

# WHOWHATWHY

## US Elections Report Card

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# Statement of Methodology

Our goal was to fairly and accurately present the health status of US democracy on a state by state basis.

To this end, we created a comprehensive evaluation process to score each state relative to its cohorts on a wide variety of democracy- and election-related metrics. We examined 12 categories of performance, each of which was further divided into subcategories, or component metrics, as follows:

- 1. Fairness of Districting (Gerrymandering):**
  - a. Alignment of US House Representation With Statewide Vote (2020)
  - b. Alignment of State House Representation With Statewide Vote (2020)
  - c. Alignment of State Senate Representation With Statewide Vote (2020/2018)
  - d. Nonpartisan Redistricting Commission?
- 2. Ways to Register and Vote**
  - a. No-Excuse Vote by Mail Option Available?
  - b. All Vote by Mail?
  - c. Length of In-Person Early Voting Period
  - d. Hand-Marked Paper Ballot on Demand?
  - e. Poll Books - Electronic/Paper/Mixed
  - f. Ballot Marking Methods (Able Voters)
  - g. Tabulation Methods
- 3. Voter Turnout**
  - a. 2018/2020 Average Ballots Cast/Eligible Voters
- 4. Burdens on Voters**
  - a. ID Requirements?
  - b. Registration/Absentee Ballot Problems
  - c. Ballot Collection Laws
  - d. Provision/Convenience of Drop Boxes
  - e. Wait Times/Conditions
  - f. Online Registrations Available?
  - g. Percent Registrations Rejected
  - h. Percent Provisional Ballots Rejected
  - i. Percent Military & Overseas Ballots Rejected/Unreturned (Composite)
- 5. Election Worker Safety/Jeopardy**
  - a. Laws to Protect Election Workers vs. Laws Threatening Election Workers
- 6. Post-Election Audit Protocols**
  - a. Audits Performed?

- b. Risk-Limiting Audits?
  - c. Timing of Audit(s)
  - d. Contests Audited
  - e. Escalation Provisions?
  - f. Are Audits Public?
- 7. Election Deniers**
- a. Election Deniers on Ballot for Governor, Secretary of State, Attorney General
- 8. Statistical Forensics**
- a. Exit Poll-Vote Count Disparity/Margin of Victory: President 2016
  - b. Exit Poll-Vote Count Disparity/Margin of Victory: President 2020
  - c. Preelection Poll-Vote Count Disparity/Margin of Victory: President 2020
- 9. Restoration of Rights**
- a. Conditions Under Which Voting Rights Remain Forfeited
- 10. Legislative Activity**
- a. Anti-Democracy Legislation (Enacted, Vetoed, Introduced: January 2021 - August 2022)
  - b. Pro-Democracy Legislation (Enacted: January 2021 - May 2022)
- 11. State and Federal District Court Decisions**
- a. Re. Districting
  - b. Re. Transparency
  - c. Re. “Stop the Steal” Cases
  - d. Re. Voting Rights
- 12. Direct Democracy**
- a. Powers Granted to Electorate to Pass Referenda, Ballot Initiatives, Constitutional Amendments

Data and information were drawn from numerous sources, all of which may be accessed via the links provided. In some cases these are official government records and in others compilations made by watchdog organizations or media outlets. Where available, multiple sources have been consulted for a given metric to cross-reference data and information.

Any comprehensive numerical grading process of a complex system is inherently somewhat reductionist in nature. While certain aspects of the electoral and political processes we sought to evaluate lend themselves well to direct numerical measure or fall into clear, denumerable categories, others are more difficult to pin down and compare in numerical terms.

An example of the former would be the score for the number of “election deniers” on the ballot for the offices of governor, secretary of state, and attorney general relative to the number of those same offices being contested in a given state: We found precise ratios ranging from zero deniers in three contests to five deniers in three contests and were able to assign scores accordingly without ambiguity.

An example of the latter would be scoring the provisions for escalating post-election audits in the event disparities are discovered. In this case, such provisions were quite diverse, qualitative rather than quantitative in nature, and arrayed along a spectrum, requiring interpretation and the exercise of judgment in assigning scores.

In many other cases — for example, voter turnout — the core data was quantitative but spectral in nature, so that cutoffs had to be decided upon to translate the turnout percentages into integral scores, in that case ranging from 0 to 5.

We have provided a “legend,” or key, for every metric, detailing the range of scores, what each score signifies, and how it was calculated. So, to take voter turnout as an example again, the measured metric is “2018/2020 Average Ballots Cast/Eligible Voters” and the legend reads “0 < 50.0%; 1 = 50.1% to 55.0%; 2 = 55.1% to 60.0%; 3 = 60.1% to 65.0%; 4 = 65.1% to 70.0%; 5 > 70.0%,” associating each integral score with a discrete range of turnout.

Decisions were also required regarding the assignment of weights to both the 12 principal categories (presented in **bold** above) and each of their components (indicated by the lowercase letters above). The weightings reflected our assessment of the relative impact a given component or metric is likely to have upon the health and functionality of US democracy.

The weightings of the 12 major categories are indicated by a multiplier (ranging from 0.3 to 3.0) shown at the top of each column of the Grading Sheet. The relative weightings of components *within* each principal category are reflected in the choice of scale for each component. For example, in “Burdens on Voters,” the “Type of ID Required” component is scored on a scale of 0, 3, 6, 9, 12 while the scale for “Military & Overseas Ballots Rejected/Unreturned” is 0, 0.5, 1, 1.5, 2. While both are “5-point” scales, the former can be seen to carry six times the weight of the latter, reflecting its significantly greater impact on the electoral process.

While opinions may differ regarding such impacts and consequent weightings, we are confident that solid real-world arguments can be advanced for each of our choices.

Most importantly, we undertook this work, to the extent possible, “blind” — which is to say without regard for which states were attached to any given numbers, percentages, or descriptions of protocol — *so that our decisions on numerical translations, ranges, scores, and weightings would not be impacted by which states might benefit or suffer from those choices.*

The interaction of principal category and component weightings produced weighted top scores for the 12 principal categories ranging from 6.0 to 12.0, again reflecting the relative impact of each major metric on the democratic process as a whole. These 12 top scores sum to 100, as in a conventional report card, and the “democracy” scores of the individual states range from a low of 24.2 to a high of 79.8, with letter grades assigned accordingly.

We avoided negative scoring throughout. Thus, the lowest possible score for any metric was zero. In the rare cases where a metric did not apply to a given state, or where insufficient information was available to support a score, that state was given the median score for that metric. In this way we avoided penalizing states that could not be scored on a particular metric, which would have been the case if a zero or no score was entered.

Finally, it should be understood that any comprehensive evaluation of success or failure will depend, to a significant extent, on underlying values — in this case, what promotes or threatens to subvert a robust participatory democracy.

We placed high value on factors that encourage and facilitate participation — beginning with the casting of ballots and extending to the public service of administering elections and to the crafting of laws through ballot initiatives and referendums. We also accorded value to good-faith protocols — such as post-election audits — designed to verify and confer legitimacy upon electoral outcomes.

To the extent that tension arises between participation and security levels — for example, when considering the imposition on would-be voters of stringent identification requirements or the restriction of popular modes of voting such as vote-by-mail and drop box use — we valued only such measures that could be justified by data pointing to the existence of a significant security threat. Thus, restrictions instituted in response to such a general and unsubstantiated “threat” as “voter fraud” were, to the extent they blocked or discouraged voting, regarded negatively and resulted in low scores on the relevant metrics.

# Summary of Principal Metrics

## Fairness of Districting

It is a challenge to precisely quantify the fairness of districting maps but we can measure the extent to which representative delegations, whether in the US House or state legislative chambers, diverge from what would be a strict proportional representation based on statewide vote shares. Particularly where the size of the delegation is small — such as the US House representation in all but the largest states — the statewide minority will tend to be somewhat underrepresented even in districts not drawn for partisan advantage.

We found, however, significant divergence between aggregate party vote share and the composition of the various delegations, clear evidence of gerrymandering undertaken by both parties, though somewhat more effective overall in states under Republican control. We additionally factored into the scores for this metric the approach taken to redistricting: whether an independent redistricting commission is established and, if so, whether its members were officeholders or nonpoliticians.

Based on these component factors, the states of Colorado, Michigan, Arizona, and Washington are the most fair when it comes to districting, with Pennsylvania and Montana not far behind. Oklahoma is the least fair state for districting, followed by Connecticut, Indiana, and Kentucky.

## Ways to Register and Vote

This measure encompasses the ways available to cast votes and the ways votes are recorded and counted. We awarded points to states that provide a mail-in voting option; that mail a ballot to every registered voter; that provide longer in-person early-voting periods; and that will provide voters with a hand-marked paper ballot on demand.

We also favored states that use durable, as opposed to digital, poll books; that rely on hand-marked paper ballots, as opposed to direct-recording electronic machines (DREs) and ballot-marking devices (BMDs), for able voters; and that tabulate with optical scanners (or hand counting), preserving hand-marked paper as the ballot of record rather than barcodes, QR codes, or purely electronic data.

Vermont had the highest score for voting ease and security, followed by Montana, Maine, Minnesota, and Nebraska. Delaware had the lowest score, followed by Louisiana, Arkansas, Mississippi, and Tennessee.

## Voter Turnout

When it came to voter turnout we were interested primarily in the current state of affairs rather than historical levels. We therefore averaged turnout levels in the 2018 and 2020 general



elections — one a midterm, the other presidential; one pre-COVID-19, the other during COVID-19's first and most impactful year.

Turnout can be measured as a percentage of registered voters, voting-age population (which would, for example, include the incarcerated and ineligible to vote), or eligible voters. We chose the last, as it impounded the impact of the registration process burdens while not duplicating the separate measure we included of the restoration of voting rights. It should be noted, however, that states with higher levels of incarceration will effectively disenfranchise more potential voters without that showing up in our turnout scoring.

Minnesota had the highest voter turnout score, with Colorado, Iowa, Maine, Michigan, Montana, Oregon, Wisconsin, and Washington tied for second place. Arkansas, Oklahoma, and Hawaii received the lowest turnout scores.

## **Burdens on Voters**

Both research and intuition tell us that voter turnout is significantly impacted by the burdens placed on would-be voters: The more stringent the identification requirements, the more cumbersome the registration process, the longer the lines at the polls, the fewer voters will make it through the gauntlet to cast their ballot.

We also have observed that hurdles and hoops can appear to apply to all and yet be designed to selectively discourage voting among targeted groups. Long wait times, for example, can have a disproportionate impact upon working-class voters who are “on the clock” or juggling work and child care responsibilities; sparsely placed voting centers or drop boxes make voting especially difficult for the carless, as do ID requirements that necessitate a trip to a distant motor vehicles department office.

We examined identification requirements, which vary greatly; wait times and conditions; availability of drop boxes; and restrictions on ballot collection (dropping off or mailing another person's ballot). We further looked at problems with registration and obtaining absentee ballots; rejection rates of registrations, provisional ballots, and military/overseas ballots; and whether an online registration process was available.

We found that Vermont imposes the fewest burdens on voters, followed by Minnesota, Maine, Washington, and Massachusetts. North Carolina and Tennessee tied for imposing the greatest burdens on voters, followed by Alabama, Texas, Oklahoma, and Georgia.

We noted that the states that impose the heaviest burdens on would-be voters — for example, those that have photo ID and/or signature requirements, or that criminalize the provision of food and water to lines of waiting voters — often attempt to justify such measures as combatting rampant “voter fraud,” a phenomenon for which none of many investigations that have been undertaken have found evidence. Consequently, in our evaluation of burdens on voters, we regarded such restrictions as unjustified and scored them accordingly.



## **Election Worker Safety and Jeopardy**

In the wake of Donald Trump's Stop the Steal movement and its generally baseless allegations of election worker complicity in fraud, many election workers across the country have been subject to harassment and threats to their safety (more than a thousand complaints of such threats have been filed with the Department of Justice); a number have resigned, their places often taken by Stop the Steal proponents.

At the same time, in many states whose legislatures are under Republican control, bills have been advanced and laws enacted to penalize and criminalize routine activities by election workers previously regarded as necessary or innocuous, an additional source of concern for election workers already facing high pressure from a suspicious segment of the public.

One unfortunate result has been a self-protective decline in an already insufficient transparency on the part of those charged with conducting our elections, especially in states and counties where Stop the Steal has been most active.

We compared, for each state, the legislative efforts to protect and to threaten or punish election workers. California, Maine, Minnesota, New Mexico, Oregon, and Washington scored highest for protecting their election workers, while Arizona, Arkansas, Florida, Georgia, Iowa, Kansas, North Dakota, Pennsylvania, Texas, and Wisconsin — each of whose legislatures passed more bills (some of which were vetoed) threatening than protecting their election workers — scored lowest.

## **Audit Protocols**

Rigorous audits are a critical component of an election process whose initial count takes place almost exclusively in the pitch-dark of cyberspace and is currently the object of intense skepticism among a significant portion of the public and, of course, certain defeated candidates. Unfortunately, there is no federal mandate for audits of any kind and states vary dramatically in the audit protocols they employ, both on paper and in actuality.

We tried to read between the lines to determine how each state's audits work in practice. We awarded points to all states professing to audit, as some states have no audit provisions at all; we credited states currently employing risk-limiting audits (RLAs), as well as those scheduled to adopt them in the near future. We further evaluated the timing of audits; the number of contests audited; whether the audits were performed in public; and what provisions, if any, were in place to escalate the audit in response to detected disparities, with mandatory escalation provisions — critical to the audit's value in detecting systemic errors and deterring systemic fraud — receiving the most points.

Colorado had the most stringent and effective audit protocols, followed by New York, West Virginia, Minnesota, Oregon, and Pennsylvania. Alabama, Louisiana, Maine, Mississippi, New



Hampshire, and South Dakota scored lowest, having no audits or very weak and/or discretionary audit protocols.

## **Election Deniers Nominated for State Office**

Stop the Steal and Donald Trump’s ongoing insistence that the 2020 election was “stolen” have spawned, in addition to January 6, a host of candidates for public office at all levels who echo that insistence and are known as “election deniers.” There are 299 such candidates officially on the November ballots, virtually all of them nominees of the Republican Party and many who have received Trump’s endorsement. Because so many are running for safe Republican seats, the majority are expected to be elected.

Our focus was exclusively on the three statewide offices that can exercise control over the conduct of elections in each state: governor, secretary of state, and attorney general. While election deniers elected to federal office might be disruptive in a number of ways, running their respective states’ elections is not among them. Election deniers serving in state legislatures may be more problematic, but it is likely their power will be tempered by dilution.

In scoring for this category, we considered the total number of election deniers on the ballot for the three offices on which we focused, also taking into account the number of those offices — ranging from zero to three — that are on this November’s ballot in each state.

Top scores went to states in which the three offices are being contested but no election deniers are on the ballot for them: Arkansas, California, Delaware, Georgia, Hawaii, Illinois, Nebraska, New Hampshire, Oklahoma, Rhode Island, South Dakota, and Washington. At the bottom were states with three (or more) candidates on the ballot for the three key statewide offices: Alabama, Arizona, and Michigan.

We will, of course, revisit this category when the results of the 2022 election are available.

## **Statistical Forensics**

Having amassed, over the course of the past 20 years, both official returns and copious polling data for every biennial election through 2020, we selected the two most recent presidential elections for analysis, as they were characteristic of both recent trends, and in most respects, chronic patterns.

We measured, in the 2020 presidential election, the disparities between vote counts and preelection polling (a rolling weighted aggregate drawn from multiple polling operations). And we measured, in both the 2016 and 2020 presidential elections, the disparities between vote counts and unadjusted (first public posting) exit polls for the states in which exit polling was conducted. In all cases we compared margins of victory in polls and in actual voting.



While the vast majority of disparities were “red” — that is, with vote counts shifted from polling to the benefit of the Republican candidates — we were not concerned, for the purpose of this metric, with the direction of shift. We were, however, attuned to the potential impact of any given shift, which of course would be dependent on the magnitude of the shift relative to the margin of victory — the closer the race, the more significant a shift of a given magnitude.

Thus we calculated the absolute value (to eliminate partisan consideration of direction and keep the focus solely on indications of accuracy) of the ratio of the poll-vote count disparity to the official margin of victory for the three elections studied and based our scoring on that calculation (taking the mean when we had data for more than one election). Generally the lowest scoring states were those that had both tight elections (i.e., swing states) and significant disparities, such as to fuel doubts that the winners had been accurately identified — that being, after all is said and done — the essence of the breakdown in trust of electoral legitimacy.

California, Colorado, Illinois, Kansas, Louisiana, Maryland, Massachusetts, Mississippi, Nebraska, Oregon, Vermont, and Washington achieved the top score, while the lowest scoring states were Arizona, Georgia, and Wisconsin, followed by Florida, Maine, Michigan, Nevada, New Hampshire, North Carolina, and Pennsylvania.

## **Restoration of Lost Rights**

The disenfranchisement of felons and ex-felons who are on probation or have completed their sentences can have significant impact on the composition of state’s electorate, particularly in view of the racially disproportionate rates of prosecution, conviction, and incarceration in some of the states that are most restrictive when it comes to restoring such rights.

We scored states highest that were least restrictive of the right to vote among the incarcerated and at various stages post-incarceration. The lowest scoring states were those that were slowest to restore the right to vote, in some cases depriving the convicted of the right to vote indefinitely.

Vermont and Maine tied for the highest score. The lowest scores went to states that do not restore voting rights: Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Tennessee, Virginia, and Wyoming.

Notably, in the case of Florida, a ballot measure that would have restored the voting rights of 1.4 million ex-felons passed by a nearly 2-to-1 margin in 2018 — only to be effectively overridden by legislation passed the next year that made such restoration contingent upon the payment of often indeterminate fines and restitution, and thus left most of the newly re-enfranchised in limbo. All told, more than 10 percent of Florida’s voting-age citizens are disenfranchised — more than justifying, as a matter of practice, its bottom score.

## Legislative Activity

The conduct of elections is at all times subject to state legislative tweaking but the flurry of such activity in the wake of the 2020 election and Stop the Steal allegations of fraud is unprecedented. While many of the provisions passed and introduced pertained to the contraction or expansion of voting rights, states also addressed the counting process, the roles of election workers and poll watchers, the audit process, modes and timelines of voting, and the potential role of the legislature itself in the process leading to certification of election results.

We divided proposed and enacted legislation into “pro-democracy” and “anti-democracy” groups, based on the expected impact of each provision on participation and those security measures justified by evidence of an existing or potential threat to the integrity of the electoral process. Given some of the complexities involved, we were at least somewhat surprised by how clear the pro-anti division was in virtually all cases.

We found that more provisions were enacted to advance or protect the democratic process (104) than to challenge or undermine it (56). There were however, an additional 475 anti-democracy bills introduced but not passed, and another 10 vetoed by governors (we were unable to collect reliable data regarding the number of pro-democracy bills introduced). In the case of anti-democracy provisions, we gave each bill that became state law full weight, while weighting bills passed but vetoed at 0.5 and bills introduced but not passed at 0.1. We then gave each state a separate score for its pro- and anti-democracy legislative activity, and then added the scores to determine each state’s overall score.

California, Connecticut, Hawaii, Maine, Maryland, Massachusetts, and Nevada achieved the highest overall scores, while Texas and Wisconsin were at the bottom, followed by Alabama, Georgia, Kansas, Michigan, Pennsylvania, and Tennessee.

We note that legislative control of the electoral process is the subject of a critical US Supreme Court case (*Moore v. Harper*) to be decided in the current term. One outcome would be to vest in legislatures virtually unfettered power to shape elections, including potentially overriding the public will as expressed in vote tallies, not subject to veto or judicial review in state courts. It is difficult to overstate the impact such a decision might have, and we will be revisiting the metric of state legislative activity in its wake.

## State Court Decisions

Courts are a vital organ when it comes to the health of a democracy. With the US Supreme Court’s decisions — stretching from *Buckley v. Valeo* (1976) to the most recent term — tending to close the doors of federal courts to pro-democracy litigants, state courts have taken on an increasingly important role as potential protectors of voting rights and a fair democratic process.

Not surprisingly we found significant differences among the states in their respective courts’ attitudes towards the fundamentals of the democratic process. We examined the past year’s court



decisions relating to districting, transparency of election processes, Stop the Steal suits, and voting rights, classifying each decision as positive or negative based on its impact on our democracy's function. We scored states on the net of positive versus negative court decisions.

Georgia, Pennsylvania, and Wisconsin earned top scores, while Florida, Indiana, Kentucky, Massachusetts, Montana, Ohio, and Tennessee — all of which had a negative net — were at the bottom.

## **Direct Democracy — Ballot Initiatives**

The ballot initiative, or referendum, process can give the citizens of a state a direct voice in the making (or repealing) of law and even, in some cases, in the amending of the state's constitution. This power becomes especially important when a state's citizenry and their elected representatives slip out of sync on one or another key issue.

To be sure, not every such direct expression of democracy has worked out well, or necessarily worked to advance the cause of democracy itself. And it is also apparent that vast disparities in expenditures, along with misinformation campaigns, have sometimes played a major role in the passage or rejection of initiatives. But there is no denying that the capacity to vote directly on issues of public concern is, almost by definition, an embodiment of the democratic process.

We considered three main categories of direct voter action — the statutory initiative, the referendum, and the constitutional initiative — and awarded states a point for each type of citizen empowerment. The highest scorers were Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota, each of which provided their citizens with all three opportunities.

The lowest scores went to Alabama, Connecticut, Delaware, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin, which provided none of these three opportunities.

# Summary of Selected Specific Components of Principal Metrics

## Nonpartisan Redistricting Commission

We found a significant correlation between states' reliance on redistricting commissions composed of non-politicians and the degree to which their US House and state legislative delegations jibed with statewide vote by party. Such commissions are established in only nine states: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Michigan, Montana, and Washington. Lowest ranked are the five states — Connecticut, Florida, Maryland, Mississippi, and North Carolina — where the state legislatures draw up the maps not subject to gubernatorial veto, thus permitting the legislatures essentially unlimited power to carve out a very large proportion of safe seats for incumbent representatives of both parties.

## Photo ID Required

California, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Mexico, New York, Pennsylvania, and Vermont were the top 11 states because none of them required photo IDs. Tennessee, Montana, Louisiana, and Florida were the bottom four states, as they alone required both a photo ID and a signature.

## Wait Times/Conditions

Alaska, Arizona, Colorado, Iowa, Minnesota, Oregon, South Dakota, Vermont, Washington, and Wyoming tied for having the shortest wait times and best conditions. Texas, Tennessee, South Carolina, North Carolina, Nevada, Maryland, Indiana, and Georgia tied for having the longest wait times and worst conditions.

## Audit Protocols

One form or another of post-election audit is now mandatory in 33 states. No election audits are performed in eight states: Alabama, Louisiana, Maine, Mississippi, New Hampshire, North Dakota, South Dakota, and Wyoming. In the remaining nine states, audits are inconsistent and discretionary.

Colorado, Georgia, Pennsylvania, Rhode Island, and Virginia use risk-limiting audits (RLAs), considered by many experts to be the gold standard, though potentially problematic in real-world execution.

Timing of audits is significant, with a slim majority of 26 states performing their audits before the certification of the election results.



No state audits every contest and ballot issue, national, state and local. California, Indiana, Nevada, New York, Pennsylvania, Utah, Vermont, and West Virginia scored highest on this measure, even though they audited only some contests. Alabama, Louisiana, Maine, Mississippi, New Hampshire, North Dakota, South Carolina, South Dakota, and Wyoming scored lowest, as they do not specify contests to be audited.

The parameters and consequences of a failed audit are of great importance, as an audit that leads to nothing more than a “report” or a correction of only the specific machine or precinct audited is effectively worthless in detecting systemic error and deterring fraud. Colorado, Minnesota, New Jersey, New York, Ohio, Oregon, and West Virginia scored highest for having robust or mandatory “escalation” provisions, leading to expansion of a failed audit and/or a full recount. Alabama, Georgia, Louisiana, Maine, Michigan, Mississippi, New Hampshire, North Dakota, Pennsylvania, South Carolina, South Dakota, Vermont, and Wyoming received the lowest scores, as they have no robust or mandatory escalation provisions or require only that a report be submitted for the record..

Audits are performed in public in 27 states but Alabama, Arkansas, Georgia, Louisiana, Maine, Mississippi, Nebraska, New Hampshire, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, and Vermont do not perform their audits in public.

## Election Deniers on Ballot

Michigan has five election deniers on the ballot for the three key statewide offices of governor, secretary of state, and attorney general — the most of any state. Alabama and Arizona each have three; Florida, Kansas, Maryland, Massachusetts, Minnesota, Nevada, Texas, and Vermont all have two. All told, 30 states have at least one election denier on the November ballot for these three statewide offices.

## Legislative Activity

Arizona and Montana enacted the most anti-democratic legislation, followed by Arkansas and Georgia. Texas introduced the greatest number of anti-democracy bills (59), followed by Arizona, Wisconsin, Michigan, Pennsylvania, and Tennessee. Wisconsin, Michigan, and Louisiana — all three states having Democratic governors — were the only states in which anti-democratic legislation was passed and vetoed.

Virginia was the state enacting the most pro-democracy legislation, followed by Maryland, Nevada, Maine, Connecticut, and Hawaii. Twenty-four states enacted no pro-democracy legislation.

## Court Decisions

Highest state courts in North Dakota and Texas each issued two positive decisions regarding voting rights, while high courts in Hawaii, Minnesota, North Carolina, Rhode Island, South



Carolina, and Wisconsin each handed down one such decision. Texas and Wisconsin high courts each issued three decisions undercutting voting rights, while Ohio courts issued two and Florida, Georgia, Indiana, Kentucky, Massachusetts, Michigan, Montana, North Carolina, and Tennessee courts handed down one each.

Georgia, Pennsylvania and Wisconsin had the highest net number of pro-democracy decisions, followed by Arizona. Florida, Indiana, Kentucky, Massachusetts, Montana, Ohio, and Tennessee high courts handed down more anti-democracy than pro-democracy decisions.

## Statistical Forensics

In the 2016 presidential election, in the states that were exit-pollled, the shift from the exit poll to the vote count was toward the Republican (Trump) in 22 states and toward the Democrat (Clinton) in four states.

In the 2020 presidential election, in the states that were exit-pollled, the shift from the exit poll to the vote count was toward the Republican (Trump) in 21 states and toward the Democrat (Biden) in three states. In the same election, the shift from the rolling aggregate of pre-election polling to the vote count was toward Trump in 48 states and toward Biden in two states.

We further calculated the ratio of poll-vote count disparities to the margin of victory of the winning candidate, as the narrower that margin the more potentially impactful a given disparity. The state with the highest mean disparity/margin ratio was Wisconsin (10.25), followed by Arizona (8.47), Georgia (5.74), and Pennsylvania (3.90). In 40 states the ratio was less than 1.0; in 36 states less than 0.5; and in 21 states less than 0.25.

## Modes of Voting

California, Colorado, Hawaii, Nevada, Oregon, Rhode Island, Utah, and Washington mail ballots to all registered voters.

Hand-marked paper ballots (HMPB) are used for able voters in 28 states. Seven additional states use mainly HMPB; nine states use predominantly electronic ballot marking methods, including Direct Recording Electronic (DRE), Hybrid Ballot Marking Device/Printer (HBMD), or Ballot Marking Devices (BMD). Only one state, Louisiana, relies exclusively on DREs without a paper trail.

## Concluding Statement

The most important takeaway of this Report Card is that US democracy is in very bad shape. Sadly, our findings confirm the dire predictions of experts who have been sounding the alarm.

We would not expect any state, on a scorecard such as this, to achieve a perfect score of 100, reflective of top scores in every component measured. But the scarcity of good grades and plethora of bad and very bad ones should give serious pause to anyone thinking that our elections and our politics have nothing in store worse than minor turbulence.

It is natural in a preelection period for media attention to be riveted on the many horse races that will have a decisive impact on partisan control at national and state levels once the dust settles in November. But our analysis sheds light on another, darker dimension to the battles being fought: the struggle, taking place mostly at the state level, to shape the electoral process itself with respect to participation, security, verifiability, and perceived legitimacy.

This is not about partisan shots. States run by Democrats and Republicans are failing. However, based on as objective metrics as can be found, it is easy to see that, throughout the country, GOP-led states are taking steps to weaken democracy.

As can be seen on the [Ranked Grading Sheet](#), we divided the states into red (Republican), blue (Democrat), and purple (swing) cohorts (a further division can be made among the purple states on the basis of partisan control of the legislative and executive branches). We found a powerful correlation between these cohorts and the democracy scores.

The top nine scores went to states under Democratic (7) or shared (Minnesota, Maine) control. The bottom 20 scores went to states under Republican (17) or shared (Louisiana, North Carolina, and Kentucky) control. The average blue state score was 65.4; the average red state score was 46.1; and the average purple state score was 50.8. Among the purple states, those under full Republican control (Arizona, Florida, Georgia, New Hampshire, Wisconsin) averaged 43.0, lower than the red-state average.

The letter grades for the blue states were 4 As, 3 Bs, 6 Cs, 2 Ds, and no Fs; for the purple states, no As, 1 Bs, 3 Cs, 3 Ds, and 5 Fs (the five GOP-controlled purple states received 1 D and 4 Fs); for the red states, no As, no Bs, 4 Cs, 10 Ds, and 9 Fs.





**From these results emerge two clear conclusions:**

- **Democracy is not thriving in America as a whole**
- **It is doing far worse in the red states and swing states where the Republican Party exercises control**

The failing grades, moreover, are rarely the function of one or two specific demerits. In most cases they are instead the product of multiple failings across a range of measures, and what might be characterized as a generally toxic environment undermining democratic principles and practices.

A fair question at this point might be what values underlie our scoring process. And, as a consequence, what features — restrictions, protections, laws, rulings, statements, innovations — scored points, while others did not. Quoting from our Statement of Methodology:

We placed high value on factors that encourage and facilitate participation — beginning with the casting of ballots and extending to the public service of administering elections and to the crafting of laws through ballot initiatives and referendums. We also accorded value to good-faith protocols — such as post-election audits — designed to verify and confer legitimacy upon electoral outcomes.

To the extent that tension arises between participation and security levels — for example, when considering the imposition of stringent identification requirements or the restriction of popular modes of voting such as vote-by-mail and drop box use — we valued only such measures that could be justified by data pointing to the existence of a significant security threat.

While this lens might be seen as “disadvantaging” states that do not share these values — that have been working to restrict and burden voting, eschew commonsense steps to verify the concealed counting process, create mechanisms to enable the overriding of electoral results, etc. — this is in large part because *democracy itself has become a matter of partisan contention*. The protocols and infrastructure of democracy have become prime targets in a political war in which the stakes are seen as existential and process is seen as the principal determinant of power.

The decentralization of American elections has long been cited as a vital safeguard against any attempt to commandeer the whole process to authoritarian ends. But the dismal condition of participatory democracy in so many states, and the looming threats to go farther still in that direction, point to the necessity of action at the *federal* level to restore basic democratic standards for all Americans.

Unfortunately, virtually all such legislation has been blocked (primarily by Republican use of the Senate filibuster). And the impact of US Supreme Court decisions — whether with reference to gerrymandering, campaign finance, voting rights, burdens on vote casting, or a variety of other components of a healthy democratic process — has been primarily destructive.

The battles at the state (and local) level continue to be fierce: Individuals and organizations devoted to genuine electoral integrity and the furtherance of authentic democratic principles and practices are fighting the good fight. In some places and at some times a commitment to our democracy's well-being can be seen to triumph over narrow calculations of how changing a particular process will translate to partisan advantage.

More frequently, however, as our scores and grades suggest, a state's approach to democratic process reflects little more than partisan control of legislative, executive, and judicial bodies. The map makes that all too clear. It shows both what *can* be done to nurture our democracy (look to the high scores and high grades for that), what is *not* being done, and where democracy in America is weakly protected or indeed under sustained assault.

It should give all who have taken our democracy for granted pause. Urgent pause.

*This report was written by Jonathan Simon with research assistance from Katie Kemmerer, Norma Levy, and Bruno Barros.*