



How Partisan Gerrymandering Limits Voting Rights

By Alex Tausanovitch and Danielle Root July 8, 2020

Every 10 years, each U.S. state redraws its electoral districts—lines on a map that have serious real-world consequences. If districts are drawn fairly, then the public can elect representatives who reflect the views of the population as a whole. But if the district lines are manipulated through partisan gerrymandering, then the legislature will be untethered from the popular will.

The Center for American Progress has published a series of reports that analyze how partisan gerrymandering affects issues from gun violence prevention to access to health insurance to policies that are important to children and families.¹ This issue brief explores how gerrymandering affects voting rights. In recent years, gerrymandered legislatures have pioneered other tools to stay in power, including making it harder for voters who oppose them to cast a ballot. It is a power grab on top of a power grab.

Fortunately, both of these interrelated problems—gerrymandering and limits on the right to vote—are fixable. Indeed, citizens across the country seem to be fired up about reform.² This could be the political moment to solve these problems and get American democracy back on track.

This issue brief examines the only four states where, after the 2018 elections, the party that won a majority of state legislative seats received only a minority of the total statewide vote: North Carolina, Michigan, Pennsylvania, and Wisconsin. Because of gerrymandering, these four states dramatically failed a basic test of democracy—votes did not translate into political power. To make matters worse, gerrymandering has since gone hand in hand with increased restrictions on voting in each of these states. In other words, legislative majorities that received a minority of the votes have used their unearned power to make it harder for citizens to cast a ballot, further distancing themselves from accountability at the ballot box. CAP's solution to this problem is highlighted in the final section of this issue brief: empowering independent commissions to draw voter-determined districts that reflect the will of the people.

North Carolina

In 2013, the U.S. Supreme Court struck down a part of the Voting Rights Act that, in order to prevent racial discrimination, required many North Carolina counties to “preclear” voting changes with the U.S. Department of Justice. Just one month later, the state’s Republican-controlled legislature passed harsh new restrictions on voting, “[requiring] strict voter ID to cast a ballot, [cutting] a week of early voting and [eliminating] same-day voter registration, out of precinct voting and pre-registration for 16- and 17-year-olds.”³ One headline called the new law “The Country’s Worst Anti-Voting Law.”⁴ The bill was approved 73-41 in the state House and 33-14 in the Senate; not a single Democratic legislator voted in favor of the bill’s enactment, nor did any Republican legislator oppose it.⁵ Ultimately, the law was struck down by the 4th U.S. Circuit Court of Appeals, which found that the restrictions were intended to “target African-Americans with almost surgical precision.”⁶

In 2018, North Carolina voters passed a state constitutional amendment through a ballot measure⁷ that requires voters to “present photographic identification before voting.”⁸ However, the amendment also specified that the Legislature was required to pass implementing legislation, “which may include exceptions.”⁹ Less than one month later, at a moment when Republican lawmakers knew that, despite their gerrymandering, they had lost their veto-proof majorities in the next session, the Legislature quickly passed a bill implementing the new requirements—which made exceptions but “declined to allow voters to use the types of photo IDs that black voters were more likely to possess.”¹⁰ Gov. Roy Cooper (D) vetoed the bill, but the Republican majority voted unanimously to override the veto, along with two Democrats.¹¹ A legal challenge to this new law eventually made its way to the North Carolina Court of Appeals, where the court found that the law “allows for exceptions to any voter ID law, yet the evidence shows the General Assembly specifically included types of IDs that African Americans disproportionately lack,” such as driver’s licenses, passports, and military IDs.¹² The court ordered that North Carolina could not enforce the law because it had the discriminatory intent of suppressing African Americans’ votes.¹³

Absent gerrymandering, this effort to disenfranchise voters would have been reversed by the Legislature. In December 2018, Democratic legislators introduced the Let North Carolina Vote Act to establish affirmative policies such as automatic voter registration and same-day registration, as well as expanded online registration and early voting.¹⁶ The bill also would have partially defanged the state’s voter ID amendment by providing free IDs to anyone in need of one and by loosening restrictions on acceptable forms of identification, including allowing voters to use IDs that are expired.¹⁷ According to one of the bill’s sponsors, the bill was not expected to pass through the Republican-led legislature but was intended to show that state Democrats were united behind reforms that would

In the 2018 North Carolina Senate election, Democrats received 50.5 percent of the vote, but Republicans won 57.9 percent of the seats.¹⁴

In the 2018 North Carolina House of Representatives election, Democrats received 51.2 percent of the vote, but Republicans won 54.2 percent of the seats.¹⁵

make it easier for people to vote.¹⁸ Democratic candidates won a majority of the statewide vote in 2018; with a fair set of districts, they would have held a majority of seats in the state Legislature and been able to implement positive reforms expanding voting access. Instead, supporters of expanding voting rights in the Legislature have been blocked from passing more equitable laws and forced to rely on the courts to ensure equal access to the ballot.

Michigan

After gerrymandering districts in 2010, Republican lawmakers in the Michigan Legislature blocked several bills between 2011 and 2016 that would have made it easier to register and vote, including proposals to allow same-day voter registration and no-excuse absentee voting.¹⁹ In the absence of these reforms, voters were required to register nearly a month before Election Day, and only those with certain excuses qualified to receive an absentee ballot.²⁰ Thus, it was unusually difficult for some Michigan residents to register and vote—particularly young people, who are more mobile and more likely than older Americans to miss traditional registration deadlines due to unfamiliarity with election requirements.²¹ Out of all 50 states, Michigan saw the largest gap in voter turnout between 18- to 24-year-olds and the general population during the 2016 election.²² Nonetheless, Republican legislators refused to modernize the voting process, claiming without evidence that changes would open the state up to widespread voter fraud.²³

In 2018, frustrated by continued legislative inaction, voting rights groups in Michigan, led by the American Civil Liberties Union, gathered signatures for a ballot measure to expand voting rights.²⁴ By a 2-1 margin, voters approved the ballot measure—Proposal Three—which amended the state constitution to allow no-excuse absentee voting and same-day registration during early voting and on Election Day.²⁵ Any voter in Michigan can now apply to receive an absentee ballot without an excuse—an option that has proven essential for helping mitigate public health risks during the COVID-19 pandemic.²⁶ Although a majority of voters clearly favored these reforms, a ballot measure was the only way to enact them, as they stood little chance of passing through Michigan’s gerrymandered Legislature, despite broad support from Democratic legislators. Notably, that same year, Michigan voters also passed an anti-gerrymandering ballot measure proposed by the grassroots group Voters Not Politicians, transferring the power to draw districts from the Michigan Legislature to a new Independent Citizens Redistricting Commission.²⁷

Notwithstanding these advancements, Michigan voters still face myriad obstacles to voting. Michigan law continues to prohibit anyone from hiring transportation services—such as taxis or rides through Uber or Lyft—to help voters reach their local polling place, unless the voter is physically unable to walk.³⁰ Another law prohibits anyone other than a family member from returning a voter’s absentee ballot application.³¹ Such restrictions disproportionately disenfranchise

In the 2018 Michigan Senate election, Democrats received 51.3 percent of the vote, but Republicans won 57.9 percent of the seats.²⁸

In the 2018 Michigan House of Representatives election, Democrats received 52.4 percent of the vote, but Republicans won 52.7 percent of the seats.²⁹

young and elderly Americans, people of color, and people with disabilities who may live far from polling places and lack reliable transportation or who may require physical assistance in returning their ballots. Both laws are currently being challenged in court,³² but the majority in the Legislature has so far refused calls to eliminate these restrictive requirements. In fact, the Legislature, along with the Michigan Republican Party and National Republican Committee, have intervened to defend both rules in the ongoing suit.³³ In February 2020, Michigan Democratic Party Chair Lavora Barnes responded, “When you deny communities a voice in our political process, that’s rigging the game. When you fight to keep laws that disproportionately deny black and brown voters access to the ballot, that’s ‘rigging the game.’”³⁴

Other restrictions on voting have been resolved, belatedly, outside the Michigan Legislature. In 2018, state law required that certain first-time voters who registered by mail or through registration drive must vote in person and that voters’ current address must match the address on their driver’s license.³⁵ A group of Michigan-based college students brought a lawsuit challenging these restrictions, arguing that they created unnecessary and discriminatory barriers to voting, particularly for young people. Democrats had previously attempted to pass legislation expanding access to vote by mail for first-time voters but were blocked from doing so.³⁶ Upon entering office in 2019, Michigan’s newly elected Secretary of State Jocelyn Benson (D) settled the case, declaring invalid the requirement that certain first-time voters cast ballots in person and instituting a voter education campaign and other initiatives to ensure college students were able to register to vote using their campus address.³⁷

Had Michigan’s district maps reflected the will of state voters, many restrictive laws would no longer be in place. Yet as long as Michigan’s maps are gerrymandered, legislators will continue to obstruct commonsense election reforms while preserving oppressive laws that disenfranchise many of their own constituents.

Pennsylvania

In 2012, Pennsylvania’s Republican-controlled Legislature followed a familiar tactic in the voter suppression playbook—it passed a strict voter ID law requiring all Pennsylvania voters to present a specific form of identification, such as a driver’s license or passport, when showing up to vote.³⁸ The measure, which passed 104-88 in the state House and 26-23 in the Senate, was unanimously opposed by Democrats as well as a handful of Republican dissenters.³⁹ Voter ID laws have repeatedly been shown to discriminate against people of color, low-income Americans, young people, the elderly, and people with disabilities.⁴⁰ Furthermore, in this instance, partisan politics was a driving force behind the bill. Pennsylvania House Majority Leader Mike Turzai told a group of fellow state Republicans, “Voter ID—which is going to allow Governor Romney to win the state of Pennsylvania—done,” an acknowledgement that the law would suppress voting in communities that were more likely to support Democratic candidates.⁴¹ A state court struck down the law in 2014.⁴²

In 2019, the Pennsylvania Legislature passed a bill largely along party lines—111-88 in the state House and 31-19 in the Senate—that would have prohibited straight-ticket voting. Only four Democratic members in the House and three in the Senate voted in favor of the bill.⁴⁵ Many Democrats warned that the rule change would cause longer lines and confusion at the polls, placing a particular burden on “under-resourced polling locations,” predominantly those located in communities of color.⁴⁶ In 2018, a federal judge blocked a similar law in Michigan because it was expected to disproportionately affect African Americans.⁴⁷ Pennsylvania Gov. Tom Wolf (D) vetoed the bill, but it came at a cost: He also had to forgo \$90 million in needed upgrades for the state’s voting machines, to which the Legislature had attached the provision banning straight-ticket voting.⁴⁸ Ultimately, Gov. Wolf and the Republican-controlled Legislature entered into an agreement to eliminate straight-party voting in favor of new voting reforms and \$90 million in election funding.⁴⁹ The compromise legislation was opposed by a majority of Democrats who remained concerned over potential disenfranchisement.⁵⁰

In the most recent elections for each Pennsylvania Senate seat, in 2016 and 2018, Democrats received 50.5 percent of the vote, but Republicans won 54.2 percent of the seats.⁴³

In the 2018 Pennsylvania House of Representatives election, Democrats received 54.1 percent of the vote, but Republicans won 58.0 percent of the seats.⁴⁴

Compared with other states, Pennsylvania has been slow to adopt vital policies that help Americans register to vote and cast ballots that count. The state lacks same-day voter registration and automatic voter registration.⁵¹ Democratic lawmakers have introduced bills to establish these and other pro-voter policies that, if adopted, would significantly expand the ability of Pennsylvania residents to make their voices heard.⁵² Gov. Wolf has similarly expressed his support for automatic and same-day registration.⁵³ Unfortunately, there is no reason to believe these policies will be adopted given that, for most of the past decade, the gerrymandered Legislature has worked to erect—rather than remove—barriers to voting.

Wisconsin

In Wisconsin, gerrymandering shifted control of the state Assembly outright in 2018, from Democrats who won a majority of the statewide votes to Republicans who fell short of a majority. In the Senate, Democrats fell 1 percent short of a majority of the vote, likely because of aggressive voter suppression targeting communities that disproportionately support Democrats.⁵⁴

In 2011, Wisconsin’s newly Republican-controlled Legislature passed one of the strictest voter ID laws in the country.⁵⁷ The bill passed 60-35 in the state Assembly with all Republicans voting in favor, along with one independent and two Democrats.⁵⁸ In the Senate, the measure passed along strict party lines; every Senate Democrat voted against the bill.⁵⁹ The now-infamous law requires Wisconsin voters to present a driver’s license, passport, or other specified form of identification when voting.⁶⁰ In 2016, it was estimated that nearly 300,000 registered voters lacked necessary forms of identification leading up the general election.⁶¹ Many of the individuals without qualifying ID were

people of color, young people, and elderly people. Since taking office in 2019, Gov. Tony Evers (D) has attempted to make obtaining requisite ID easier and more accessible.⁶² However, the gerrymandered Legislature has declined to relax or eliminate the requirement, even in the face of a pandemic.

The Wisconsin Legislature has also fought in favor of a mass voter purge of more than 200,000 people.⁶³

The Legislature persuaded a federal court to dismiss a lawsuit that sought to prevent the voter purge, expressing concern over the fact that notifications sent by the state failed to inform voters of the consequences of not re-registering.⁶⁴ An attorney for the Republican-controlled body requested that the suit not be considered until a related legal proceeding filed by conservative activists—which supported the removal of voters from the rolls—could be resolved.⁶⁵ Mass voter purges are especially common in places with histories of racial discrimination.⁶⁶ Wisconsin Democratic Party Chair Ben Wikler has condemned the purge as anti-democratic, saying in December 2019, “We’re supposed to have a system where voters choose their elected officials, not a system where the powerful choose who the voters will be.”⁶⁷

Legislators’ disdain for free and fair elections was on full display in spring 2020 when Wisconsin voters were forced to risk their lives to vote amid the COVID-19 pandemic. The Republican-controlled Legislature refused to heed desperate warnings from government and public health officials who noted that proceeding with the state’s April 7 primary election as planned would endanger voters and election workers and exacerbate community spread of COVID-19.⁶⁸ As described in a CAP column:

“The Republican-controlled Legislature’s refusal to postpone the primary ensured that state and local leaders did not have enough time to prepare by implementing necessary measures for conducting the election safely and efficiently. As a result, Americans were forced to make a terrible choice between shielding themselves against COVID-19 and exercising their fundamental right to vote.”⁶⁹

Across the state, hundreds of polling places were shuttered, with thousands of poll workers resigning due to health concerns.⁷⁰ Early voting was slashed or eliminated entirely in some locations, and thousands of requests for absentee ballots were never fulfilled. Recent reports suggest that election activity led to a spike in new COVID-19 cases.⁷¹ Prior to the election, Democrats in the state Legislature proposed a package of bills that would have made the election safer by expanding access to absentee voting and rescinding voter ID requirements during state emergencies. These proposals would have protected voters from having to endanger their health by traveling to in-person polling places and visiting the Department of Motor Vehicles to obtain a qualifying ID.⁷²

In the most recent elections for each Wisconsin Senate seat, in 2016 and 2018, Democrats received 49.0 percent of the vote, but Republicans won 54.2 percent of the seats.⁵⁵

In the 2018 Wisconsin State Assembly election, Democrats received 54.2 percent of the vote, but Republicans won 63.6 percent of the seats.⁵⁶

Republican legislators seemed to view low voter turnout as a possible advantage to the re-election of an incumbent conservative state Supreme Court judge.⁷³ Not to be dissuaded from exercising their fundamental rights, Wisconsin voters turned out in large numbers and unseated the favored judge,⁷⁴ though they had to risk their health in the process.

How to fix gerrymandering and restore voting rights

If majorities of voters cannot elect majorities of legislators, that is a failure of democracy. If those ill-gotten majorities then use their power to disenfranchise voters, that is a democratic downward spiral.

Fortunately, voters and reform advocates have the capacity to fight back. As more and more citizens and political leaders have come to understand the problem of partisan gerrymandering, there has been a slow but steady string of anti-gerrymandering victories. Several states, including California and Arizona, have put reforms in place that prohibit politicians from drawing their own districts, entrusting independent citizen-led commissions to draw the districts instead.⁷⁵ In Michigan, citizen-activists passed a ballot initiative to create their own independent commission with specific criteria for district-drawing. And in 2019, the U.S. House of Representatives passed a bill—H.R. 1, or the We the People Act—that would require every state to use independent commissions to draw their federal districts.⁷⁶ The bill was blocked by the U.S. Senate under Majority Leader Mitch McConnell, but it lays a strong foundation for future reform efforts.⁷⁷

As CAP explained at length in a previous report,⁷⁸ taking the power to draw districts away from incumbent politicians is the first step toward any serious reform. The second step is instituting voter-determined districts, wherein people's votes dictate how districts are drawn. If 55 percent of voters support one political party, for example, then that party should win as close as possible to 55 percent of the seats. In a democracy, this is the commonsense path to actually representing the will of the people. Finally, districts should be drawn so that people who have been underrepresented throughout American history—such as African American, Latinx, and other communities of color—are fully represented in Congress and state legislatures.⁷⁹

Majority rule is a cornerstone of U.S. democracy—and so is the right to vote. Fortunately, in many cases, the two go hand in hand. Fixing gerrymandering is a major part of undoing the democratic downward spiral in the United States and ensuring that democracy, at every level, serves the values and interests of its citizens.

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