both. In Wisconsin, state lawmakers passed three bills with restrictive provisions that the governor also vetoed.

Although legislatures have been slow to pass restrictive legislation, at least 34 bills with restrictive provisions are still moving through 11 state legislatures.

Overall, lawmakers in 39 states have considered at least 393 restrictive bills for the 2022 legislative session.

Enacted Restrictive Legislation

Arizona and Mississippi have enacted restrictive documentary proof of citizenship laws for voter registration. The Mississippi law will be effective for the 2022 midterm elections; the Arizona law will go into effect at the end of 2022. The laws were enacted despite the U.S. Election Assistance Commission [determining](#) that documentary proof of

citizenship requirements are not necessary to determine a voter’s eligibility and despite a federal court [striking down](#) similar requirements last year. Documentary proof of citizenship laws may [disproportionately impact](#) Black and Latino voters and elderly, low-income, and rural voters.

The Arizona law, already subject to [legal challenges](#), will expand the state’s proof of citizenship requirement for voter registration. Under current state law, if an individual registers to vote in Arizona without showing proof of citizenship, they are entitled to vote only in federal elections. The new law requires election officials to verify applicants’ citizenship status through existing databases, and if they are unable to do so, to require applicants to provide documentary proof of citizenship. Voters unable to provide documentary proof of citizenship will be prohibited from voting in presidential elections and from voting by mail in all federal elections, in addition to already being barred from voting in state and local elections.

The law defies the Supreme Court’s holding in *Arizona v. Inter Tribal Council of Arizona, Inc.* that individuals registering to vote using the federal voter registration application need not provide documentary proof of citizenship, because this new law may retroactively require documentary proof of citizenship from currently registered voters, it has been estimated that [as many as 200,000 voters](#) — some of whom have been registered voters for decades — could be at risk of having their registrations canceled. The new law also includes provisions requiring the state attorney general to investigate and potentially prosecute certain applicants who are unable to provide documentary proof of citizenship.

Mississippi’s law imposes a new documentary proof of citizenship requirement in the state. Its restrictive impact will likely be more modest than Arizona’s law above because voter registration applicants may only be asked for documentary proof of citizenship after election officials have cross-checked two government databases. Voter registration applicants’ citizenship status will be checked against the state’s Department of Public Safety database and, if necessary, against a U.S. Citizenship and Immigration Service (USCIS) database. If an applicant is flagged as a noncitizen, they must provide documentary proof of citizenship within 30 days. But citizenship data in [state public safety databases](#) as well as the [USCIS database](#) have been found unreliable, and this law could result in unlawful and inaccurate voter purges.

In addition to these enacted laws, a restrictive voting ballot initiative in Arizona passed both houses and will be placed on the ballot for voters in the November

general election. If successful, the ballot initiative would require mail voters to provide a state license, Social Security, or unique voter identification number when returning their ballots. A similar law enacted in Texas last year led to [significant](#) mail ballot rejections during Texas’s primary election earlier this year. Additionally, the ballot initiative would limit the types of ID that a voter can present when voting in person by eliminating the use of non-photographic identification alternatives. The resolution would empower any voter in the state to sue election officials to compel enforcement with the new ID provisions, potentially drowning election officials in lawsuits and diverting resources from election operations.

Restrictive Bills That Are Moving

As of May 4, at least 34 bills with restrictive provisions are moving in 11 states. The moving restrictive bills focus on restrictions to mail voting, new voter ID requirements, and voter registration, among other barriers to voting.

Restricting access to mail voting. Of the restrictive bills that are moving, almost three-fourths (25 bills in 10 states) would curtail access to mail voting. Eight bills in five states would either impose a new or stricter ID requirement for mail voting, such as providing a driver’s license number or partial Social Security number to apply for or return mail ballots. Another six bills in five states would limit voters’ access to mail ballot drop boxes or prohibit the use of mail ballot drop boxes altogether.

Other restrictions on mail voting in motion include legislation that would shorten the deadline to apply for a mail ballot or return a mail ballot; repeal no-excuse mail voting; and prohibit anyone, including an election official, from sending out unsolicited mail ballots.

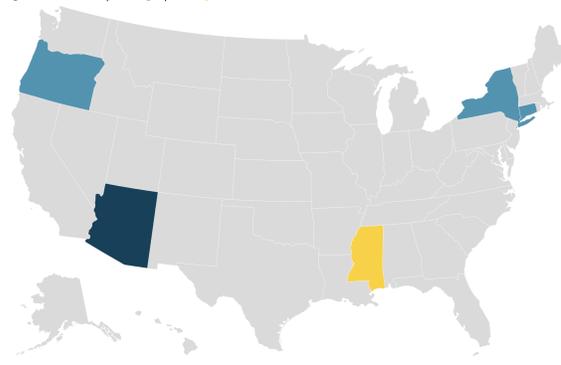
Imposing new or stricter voter ID requirements. Nine bills moving in five states (Arizona, Missouri, New Hampshire, New York, Pennsylvania) would implement new or stricter voter ID requirements for in-person voting. For example, a New Hampshire bill would eliminate a [decades-old policy](#) of providing Election Day registration to all voters by requiring voters registering on Election Day to vote by provisional ballot if they do not have an approved ID.

Making voter registration more difficult. Five bills moving in five states would make voter registration more difficult, including shortening the deadline to register to vote, imposing new residency requirements that could impede students’ ability to vote, and prohibiting compensation for anyone who solicits a

voter registration application, which could impose a significant burden on voter registration drives.

New Restrictive and Expansive Voting Laws

● Both Restrictive & Expansive ● Expansive ● Restrictive



Expansive Legislation

Between January 1 and May 4, Arizona, Connecticut, New York, and Oregon have enacted five laws that expand access to the vote. Maryland and Oklahoma also have three expansive bills that passed both chambers and were ready for the governor’s signature or veto as of May 4. At least 48 bills with expansive provisions are moving through 16 state legislatures and the DC City Council.

Overall, lawmakers in 44 states and Washington, DC, have considered at least 596 expansive bills for the 2022 legislative session.

Enacted Expansive Legislation

One Arizona law eliminates the two-year waiting period for individuals with multiple felony convictions to apply to have their voting rights restored. The other Arizona law requires cities and towns with populations greater than 20,000 to provide an accessible mail voting option for blind and visually impaired voters.

The Connecticut law expands absentee voting excuses to allow voters who will be unable to appear at their polling place during some — rather than all — hours of voting on Election Day to vote by mail. The law also expands mail voting to caretakers of individuals who are sick or have disabilities.

The New York law extends the expanded definition of “illness” for voting absentee to include the risk of contracting or spreading a disease through the end of 2022. The expanded definition of illness had expired in January of this year.

The Oregon law expands online voter registration to individuals without a DMV record. Under the new law, voters with a Social Security number can use that

number to register to vote online. Additionally, voter registration organizations approved by the secretary of state may now electronically submit voter registration cards on behalf of voters.

Arizona H.B. 2119 and the Connecticut and New York laws will be in effect for the 2022 midterm elections, while AZ S.B. 1638 will be effective on December 31, 2022; the Oregon Secretary of State has until 2026 to implement the enacted law.

Expansive Bills That Are Moving

Access to mail voting. Over a third of the expansive bills moving through state legislatures (19 bills in nine states and Washington, DC) are focused on expanding mail voting. The bills would expand the use of absentee ballot drop boxes, create or extend no-excuse absentee voting, require election officials to send applications to all eligible voters, require prepaid postage on mail ballot return envelopes, and allow voters to request to automatically receive absentee ballots for all elections.

Easier voter registration. Fifteen bills moving in 10 states would create more opportunities for individuals to register to vote, including bills that would implement same-day or Election Day registration, expand automatic voter registration, and allow individuals to register to vote online.

Expanding voting access for voters with disabilities. Eleven bills in six states and the District of Columbia would make voting more accessible for voters with disabilities, including bills that would expand access to absentee ballots for voters with certain disabilities and a bill that would allow a voter with a disability to mark a mail ballot instead of signing it.

Voting rights restoration. Three bills or resolutions in three states (Iowa, Massachusetts, Rhode Island) would extend the voting rights or ballot access of individuals with past felony convictions, including automatic restoration of the right to vote and requiring voter registration efforts inside correctional facilities.

Activity 4.3

Voting Rights: Should 16 Year Olds Have the Right To Vote?

Overview:

As far back as 1971, when the 26th Amendment gave 18 year olds the right to vote, some activists have argued that the voting age should be even lower—age sixteen is often cited as an appropriate cutoff. In this activity, students will read two articles (both of which include input from high-school students) and analyze the arguments behind different perspectives.

Opener:

Begin by showing a short video about the history of the legal voting age in the United States: <https://www.youtube.com/watch?v=E7D638F6QK0>.

Activity:

Students read two contrasting opinion pieces about whether or not to lower the voting age. As they read the articles, have them complete the handout titled “Analysis: Should 16 Year Olds Have the Right To Vote?”

If time allows, after students have completed their analysis, have each student stand up at their seats and give a one-sentence speech (micro-testimony!) in support of their own belief. It can be as simple as saying, “I believe 16 year olds should/should not have the right to vote because _____.” (This can be an excellent way to preview that they will soon be creating one-minute testimony for the legislative hearing.

Give Young People the Vote

Jeremi Suri, Samuel J. Abrams (with contributions by Zachary Suri), *The Hill*, December 28, 2021
(Source: <https://thehill.com/opinion/campaign/587055-give-young-people-the-vote/?r=1>)

Since the start of the pandemic, many 16- and 17-year-old Americans have proven that they possess the social responsibility and political maturity to help elect better leaders. Their future is at stake — perhaps more than ever — in the decisions our society makes about climate change and global health. An aging electorate has not shown that it can make better choices.

The United States should do what the new governing coalition in Germany, Europe’s largest democracy, has pledged to do: lower the voting age to 16. It is time to give younger voices — more than 8 million men and women — a chance to be heard.

The challenges of COVID-19 have hit Generation Z (those born between 1997 and 2012) particularly hard. They have endured separation from peers, online Zoom schooling and confinement during the years they most seek independence and adventure. Many have become primary caregivers for siblings, parents and other relatives, or have had to confront the mortality of loved ones. They have learned to vaccinate, mask up, socially distance and adopt other protection measures.

We have only begun to understand the social effects of these experiences, but no one can deny the pervasive resilience and sense of interdependence among those attending high school. They understand the tough realities of our world from the personal trials few of their predecessors endured. They have earned a say in our elections.

The time has passed for arguing that 16- and 17-year-olds are “not ready” to vote. They are better prepared to address crucial issues confronting our democracy than any generation since those who returned from World War II.

Every 50 years, Americans have expanded the eligible voting electorate as historical circumstances support a pragmatic and moral claim to enfranchise more of the population. There is nothing sacrosanct about race, sex or age when it comes to voting. The Civil War opened voting rights for Black men. Industrialization and World War I helped women gain suffrage. World War II and the Vietnam War pushed the voting age down from 21 to the age of military service at the time: 18. Today, men and women under 18 serve in all of our military branches (the legal age is 17), as well as on the frontlines in hospitals, grocery stores and other essential facilities that are high-risk for COVID.

Reducing the voting age is something we can do, despite partisan gridlock. The Constitution does not set a minimum age for voting. The 26th Amendment, ratified in 1971, stipulates that 18-year-old citizens cannot have their right to vote denied “on account of age.” It does not prohibit those under 18 from voting, and some states allow 17-year-olds to participate in primaries.

States should take the lead as they did before the passage of the 19th Amendment, when women voted in 27 states. State legislatures set requirements for voting in elections within their borders, and they can reduce the minimum voting age to 16 through legislation. Congress can do the same for federal elections, but it is not necessary, since American elections are primarily run by the states.

These changes should begin before the 2022 elections. Opening the electorate to younger voters will help to reverse the recent efforts in some states to restrict voting. A larger, younger population of voters may break apart some of the partisan divides, forcing statewide candidates to address issues that Generation Z cares about. Several gerrymandered congressional districts might become more competitive.

Fourteen states with Democratic legislatures and governors — California, Washington, Oregon, Nevada, New Mexico, Colorado, Illinois, Delaware, New York, New Jersey, Connecticut, Rhode Island, Maine and Hawaii — could set a new voting age. We would expect moderate and young Democratic candidates to benefit most. This would be especially true in the battleground states of Nevada and Maine where new voters might tip elections to Democrats. In a closely divided Senate and House of Representatives, younger voters in a few areas could make a difference in determining which party holds the majority. This is also true for presidential elections.

Republican states soon would face pressures to enfranchise their own 16- and 17-year-olds. Which parents would accept that their high schoolers remain locked out of voting booths? Younger voters in Republican states could help break the extremists’ stranglehold on the party, pulling some candidates back to centrist positions on the environment, health and social issues.

In one way, Generation Z already has entered politics. After George Floyd's killing by a Minneapolis police officer in May 2020, many young people took action to try to reverse the country's history of racism. They participated in peaceful demonstrations. They gained hands-on experience with organizing, lobbying and community-building. And they inspired a racial awakening that reverberated through media, government, education and business. Young people demand that diversity, equity and inclusion are mainstream subjects in our society. They have proven they can make change, even involving controversial issues.

Zachary Suri, a student at Liberal Arts and Science Academy High School in Austin, Texas, a published poet and co-host of the podcast This is Democracy, contributed to this report.

Climate change and health disparities are potential apocalypses that confound older voters and their elected representatives. Congress has remained deadlocked while the planet warms with extreme weather events; more than 800,000 Americans have died from COVID; and life expectancy has declined in parts of the United States. Recent surveys show that members of Generation Z take these issues seriously and they are determined to make a difference. Why should those in high school stay content to watch their elders do little? They have a strong moral claim on choosing leaders who might help save the planet and prevent more pandemics.

The rise in mass shootings in the United States, particularly in schools, also deserves mention. Recent policy decisions about policing and gun ownership have failed to reverse the frequency of domestic massacres. Students may die because of inaction from politicians; shouldn't students have some say in who holds elected offices?

Lowering the voting age is not a cure-all for the many challenges confronting the American political system. It will expand the electorate by only about 3 percent, but that may encourage additional attention to neglected citizens. It could make our elections more representative of our nation as a whole. New voters promise new possibilities when advanced democracies, such as the United States and Germany, need them most.

Jeremi Suri is the Mack Brown Distinguished Chair for Leadership in Global Affairs at the University of Texas at Austin and the Lyndon B. Johnson School of Public Affairs. He is the co-host of the podcast This is Democracy.

Samuel J. Abrams is a professor of politics at Sarah Lawrence College and a nonresident fellow at the American Enterprise Institute.

Commentary: Why voting age should not be lowered

Ilona Van der Linden, *San Diego Union Tribune*, September 11, 2019

(Source:

<https://www.sandiegouniontribune.com/opinion/story/2019-09-11/why-voting-age-should-not-be-lowered>)

Political literacy is very important to me. I've always had a fascination with history, government and how laws worked, prompting me to join programs such as Model United Nations and California YMCA Youth and Government. I've had some wonderful history and English teachers who have taught me the importance of thorough research, rhetorical analysis and source-checking, helping me maintain a well-rounded understanding of both sides of an issue.

I consider myself to be fairly well-versed in political history and current events, but I know this isn't the case for many of my peers. Most California teenagers don't have access to the experiences and resources that I have. Though some have taken the extra steps to become engaged in our democracy, most don't sufficiently understand its nuance — and many students simply adopt the political beliefs of their parents without a second thought.

Yes, there are voting adults who cast their votes in a disinterested or uninformed manner, but they are the ones paying the taxes and being directly impacted by the laws passed by our elected officials. They should, by all means, legally have a say in issues that directly affect them and their money.

As a teenager, I'm unable to work without a special permit, don't pay a single penny in taxes and can't legally enter contracts without a guardian's permission. At the end of the day, I'm widely unaffected by our legislators. At 18, I can say that I am fully affected by every decision made by those in power, and should have a full and complete say in who gets to control the government.

It can be argued that many 17-year-olds are just as intellectually mature as their 18-year-old counterparts. However, if intellectual maturity is what we're seeking, then the voting age should really be 25, when the prefrontal cortex and the brain's reward system fully develop and balance out, respectively.

Yet that isn't the case as maturity has nothing to do with the voting age. Intelligence also can't be used as a qualifier. Adults with mental disabilities are still guaranteed the right to vote under the same qualifications as everyone else. In short, there's no

concrete developmental basis for why 18 is the age we're old enough to vote at all.

The voting age may be a legal construct, but it ties into the fact that 18 is the age at which teenagers acquire the vast majority of their rights as adults. Take, for example, the most recent national lowering of the voting age. This came in 1971, when the U.S. government lowered it from 21 to 18.

Though some attribute the lowering primarily to student protests due to the tensions of wartime, it wasn't the deciding factor. At the time, 18-year-olds were enlisting and being drafted into the military, laying down their lives overseas in the Vietnam War. The individuals who were being drafted were incredulous that they were being denied the right to choose the political leaders who were determining the battles they fought.

Yes, 16 is the general age at which teenagers gain a new relationship with the law. Minors are given certain rights that enable them to become responsible for themselves. They're able to work, get emancipated and attain a driver's license (in most states), but there's both logical and legal initiatives behind all of these.

Though the voting age may be an arbitrary legal standard, it takes into account the completion of a high school education, the full opportunity to be versed in government, legal independence, and coming into one's complete rights as a U.S. citizen. Changing it would be akin to suggesting that all of the factors that have led to it being set at 18 in the first place simply don't matter.

Van der Linden is a senior at Canyon Crest Academy

NAME _____

DATE _____

Analysis: Should 16 Year Olds Have the Right To Vote?

Give Young People the Vote

As you read this editorial, list the three most persuasive points made in favor of giving young people the right to vote.

a.

b.

c.

Commentary: Why voting age should not be lowered

As you read this editorial, list the three most persuasive points made against lowering the voting age.

a.

b.

c.

After reading arguments in favor of and opposed to lowering the voting age, do you believe that the voting age should be lowered from 18 to 16? What arguments would you make to convince others of your perspective?



Activity 4.4

Voting Rights: Should Ex-Felons Have Their Voting Rights Restored?

Overview:

All but four U.S. states and territories have some prohibitions on the voting rights of people who are incarcerated, on parole, or who were formerly in the criminal-justice system. (The State of Oregon prohibits people who are in prison from voting.) In all, over 5 million people in the United States were deemed ineligible to vote in 2020 due to their status within the criminal justice system. Among the many proposals to expand voting rights in the United States, ex-felon re-enfranchisement remains one of the most controversial and contested ideas. Students will review opposing perspectives on the issue of restoring voting rights to people who have been convicted of felonies.

Opener:

Begin the activity with a quick poll: “Almost all U.S. states and territories have rules preventing people in prison with felony convictions (murder, armed robbery, sexual assault, etc.) from voting. Over half of all states extend the prohibition on voting to people who have completed their sentences, who are on parole, or who are no longer part of the criminal justice system. Using the Fist to Five* method, should people who have been convicted of crimes but have served or completed their sentences be able to vote?” Ask for a few students to share their perspectives.

* Fist to Five provides a quick process for students to signal the level of their agreement with a proposal or idea. In this case, a fist (0) indicates that people convicted of felonies should never have their voting rights restored. A five (5) means that a student believes people who have been convicted of crimes but have served their sentences should absolutely have their voting rights restored. Responses in the middle (1-2-3-4) suggest some level of disagreement/agreement with the statement.

For years, the State of Florida has been a major battleground in the debate over restoring voting rights to ex-felons. In 2018, almost 2/3 of Floridians voted in favor of a ballot initiative to give ex-felons the right to vote. Just prior to this vote, *The New York Times* created this video story about the effects Florida’s previous laws had on people’s right to vote: [Why Florida's Ex-Felons Should Be Able to Vote | NYT - Opinion](#).

(In a postscript, explain to students that in 2020 and beyond, the Florida state legislature and governor have instituted additional rules that have made it difficult for ex-felons to vote. These include a requirement that ex-felons pay all fines and restitution.)

Activity:

Students will read two opinion pieces—one in favor of restoring felons’ voting rights, one against—and evaluate the arguments on each side of the issue using the Analysis: Should Ex-Felons Have Their Voting Rights Restored?” handout.

Supplementary Background Reading:

“Voting Rights in the Era of Mass Incarceration: A Primer,” Joyce Chung, The Sentencing Project, July 28, 2021. (Source: <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>)



Opinion: Progress on restoring felons' voting rights is still slow— but at least there's progress

The Editorial Board, *The Washington Post*, October 18, 2020

(Source:

https://www.washingtonpost.com/opinions/progress-on-restoring-felons-voting-rights-is-still-slow-but-at-least-theres-progress/2020/10/18/51f3adb8-0f1c-11eb-b1e8-16b59b92b36d_story.html)

Since the mid-1980s, about half the states have changed their laws to expand voting rights for convicted felons, generally those who have already served their sentences. Yet until recently, the number of convicts shut out of the polls soared anyway, a product largely of the nation's enthusiasm for locking up even nonviolent criminals. Virtually no Western democracy disenfranchises so many of its citizens as the United States — and a hugely disproportionate number of those barred from voting are Black.

Against that dispiriting backdrop, there is finally a ray of good news: In this presidential election year, for the first time in decades, the number of Americans disenfranchised owing to a felony conviction has fallen, to about 5.2 million, nearly a million fewer than in 2016. About a quarter of them remain behind bars; the rest are ex-convicts who remain deprived of their full rights even though they are no longer incarcerated.

Those figures, contained in a [new study](#) by the nonpartisan Sentencing Project, reflect an encouraging recent trend; they also suggest how deep a hole remains for many ensnared in the criminal justice system. In parts of the Deep South and a few other states, more than 1 in 7 African Americans cannot vote because of a felony conviction. In Tennessee, Mississippi and Alabama, more than 8 percent of all adults are shut out from the polls because of felony convictions. Nationally, the number of past and present convicts stripped of voting rights has grown nine times faster than the population as a whole since 1976.

Then there's Florida, where a Republican crusade to deprive citizens of the vote is its own special disgrace. In the Sunshine State alone, some 1.1 million felons are [barred from the polls](#), including 900,000 who are no longer behind bars. For that, blame the efforts of GOP state lawmakers for successfully reversing the intent of nearly two-thirds of Floridians who voted in a [referendum](#) to restore former felons' voting rights in 2018.

Nationwide, roughly 6.2 percent of Black adults have been disenfranchised, nearly four times the share of other Americans similarly barred from the polls. Add that to the evidence of the structural and systemic

racism that remains a stubborn feature of the nation's troubled history of voting rights.

Still, there is reason for optimism. Throughout the Northeast and most of the Midwest, those who have lost the vote are limited mainly to current inmates. In the past few years, a Republican governor in [Iowa](#) and Democratic governors in [Kentucky](#) and [Virginia](#) have issued executive orders restoring the vote to most ex-convicts who have completed their sentences. The trajectory is encouraging even among Blacks, the disenfranchised share of whom has fallen by about a quarter since 2004.

In the march toward a more perfect union — one in which those who have paid their debt to society are made whole — progress remains halting. But at least there is progress.

If you can't follow laws, you shouldn't help make them

Roger Clegg, *The New York Times*, April 22, 2016

(Source:

<https://www.nytimes.com/roomfordebate/2016/04/22/should-felons-ever-be-allowed-to-vote/if-you-cant-follow-laws-you-shouldnt-help-make-them>)

We have certain minimum standards of responsibility and commitment to our laws before entrusting someone with a role in the solemn enterprise of self-government. People who commit serious crimes against their fellow citizens do not qualify.

The right to vote should only be restored to felons on a case-by-case basis after a person has shown that he or she has truly changed.

More succinctly, if you won't follow the law yourself, then you can't make the law for everyone else, which is what you do – directly or indirectly – when you vote.

The right to vote can be restored to felons, but it should be done carefully, on a case-by-case basis after a person has shown that he or she has really turned over a new leaf, not automatically on the day someone walks out of prison. The unfortunate truth is that most people who walk out of prison will be walking back in.

The arguments in favor of automatic felon voting are unpersuasive. The fact that a disproportionate number of felons at some point in time belong to a particular racial group does not make disenfranchisement racist, just as most felons being male and young does not make these laws sexist or ageist. And while a disproportionate number of felons are black, their victims likewise are disproportionately black, so minimizing the consequences of crime and empowering criminals also has a disparate impact on their law-abiding African-American neighbors.

If there were any evidence that a state's disenfranchisement law is truly discriminatory, it would be considered unconstitutional under Supreme Court rulings. The fact that it has been years since such laws have been successfully challenged in court – despite there being no shortage of organizations, starting with the Obama administration's Justice Department and the Democratic Party, that would be eager to do so – shows this evidence is nonexistent.

It's claimed that, once released, felons should be re-enfranchised because they have "paid their debt to society." But this phrase is misleading, since in many respects we don't ignore a criminal past – for example, in allowing someone to buy a gun.

Finally, it's argued that re-enfranchisement may speed the reintegration of felons into civil society. But automatic re-enfranchisement actually misses the opportunity to do so.

A better approach is to wait some period of time to ensure that the felon has actually turned over a new leaf. At that point, a ceremony – rather like a naturalization ceremony – where he is congratulated in front of friends and family and re-enfranchised would be moving and meaningful.

[Roger Clegg](#) is president and general counsel of the Center for Equal Opportunity. He was a deputy attorney general in the Justice Department's civil rights division under Presidents Ronald Reagan and George H.W. Bush.

NAME _____

DATE _____

Analysis: Should Ex-Felons Have Their Voting Rights Restored?

Opinion: Progress on restoring felons' voting rights is still slow—but at least there's progress

As you read this editorial, list the three most persuasive points made in favor of restoring felons' voting rights.

d.

e.

f.

If you can't follow laws, you shouldn't help make them

As you read this op-ed, list the three most persuasive points made opposing the restoration of voting rights to felons/ex-felons.

a.

b.

c.

After reading arguments in favor of and opposed to restoring voting rights to felons, on which side of the issue do you tend to fall? Why? If you were a legislator, what policy solutions might you propose?

Activity 4.5

Voting Rights: Can Independent Redistricting Commissions Solve Gerrymandering?

Overview:

As a result of the 2020 Census, the State of Oregon gained a seat in Congress. Newly redrawn district maps will be in use for the first time during the 2022 election. The process of redistricting in Oregon provides an effective case study for understanding the issue of gerrymandering. After doing some background reading about gerrymandering and how the Oregon legislative redistricting process was solved in 2021, students will explore contrasting viewpoints about one possible solution to gerrymandering: independent redistricting commissions.

Opener:

Show students this 7-minute video clip about the legislative redistricting process:

<https://www.c-span.org/classroom/document/?18339>. Ask students to write down any questions they have as they view the video; after the video is complete, take a few minutes to answer their questions, or record them in a visual “parking lot” to return to later on.

Activity:

1. Students should be familiar with the material from three background pieces about legislative redistricting (two of which deal specifically with the 2021 redrawing of the Oregon Congressional map):
 - a. What Is Gerrymandering?
 - b. “Oregon lawmakers pass plans for new political maps, after Republicans end boycott”
 - c. “Oregon Supreme Court upholds new state House and Senate maps”

Students can read all three articles and annotate/highlight the articles as they read; they each can review one article (individually or in small groups) and present the major points of their article in a jigsaw format; or you may decide to cover the major points of these articles in a direct presentation to the class.

2. Students should read two articles specifically about *independent redistricting commissions*, one widely discussed solution to gerrymandering. One feature of independent redistricting commissions is their popularity across the political spectrum. As they read these editorials, students should complete the “Analysis: Can Independent Redistricting Commissions Solve Gerrymandering?”

Supplementary Background Reading:

Although the readings in this packet should provide students with ample background about the topic, the following piece provides more background about independent redistricting commissions and may be worth consulting for additional context: “Redistricting Commissions: What Works” (Brennan Center for Justice, July 24, 2018):

<https://www.brennancenter.org/our-work/analysis-opinion/redistricting-commissions-what-works>

What Is Gerrymandering?

At the writing of the Constitution, the Framers decided to leave it up to the states to decide how they would pick their Representatives for Congress. The only requirement was that it had to be based on population. The population count is to be updated every 10 years, according to the Constitution.

Many states took to dividing up voting districts to favor certain political parties or interest groups. In 1812, the word “Gerry-mander” was created to describe Massachusetts Governor Gerry’s contorted drawing of voting districts to favor his political party. The “mander” part of the word was taken from the fact that his newly drawn districts looked like a strange salamander

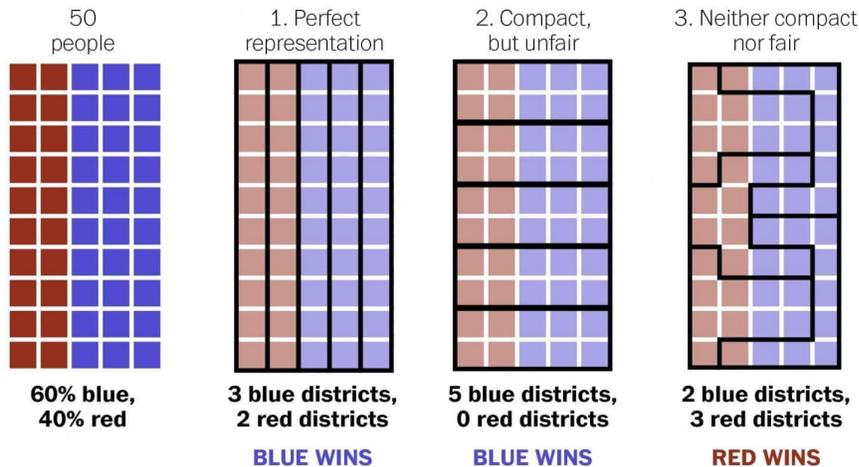


From then on, the practice of trying to draw voting district lines to favor a group has been known as “gerrymandering.”

Imagine a state as a geographical grid with a certain number of voters. Say a certain percentage of them traditionally vote Republican (often represented with the color red), and the other half vote Democratic (often represented with the color blue). After receiving its new census numbers, there are several ways a state could divide these voters up:

Gerrymandering, explained

Three different ways to divide 50 people into five districts



WASHINGTONPOST.COM/WONKBLOG

Adapted from Stephen Nass

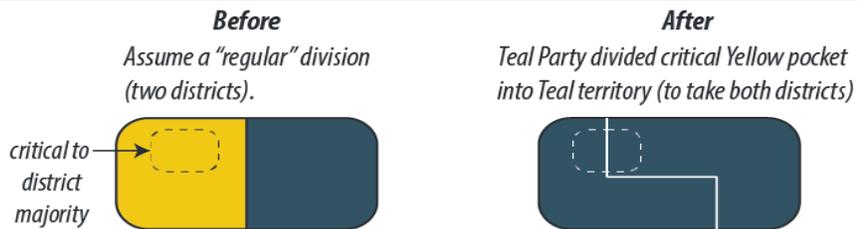
Political Gerrymandering
How a political party in power secures future voting power.

When a political party in power draws voting districts to dilute the power of votes for the disfavored party.

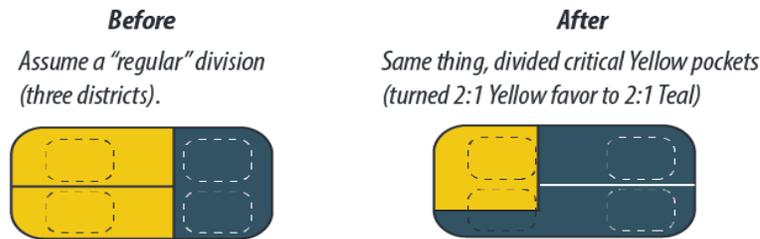
Examples of vote dilution through gerrymandering:

Assume the Teal Party is in power.

Example 1:



Example 2:



The more districts, the more complicated (and more potential variations).

Political gerrymandering is valid in the United States... unless the in-power party goes too far.

But how far is too far?

Problems with articulating how far is too far:

| | |
|-------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| There is no "regular" or "fair" starting point. | <i>Natural housing patterns are not perfect; Existing lines are results of past gerrymandering.</i> |
| Critical pockets are not clearly identifiable. | <i>Politics are "fleeting." People change.</i> |
| Gerrymandering a "fair" amount is justified. | <i>Past gerrymandering of another party justifies gerrymandering to a degree.</i> |

Oregon lawmakers pass plans for new political maps, after Republicans end boycott

Dirk VanderHart, *Oregon Public Broadcasting*, September 27, 2021

(Source:

<https://www.opb.org/article/2021/09/27/oregon-redistricting-vote-republicans-democrats-quorum-political-maps/>)

Oregon House Republicans reversed themselves Monday, showing up to the Capitol to allow passage of redistricting plans they've argued are rigged to ensure Democratic dominance.

Two days after [nearly all of their membership](#) refused to attend a House floor session to take up the maps, enough Republican members arrived in Salem to establish a quorum, allowing Democrats to pass their proposals on the last possible day.

Bills to rejigger the state's 90 legislative districts and to give Oregon a sixth congressional district passed the House largely along party lines. Gov. Kate Brown signed the bills Monday evening, making Oregon the first state to pass a congressional redistricting plan this year.

Passage of legislative plans was hailed by Democrats as a triumph over logistical issues posed by COVID-19 and a tight deadline. The National Democratic Redistricting Committee, which is concerned with congressional maps, called Oregon's plan "a compromise that accurately reflects the makeup of the state as a whole and took into consideration the diverse input from members of the public."

Republicans and their allies were universal in their disdain, guaranteeing court challenges and accusing the majority party of acting in bad faith. "The law requires us to keep communities of interest together in the redistricting process," Senate Minority Leader Fred Girod, R-Lyons, said in a statement. "The only community of interest this map seeks to keep together are Democrat voters."

With their change in tactics, Republicans opted for certitude — particularly in maps redrawing legislative districts. If lawmakers had failed to pass a legislative plan floated by Democrats, the job would have gone to Democratic Secretary of State Shemia Fagan. Many in the GOP feared what a Fagan-drawn map could look like.

"These are difficult decisions," said House Minority Leader Christine Drazan, R-Canby, when asked what had changed between Monday and Saturday.



Caption: A handful of senators talk on the floor of the Oregon state Senate on Monday, Sept. 20, 2021, as the Oregon Legislature conducted a special session to consider redistricting. The aim of the session was to pass new legislative and congressional district maps, which the state will use for elections. (Andrew Selsky / AP)

As the House passed the two plans, enshrined in Senate Bills 881 and 882, the Senate returned to action. Democratic senators quickly passed both bills a week ago over Republican objections. But in the time since, Democrats [updated their proposal](#) for drawing a new congressional map, and the amended bill needed Senate approval after passing the House. Senators approved the plan on an 18-6, party-line vote.

Rather than an initial plan that would likely have guaranteed Democrats will hold five of the state's now-six congressional seats, Democrats offered a [somewhat softer proposal](#) over the weekend. That map includes four seats that are either safe Democratic or lean in the party's favor, one safe Republican seat, and a sixth district that could be a tossup.

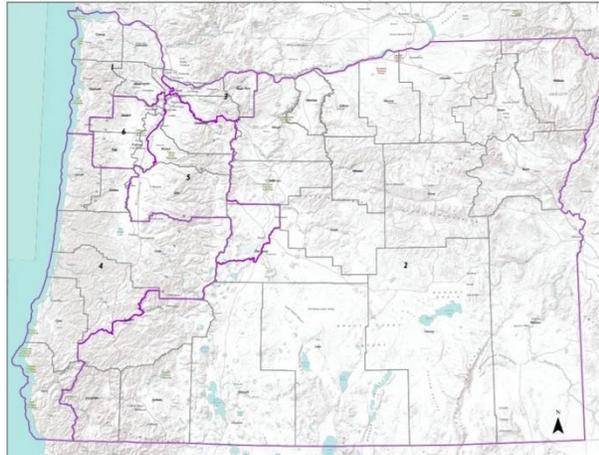
But that swing seat is currently held by Democratic U.S. Rep Kurt Schrader, who is likely to ride his incumbency to reelection. The district also includes fast-growing Bend, which should give it a more Democratic lean in future years.

Online tools that analyze redistricting plans found Democrats' final offer was not as biased in their party's favor as their first plan, but still favored Democratic candidates. Republicans on Saturday suggested the maps would lead to the same result as Democrats'

initial proposal — a 5-1 Democratic advantage — and opted to boycott the session rather than allow passage.

“At the end of the day this is the same outcome, maybe just a little more dressed up than the previous blatantly gerrymandered map,” said state Rep. Shelly Boshart Davis, R-Albany, in a committee hearing to take up the new proposal Saturday.

SB 881-3 Amendment - Oregon Congressional Map



Caption: *The final congressional boundaries approved by the Oregon Legislature on Sept. 27, 2021. (Oregon Legislature)*

In debate on the House floor Monday afternoon, Republicans continued that criticism. Many said they wrestled with whether to come to the Capitol, accusing Democrats of forcing a partisan plan that did not sensibly split up the state into six congressional districts.

“The minor changes that came after a mountain of public pressure were so minor that they were almost offensive and they didn’t address the real problem that Republicans, Independents and Democrats around the state have pointed out,” said state Rep. Suzanne Weber, R-Tillamook. “You can’t have four congressional districts spider out from Portland and honestly believe that the maps are fair.”

State Rep. Jack Zika, R-Bend, ripped into Democrats for drawing a district that extends from Portland to his central Oregon city, a move he said illegally united areas with little in common.

“I have received thousands of emails from my constituents that said that they do not want to be represented in Congress in Washington, D.C., by somebody from Portland,” Zika said. “I’m deeply concerned that this map divides the communities of common interest, ignores existing geographical boundaries and cuts through the existing political boundaries.”

But Democrats insisted their proposals are “fair and representative”, laying out extended rationale for how they came up with their plans, and insisting they would stand up to legal scrutiny.

“As we all know, change can be uncomfortable, and these have been challenging conversations,” said state Rep. Andrea Salinas, D-Lake Oswego, who led the Democrats’ redistricting effort in the House. “But our state’s growth and changing demographics requires a careful redistricting process that includes the voices, needs, and stories of all Oregonians, including those who have traditionally been shut out of the political process.”

It was much the same when lawmakers took up SB 882, the Democrats’ plan for legislative districts.

Republicans repeatedly accused Democrats of moving lines in order to press their existing advantage while representatives in the majority party listed reasons they believe the maps were fair. In one case state Rep. Raquel Moore-Green, R-Salem, spoke against changes to her own district, which will ensure it favors a Democrat.

“These current redistricting maps have an obvious goal to remove all obstacles to Democrat power, and they are a blatant play for one party rule in Oregon,” said state Rep. Christine Goodwin, R-Roseburg, the chamber’s newest member.

Also critical of the process was state Rep. Brian Clem, a Salem Democrat, who announced in a floor speech that he would not be running for re-election next year. Clem cited personal issues in his decision, but also tore into House Speaker Tina Kotek, D-Portland, for [breaking a commitment](#) to grant Republicans an equal say in redistricting.

“You cannot go back on your word,” Clem said. “It was supposed to be bipartisan or nothing. The change in the process is more than I can stomach... This is not okay and I just can’t dignify it with my vote.”

House Republicans’ decision to ultimately allow the maps through is the result of what the party saw as a no-win situation. If the GOP blocked congressional maps it deems unfair, it would also kill a set of new legislative maps that analyses suggest are more even-handed.

Those legislative plans would likely still enable Democrats to hold majorities in the House and Senate, but might not yield the three-fifths supermajorities the party currently holds in both chambers. There was no

guarantee Republicans would get a better deal from Fagan.

“Many of us are only here because we don’t trust the Secretary of State to draw these maps, either,” Weber said.

The last-minute legislating marked the end of a frenzied week-long special session that included a shattered political deal, at least one positive case of COVID-19, and a Republican boycott.

Not long after lawmakers first convened in Salem on Sept. 20, Kotek announced she’d be reneging on a deal she made with Republicans earlier in the year. Under that deal, Kotek granted GOP members equal say on the House Redistricting Committee, theoretically giving the party veto power over proposals it believed were not fair.

But with Republicans vowing to block Democrats’ proposals, Kotek severed her commitment, arguing the party had not approached the redistricting process in good faith. She instead announced new redistricting committees designed to speed through Democrats’ plans.

The maneuver enraged Republicans — so much so that Drazen unsuccessfully attempted to have Kotek censured by the chamber on Monday. It also seemed to guarantee the GOP would give up on the session and go home. But before their decision became clear, COVID-19 intervened. A Republican lawmaker tested positive for the virus on Tuesday, prompting Kotek to recess the chamber until Saturday morning.

In the meantime, senior leaders in both parties continued talking. When Senate Democrats proposed a plan for reshaping their initial congressional proposal, the two sides neared an agreement Friday night, according to people in both parties. But by Saturday, Republicans evidently decided the new map wasn’t good enough, and refused to attend a floor session.

With the GOP absent, Kotek kept Democrats on the House floor for more than four hours before adjourning until Monday morning. She warned at the time that if the chamber had not reached a quorum by 9:30 a.m., she would end the session -- and the Legislature’s ability to pass political maps.

The redistricting process occurs every 10 years following the U.S. Census. Since its results help dictate which party will lead the state for the next decade, it’s a major focus for lawmakers. But the legislature has had little success over the years.

Since 1910, Oregon lawmakers have succeeded in passing new plans that went into law just twice, most recently in 2011. In other years, plans either failed to pass both chambers, were vetoed by the governor, or were altered by the courts.

With Republicans still angered over the maps passed Monday, a court challenge appears likely. Objections to the congressional map lawmakers passed are [due by Oct. 12](#). Challenges to the legislative maps [must be filed by Oct. 25](#).

By passing maps, the Legislature pre-empted Fagan, who had planned to take input from a “citizen’s commission” if she was tasked with redrawing legislative maps. If lawmakers had failed to pass a new congressional plan, the job would have gone to a panel of five judges selected by Oregon Supreme Court Chief Justice Martha Walters.

Oregon Supreme Court upholds new state House and Senate maps

Dirk VanderHart, *Oregon Public Broadcasting*, November 22, 2021

(Source:

<https://www.opb.org/article/2021/11/22/oregon-supreme-court-upholds-new-state-house-and-senate-maps/>)

The Oregon Supreme Court has dismissed claims that new state legislative districts passed by Democrats in September were improperly drawn, putting an end to one facet of an ongoing redistricting fight in the state.

In a [ruling issued Monday](#) morning, justices ruled challengers had not proven that the new boundaries for the state's 60 House and 30 Senate districts were crafted with illegal partisan intent, or violated any other rules that lawmakers are supposed to consider.

"This court has long recognized that... constitutional and statutory provisions confer broad discretion on the legislature to devise a reapportionment plan," Justice Chris Garrett, a former lawmaker who played a role in redistricting in 2011, wrote in the opinion. The court would only go against those plans, he wrote, if it found that lawmakers had not considered proper criteria when drawing maps, or had "made a choice or choices that no reasonable [reapportioning body] would have made."

Two lawsuits challenging the maps failed on those counts, Garrett wrote. The outcome puts an end to debate about what Oregon's legislative districts will look like for the next decade, giving lawmakers and would-be lawmakers certainty as they consider running in next year's elections.

The new legislative maps take effect Jan. 1. An analysis of the plans using the website [Dave's Redistricting](#) suggests they will lead to continued Democratic control of both chambers for the foreseeable future, though it's not clear the party will maintain the three-fifths supermajorities it currently holds.

The two suits challenging the maps offered markedly different arguments for why they should be changed. [One suit](#), filed by two Lane County men and [supported by a Democratic state representative](#), sought only to shift a single boundary line that split a section of southeast Eugene from the rest of the city.

Petitioners Gordon Culbertson and David Calderwood argued that carving a piece of the city into a largely rural district unduly separated communities that shared a common interest. And they said that the line had been drawn with illegal political intent, in order to

ensure that state Rep. Marty Wilde, D-Eugene, was unable to mount a primary challenge to a sitting senator, Eugene Democrat Floyd Prozanski. As a result, the suit said, Wilde now lives in a Republican-leaning district that will be difficult for him to win.

Lawyers for the state, meanwhile, said the disputed boundary became necessary after lawmakers made changes to their initial proposed map to ensure the University of Oregon was not broken into different districts. That change, they noted, came at the urging of Wilde and others who wanted the university to remain wholly within one district.

Garrett and other justices found no reason to find the line lawmakers had arrived at was any better than the change proposed in the court challenge, and they appeared dubious that Wilde was the victim of political retribution, as he and other lawmakers have claimed.

The [other challenge](#) to the maps was far broader. Filed by a former Republican state lawmaker and a Lake Oswego attorney, the suit suggested lawmakers had failed to conduct proper process when considering new districts and had enacted an illegally partisan map that should be scrapped altogether.

Justices were unimpressed with those arguments, saying they were "unpersuasive, largely because they rely on debatable and unsubstantiated assumptions about the reasons underlying the Legislative Assembly's actions."

Since it ruled challengers to the maps had not proved basic points of their case, the state Supreme Court did not delve into some claims raised by the Oregon Department of Justice that have raised eyebrows in recent weeks.

Perhaps most notably, the DOJ has argued repeatedly in court that, even if lawmakers did pass plans that were illegally gerrymandered under state statute, the court would be powerless to stop it. That argument rests on the notion that the bill passing new political districts, Senate Bill 882, would trump the older statute that outlawed partisan gerrymandering.

"A statute cannot be invalidated on the ground that it violates another statute rather than a constitutional

provision,” the DOJ wrote in a court filing earlier this month. “If SB 882 conflicted with ORS 188.010, the former would control as the more recently enacted statute.”

That argument was met with disbelief in some corners when it came to light, but justices did not wind up deciding on its merit Monday.

Though they [passed largely along party lines](#), the state House and Senate districts that will now take effect were the least controversial aspect of a deeply acrimonious redistricting process in September. Lawmakers have battled most intently over how the state will add a sixth U.S. House district -- a decision which could have bearing on which party controls Congress in 2023.

The congressional map passed by Democrats has been [flagged as biased](#) by several prominent tools for measuring the fairness of political districts. An ongoing Republican challenge to the congressional map is before a five-judge panel. Judges hinted during oral arguments at a skepticism that the new districts are provably gerrymandered, peppering attorneys for the challengers with questions.

That panel is expected to rule this week. If it dismisses the case, petitioners have the option of appealing to the state Supreme Court.

Editorial: It's past time for independent redistricting

Editorial Board, The Times (Tigard-Tualatin-Sherwood), September 22, 2021

(Source:

<https://pamplinmedia.com/ttt/90-opinion/522596-417449-editorial-its-past-time-for-independent-redistricting>)

Like many Oregonians, we've taken great interest in the proposals for new legislative and congressional maps that have come out of Salem this month.

And we think our reaction mirrors that of many Oregonians as well: We don't like what we see.

It's as predictable as the sun rising: Democrats want to draw district lines that will shore up and perhaps expand their already-wide majorities, Republicans want to draw district lines that will give them a fighting chance at legislative control of a state where they haven't held more than one statewide office at a time in decades.

Both parties have some vulnerable incumbents, many of whom they propose to give more favorable districts less inclined to boot them from office at the next opportunity. Both parties have some members across the aisle to which they want to put the screws, drawing them out of their home districts or changing their district lines to give them a less approving electorate. And at the end of the day, both parties want to win as many districts as possible, whether they truly represent the will of Oregon's voters or not.

And what do we want?

For starters, we want to live in a small-d democratic state, with a small-r republican form of government, in which voters choose their representatives and not the other way around.

Partisans in power

It has always been a gross conflict of interest that legislators are able to vote on what their own districts will look like every decade. Mercifully, despite Oregon's long tradition of comity in Salem — something that has been in short supply in recent years — our Legislature has a pretty shoddy track record when it comes to redistricting. With the 2011 redistricting cycle as one of the few exceptions, the courts and/or secretary of state have had to take over redistricting almost every time.

It's unclear what will happen this time, after a special session gavelled in Monday, Sept. 20.

The Senate quickly adopted maps on party-line votes on Monday.

But in the House, Speaker Tina Kotek unilaterally blew up a power-sharing deal with Republicans in an attempt to force through a deeply one-sided Democratic gerrymander of Oregon's congressional districts, leading House Republicans to boycott the next morning's legislative session.

Then, on Tuesday, the House was shut down by a COVID-19 case. It's anyone's guess as to what happens when floor proceedings resume — tentatively scheduled for Saturday, two days before a deadline set by the Oregon Supreme Court to finish the redistricting process.

Unfortunately, in Oregon, even when the Legislature fails to complete its redistricting duties, the responsibility still falls on partisan actors.

Secretary of State Shemia Fagan is a Democrat, and one who explicitly ran in 2020 on a platform of championing her party's progressive wing and appealing to labor interests — the same labor interests that frequently flood competitive races in Oregon with campaign contributions. She would be responsible for crafting and submitting legislative maps if the Legislature can't agree.

Drawing the congressional map would be a panel of judges appointed by Oregon Chief Justice Martha Walters. While the Oregon Supreme Court is officially nonpartisan, Walters is a registered Democrat who was originally appointed by Democratic Gov. Ted Kulongoski.

Fagan has already been working to put together an advisory group to assist in redistricting, anticipating that the Legislature will not be able to do the job — something she pledged to do during her campaign. We hope, should this task fall to her, that despite Fagan's personal political leanings, she'll take input from all members of this "People's Commission" into account and produce legislative maps that are fair, reasonable, and drawn without allegiance to particular legislators or to benefit one political party.

As for the congressional redistricting panel, we hope Walters would appoint members based on their



experience and fidelity to justice, not their fealty to a political party or their willingness to appease special interests. Voters from across the political spectrum have repeatedly given Walters their support to stay on the Oregon Supreme Court, and we hope to see that confidence is not misplaced simply because Walters herself prefers one political party over the others.

Political games

But even if redistricting this year ends up being genuinely nonpartisan, Oregonians should not take that to mean that the system is working as it should.

In 2011, with a closely divided Legislature, Democrats and Republicans put aside their parties' interests and worked together to draw maps in a bipartisan way. We lauded those efforts. But we also agree with points made by Republicans today like Rep. Shelly Boshart Davis of Albany — while those maps may have been drawn with the approval of both Democratic and Republican legislators, they still fell short of an acceptable standard because they were drawn to satisfy legislators, rather than with fairness and proportional representation as their overriding principles.

How redistricting shakes out in 2021 is yet to be determined. But we are tired of the political games that are played.

Particularly egregious are both parties' proposed congressional maps.

Republicans vacuum-pack Washington and Multnomah counties into two districts (excluding a tiny piece of tony Southwest Portland). That leaves Republicans likely favored in the remaining four districts — even though they haven't won a statewide federal election since 2002. That may reflect the will of Republicans frustrated that their margins in rural areas are routinely outweighed by Democrats' big wins in urban and suburban Oregon, but it results in a government that is not representative of Oregonians altogether.

In a proposed map with a much better chance of becoming law than Republicans' offer, Democrats put pieces of Portland into as practically many districts as they can. That gives them a strong chance to win five of six congressional districts — or 83% of Oregon's House delegation — in a state where President Donald Trump, despite his near-historic unpopularity as a Republican incumbent running for re-election, won more than 40% of the vote last year. That's not right, either.

Again: This is all as predictable as the sun rising. Legislators are inherently self-interested, and partisans

are driven principally by the goal of garnering as much power as possible for their party.

A better way forward

It's past time that Oregon followed many other states in adopting an independent redistricting commission. This solemn duty should no longer be entrusted to the Legislature, and the backstop to legislators squabbling and staking out extreme positions instead of coming together to compromise and set aside political agendas ought not be putting redistricting in the hands of a partisan secretary of state or a potentially skewed judicial panel.

Redistricting should be done by the people of Oregon — not elected officeholders, not lobbyists, not party hacks, but by you, or your neighbor down the street, or your old friend from high school, in concert with other regular Oregonians chosen at random for the task — and based on the laws of our state, not on party politics and special interests.

In essence, redistricting should be treated like jury duty — a serious matter for disinterested people to decide, rather than a once-in-a-decade opportunity for legislators to give themselves some added job security.

We applaud the efforts of the League of Women Voters and other advocacy groups that have pushed for changes to the way Oregon does its redistricting. We also applaud efforts, long-shot though they may be, by congressional Democrats to outlaw partisan gerrymandering at the federal level — even though we recognize that there is an element of self-interest there, given that Republicans control redistricting in considerably more states than Democrats do.

It's too late to change the way things work this year, so all we can do is hope for the best within the confines of an inherently flawed system. But whether Oregon conducts its elections under fair maps or political gerrymanders in 2022, we hope that this latest circus show in Salem provides the impetus for true redistricting reform — because voters should choose their representatives and not the other way around.



Opinion: Let's put redistricting back in the hands of politicians

Hugh Hewitt, *The Washington Post*, January 18, 2022

(Source:

<https://www.washingtonpost.com/opinions/2022/01/18/redistricting-belongs-in-politicians-hands>

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Punting is an underappreciated part of playing football — and running a federal courtroom. The doctrine of “constitutional avoidance” (that is: decide no question of constitutional law that need not be decided) often favors punting. The Supreme Court is normally at its best when it comes to staying its hand on (and staying out of) election disputes. When the Supreme Court [refused, in late 2020](#), to review Texas’s case seeking to invalidate the electoral college results in four different states, a challenge backed by then-President Donald Trump, it fulfilled the conventional wisdom that the court is not political and it hates wrestling with political questions involving elections.

[Bush v. Gore](#) in 2000 was, of course, the exception that proves the rule. It was forced on the court by the absurdities of the 2000 Florida recount circus and the almost ludicrous partisanship of the Florida Supreme Court. The seven votes of the nine concluding that equal protection violations had occurred didn’t protect the five justices who went further and called an end to the recount games. The “selected-not-elected” slur that followed George W. Bush in the years following was the starting gun for the hyper-politicization of elections we live with today.

The court’s reluctance to touch on political questions has been only slightly less pronounced on redistricting cases. The court has generally abided by two rules: The one-person/one-vote doctrine that [the court decreed in 1964](#) profoundly changed redistricting by requiring all similar districts to begin every decade with the same number of people. That was followed by a subsequent line of cases generally banishing the use of race in the drawing of electoral district lines.

Many wanted the court to go farther and somehow end gerrymandering — the drawing of district lines for political advantage. In 2019, the Supreme Court loudly declared an end to the effort to constitutionalize claims of partisan gerrymandering. The subsequent confirmation of Justice Amy Coney Barrett hardly makes reversal of that bright-line decision likely.

The court had also [ruled in 2015](#) that the creation of a redistricting commission via ballot initiative does not violate [the elections clause of the Constitution](#).

Such bipartisan or nonpartisan commissions have allegedly been designed to take some of the politics out of the mapmaking; but inevitably, commissions are typically made up of politically minded folks appointed by politically focused state bodies or officers.

But that 5-to-4 decision might be up for reconsideration very soon because state supreme courts are now being asked to rule on the constitutionality of maps produced by some commissions, and here the court’s new majority might matter greatly. I hope the court takes the opportunity to reverse its 2015 precedent and dismantle the network of independent redistricting commissions that have been springing up around the country for the past generation. The Supreme Court must lead the judiciary — state and federal — out of this political thicket. Three of the four dissenters in 2015 — Chief Justice John G. Roberts Jr., who penned the sharp-edged opinion, and Associate Justices Samuel A. Alito Jr. and Clarence Thomas — are still on the court, and they have been joined by three new conservatives who most likely lean their way. These six should act decisively.

Gerrymandering is rampant everywhere these days, as it is every 10 years. Democrats have thumped Republicans in the line-drawing wars in Illinois and will soon do so in New York, as they have before in Maryland and Massachusetts. Republicans are repaying the favors in Texas, Florida and Ohio.

But, in a twist, state supreme courts are so far bearing down on maps that favor the GOP.

[Ohio’s Supreme Court just overturned](#) a plan for the state legislative districts drawn up by that state’s new independent commission, and did so on a 4-to-3 vote of elected justices. The same court then tossed a map of the Buckeye State’s congressional districts done the old-fashioned way — by the legislature. In both cases, maps that favored Republicans were struck down.

North Carolina also produced new maps via its state legislature. Though a [special court upheld those maps](#) on a unanimous vote, the North Carolina Supreme Court (which leans Democratic) will review those findings.

There should be enough votes on the remade U.S. Supreme Court to revisit the 2015 decision on the constitutionality of independent commissions if the right appeal makes it there. It is also possible the court regrets its 2018 decision to punt when it refused to get involved in the Pennsylvania Supreme Court's redrawing of the Keystone State's maps. But if the Roberts court keeps punting in 2022 on either Ohio's controversy or the possible rejection of new maps in North Carolina by that state's highest court, it will be fair to ask whether there two sets of rules now. Is it gerrymandering for the blue jerseys, court-drawn lines for the red?

The way out? Strike down the independent commissions and fence off these line-drawing controversies from state courts. Return redistricting to where it ought to reside: with state legislatures, leaving behind only two rules: One person, one vote; no use of race in drawing lines. The chips, and lines, will fall where elected officials draw them as intended by the Framers and the 14th Amendment.

Now is not the time for the highest court to punt, but to make the rules clear and fair: Redistricting is rightfully the work of elected politicians subject to a vote of the people, not "independent" commissions or robed demigods unanswerable to those they presume to govern.

NAME _____

DATE _____

Analysis: Can Independent Redistricting Commissions Solve Gerrymandering?

Editorial: It's past time for independent redistricting

As you read this editorial, list the three most persuasive points made in favor of creating independent redistricting commissions in the State of Oregon.

d.

e.

f.

Opinion: Let's put redistricting back in the hands of politicians

As you read this editorial, list the three most persuasive points made against the idea of independent redistricting commissions.

a.

b.

c.

After reading about independent redistricting commissions, which arguments do you personally find most persuasive? Why? Regardless of your position, what other solutions to redistricting do you think might also solve the problem of gerrymandering?