

F Your Racist History***

E104: *Blocking the Ballot Box*

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Show Notes

The fight for fair elections in the United States is as old as the country itself. From the Electoral College, to gerrymandering, to violent attacks on voting rights advocates, to dark money influencing campaigns, to new voter suppression laws introduced in 47 states in 2021, the concept of “one person, one vote” is still far from being realized. In this episode of *F*** Your Racist History*, we dig into the racist origins of U.S. elections and the ways politicians have spent centuries manipulating the system to keep their parties in power and disenfranchise American voters. The more things change, the more they stay the same.

EPISODE SCRIPT

Introduction

When Americans cast their vote for President of the United States, who exactly are we voting for? We check a box next to a candidate's name, get an 'I Voted' sticker to display on our lapels to signify we've performed our civic duty, and hope like hell our chosen candidate wins. But, in reality, we aren't actually casting a ballot for that person to represent us. Instead, we vote for a group of partisan electors selected well before the election by either the Republican or Democrat parties in our state to place our votes for us. Then, depending on which presidential candidate gets the most votes in that state (or wins the most Congressional districts), the chosen group of electors then go to the United States Capitol in December and place *their* vote (not necessarily yours) for the next president. This process is called The Electoral College and it's how America has elected its president every four years since the ratification of the U.S. Constitution in 1787.

Why, though? Why don't we rely on the popular vote to choose our president? Whoever gets the most votes should win that privilege, right? Like so many things in America, we need to go back to our country's founding to understand why and where we are today.

This is episode 4 of *F*** Your Racist History: **Blocking the Ballot Box.***

The Electoral College

By 1787, the original signatories of the predecessor of the United States Constitution, the Articles of Confederation, realized they had a looming problem. The federal government, under the Articles, lacked the power to do anything other than flaccidly exist. Framers of the Articles of Confederation hadn't conceived the Executive and Judicial branches of government yet, which meant they couldn't enforce federal laws. They also didn't have a mechanism to collect much-needed taxes, which meant they couldn't fund a standing army and had to rely on private militias to put down unrest or to defend themselves against invasion. The thirteen original states maintained autonomous governments, brokered their own trade agreements, and kept independent currency systems. The United States was hardly "united" at all; in fact, most states

even had competing financial interests and saw one another as foes. Something had to be done to foster cooperation if this fledgling nation was to survive.¹

At the Constitutional Convention in Philadelphia in 1787, the framers set out to solve these problems and positioned the United States government as supreme leader of the thirteen states. You may recognize some of the attendees: George Washington, James Madison, Alexander Hamilton, Benjamin Franklin, Thomas Jefferson, and John Adams. A formation of an Executive branch was paramount, but how would they elect someone to fill the highest office of the land?

By popular vote? Nope, for a variety of reasons. James Madison spent a few years reading every book he could about failed democracies of the past. He concluded that too much involvement in government by the people could lead to “mob rule,” spelling certain death for the new democratic republic.² The framers figured citizens needed propertied white men to err on the side of reason in the face of such potential populist passions. In other words, they felt too much democracy could inadvertently usurp their power and transfer it to those who were so-called less reasonable—you know, like women and people of color.

As a compromise between either a straight congressional or popular vote to elect the president, the framers instead outlined a system called The Electoral College. Here’s the gist of how it works:

Before every presidential election, each political party proposes a slate of electors equal to the number of representatives and senators in each state. As previously mentioned, when a citizen casts a vote for a candidate, they vote for the electors selected by that candidate's party (*not* the actual candidate whose name they check on the ballot). Then, after the general election happens in November every four years, the electors whose party won the general election go to Washington, D.C. and cast their votes for their respective party's candidate. End of story. Or is it?

¹ NCC Staff, “10 Reasons Why America’s First Constitution Failed - National Constitution Center,” National Constitution Center – [constitutioncenter.org](https://constitutioncenter.org/blog/10-reasons-why-americas-first-constitution-failed), 2018, <https://constitutioncenter.org/blog/10-reasons-why-americas-first-constitution-failed>.

² Jeffrey Rosen, “James Madison’s Mob-Rule Fears Have Been Realized,” *The Atlantic* (The Atlantic, September 12, 2018), <https://www.theatlantic.com/magazine/archive/2018/10/james-madison-mob-rule/568351/>.

While it's rare, there *have* been five instances in U.S. history where a candidate who *didn't* win the popular vote won the Oval Office. John Quincy Adams did it in 1824. Rutherford B. Hayes in 1876. Benjamin Harrison in 1888. George W. Bush in 2000, and most recently, Donald J. Trump in 2016 when he lost the popular vote to Hillary Clinton.³

So, how exactly does racism fit into The Electoral College equation? Well, for one, the original framers baked it into what's called "apportionment," which is a fancy word for figuring out how many representatives each state ultimately sends to Congress to place those votes for president. It's based on the American population census count, and at the Constitutional Convention in 1787, there was a massive argument about how to count enslaved Blacks as voters in the Southern United States (i.e. where they people or property?).

The Three-Fifths Compromise

The idea of a popular vote threatened Southern slave owners' power. And, plenty of the U.S. Constitution's original drafters and signers were squarely in the pro-slavery camp. The Southern states had roughly the same population density as the Northern states, but one-third of the South's population was made up of enslaved people who had no rights and could not vote, putting Southern whites at a disadvantage in the event of an election of a president by popular vote.⁴ At the time, you could only vote if you paid taxes—and you could only pay taxes if you were considered a person. For all intents and purposes, a white man.

At the Constitutional Convention, when the issue of taxation of slave property came up, white slave owners initially argued that they shouldn't be taxed for enslaved people as whole people because they believed Blacks were inherently inferior to whites. Three-fifths was the amount agreed upon that a slave owner should be taxed for a Black slave.⁵

However, when the issue of elected representation for those same slaves came up, it was determined that a periodic census of *free* citizens would dictate the amount of representation a state had in the federal government. The states with enslaved people suddenly did an

³ Bennett, Robert W. *Taming the Electoral College*. Stanford, Calif., Stanford Law And Politics, 2006. https://www.google.com/books/edition/Taming_the_Electoral_College/wYjvr7iCJVUC?hl=en&gbpv=1&dq=electoral+college&pg=PP11&printsec=frontcover

⁴ Akhil Reed Amar, *America's Constitution : A Biography* (New York: Random House, 2006).

⁵ "The Three-Fifths Clause Revisited," Teaching American History, accessed May 18, 2021, <https://teachingamericanhistory.org/library/document/the-three-fifths-clause-revisited/>.

about-face and claimed their slave labor was just as valuable as free labor in the North and should therefore afford them just as much representation. *Hmm*. Northern delegates chided their sudden turnaround—arguing that if everyone agreed a Black enslaved person was equal to just three-fifths of a white person for the purposes of taxation, then that ratio should also be extended to enslaved people when discussing representation.⁶ Toward the end of the debates, the Southern delegates threatened to walk away from discussions altogether, so both sides patched together a bipartisan compromise outlined in Article 1, Section 2 of the United States Constitution:

“Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons.”⁷

Notice they don’t say “slave” here. That’s because there were serious objections to using the word *slave* in a document that also declared all men were created equal, even if, in actuality, the framers of our Constitution were forming a system of government designed to uphold the sanctity of white autonomy. It’s all about the optics.

This compromise all but ensured the dominance of white slaveholding politicians in American government until the Civil War broke out in 1861.

Gerrymandering

National political parties like we know them today didn’t burst onto the scene with the country’s founding; they formed and grew over time as politicians learned how to consolidate power and exploit loopholes in the law. It didn’t take long for politicians to figure out drawing congressional-district maps in specific ways had huge political advantages; Southern politicians started drawing their congressional maps toward large slave-owning districts, starting with Virginia in 1788. But the practice gained its well-known name of Gerrymandering in 1812 when a governor from Massachusetts signed a bill allowing a controversial new redistricting plan.

⁶ “The Three-Fifths Clause Revisited,” Teaching American History, accessed May 18, 2021, <https://teachingamericanhistory.org/library/document/the-three-fifths-clause-revisited/>.

⁷ National Archives, “The Constitution of the United States: A Transcription,” National Archives, September 24, 2018, <https://www.archives.gov/founding-docs/constitution-transcript>.

Elbridge Gerry was born in Marblehead, Massachusetts, in 1744. He entered into politics in 1772 on the eve of the American Revolution and became a Founding Father of the United States. He signed the Declaration of Independence, served on the Continental Congress, and participated in the Constitutional Convention. After serving President John Adams as a foreign diplomat to France, Gerry retired from politics in the early 1800s and settled into life as a businessman in Massachusetts...until he became so disgusted with the behavior of his political foes, the Federalists, he re-entered politics.

A quick aside, our current two-party system of Democrat and Republican evolved from a host of other political parties from the early 1800s, including the Whigs, the Federalist Party, and the Democratic-Republicans. The main differences between these parties are not important for today's story. However, for Elbridge Gerry's story, just remember his political rivals, the Federalists, were for a strong central government, and Gerry's Democratic-Republicans were for States rights, limited central government, and saw themselves as the "every-man" party.

Gerry came out of retirement in 1810 to run for Governor of Massachusetts for the Democratic-Republican Party. He claimed he did it to end partisan political warfare between his party and the Federalists, but his actions while in office were aggressively anti-Federalist. He had Federalist newspaper editors arrested for libel for speaking out against President James Madison's foreign policy. He purged Federalist officials from his state government and replaced them with loyal Democratic-Republicans. Finally, after the Democratic-Republican-dominated legislature redrew their state Senate districts to break up Federalist-controlled areas, Gerry signed a bill that allowed for the unusual redistricting plan that unquestionably benefited his party.

Obviously, Federalists were outraged over the redrawn map. And, soon, Gerry became the subject of political jabs. An artist named Elkanah Tisdale doodled over Gerry's map and turned his freakishly redrawn district into an outline of a mythical salamander that was printed in newspapers nationwide. Critics coined it the "Gerrymander," and the name for this despicable vote-rigging practice has stuck ever since.

The maneuver soon became commonplace in American politics; every ten years after performing the census, the parties in power redrew congressional district lines to benefit

themselves in upcoming elections. They would use the tactic to either “crack” voting districts, i.e., break up groups of voters they saw as harmful to their re-election chances, or “pack” them, draw high numbers of voters together to lessen or bolster their impact on upcoming state and federal elections.

In time, politicians also realized other ways to manipulate voting maps in their favor.

Racial Gerrymandering

The practice of splitting up communities of Black and brown voters to ensure they can't elect a candidate that represents them is one that comes to mind. This form of racial gerrymandering was popular in the South following the Civil War, when newly-freed Black men tried to exercise their right to vote or run for office after the 15th Amendment was ratified in 1870.

Prison Gerrymandering and Felony Disenfranchisement

In a form of prison gerrymandering, the Census Bureau counts prisoners in the districts where they are incarcerated, instead of in their home districts. Since most prisoners come from urban (or largely Black and brown populated) areas and are imprisoned in rural (mostly white) areas, this gives a population boost and, therefore, more representation clout to rural white prison towns versus the inmates' home districts. This is a problem in particular in Massachusetts, with “the towns of Billerica, Dartmouth, Dedham, Framingham, Ludlow, Plymouth, and Walpole each contain[ing] a precinct where up to 35% of the precinct's representatives are directly attributable to the Census Bureau's prison miscount.”⁸

Voting districts are required to be drawn with an even distribution of residents so “one person, one vote” can generally be adhered to, but in every state except Maine and Vermont, as well as the District of Columbia, felons cannot vote while incarcerated.⁹ Therefore, the vote of the person who lives in a small town with a large prison population has substantially more power than a person who lives in a large urban area.

⁸ Prison Policy Initiative, “Prison Gerrymandering in Massachusetts: How the Census Bureau Prison Miscount Invites Phantom Constituents to Town Meeting,” www.prisonersofthecensus.org, October 30, 2013, <https://www.prisonersofthecensus.org/ma/towns.html>.

⁹ “Felony Disenfranchisement Laws (Map),” American Civil Liberties Union, 2019, <https://www.aclu.org/issues/voting-rights/voter-restoration/felony-disenfranchisement-laws-map>.

While prisoners' bodies are counted to impact voting maps, even as their own voices can't be included, felons only receive restoration of voting rights upon release in *some* states. In others, they are not restored until after parole or probation is finished, or after any restitution or outstanding fines are paid. In other states, felons lose their voting rights indefinitely, or they require a governor's pardon in order for them to be restored. Things used to be worse in this regard. Numerous states have passed laws to expand voting access to people with felony convictions. But, despite these reforms, as of 2020, over five-million Americans remain disenfranchised. And, because Black people have been disproportionately incarcerated, one out of every 16 African Americans has lost their voting rights due to felony disenfranchisement laws, versus one in every 59 non-Black voters.¹⁰

Although reforms have since been made to voting rights laws in Florida, the political impact that felony disenfranchisement laws can have were quite evident there in the 2000 presidential election. Even a non-violent, low-level offense like drug possession was counted as a felony and many drug offenders who never faced any jail time were barred from voting that year. The outcome of the Florida vote and of the 2000 presidential race came down to just a few hundred votes. But over 200,000 Black men (31 percent of all African-American men in the state at the time) were not allowed to vote in that election.¹¹

Voter Suppression Post-Civil War

During the Reconstruction era that followed the Civil War, states retained control over who was allowed suffrage (or, the right to vote) within their borders, even as it pertained to national elections. The 14th Amendment, adopted in 1868, however, guaranteed equal protection for all American citizens (regardless of skin color) under the law, superseding The Three-fifths Compromise language in the Constitution. To spell it out further and ensure full citizenship rights for formerly enslaved people following the passing of the 14th Amendment, Congress passed the 15th Amendment:

¹⁰ "Voting Rights," The Sentencing Project, n.d., <https://www.sentencingproject.org/issues/voting-rights/>.

¹¹ "U.S.: Florida Ex-Offenders Barred from Vote." Human Rights Watch, 7 Nov. 2000, <https://www.hrw.org/news/2000/11/07/us-florida-ex-offenders-barred-vote#>

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”¹²

The amendment was ratified in February 1870 and is often credited with finally enfranchising Black men with the right to vote. For Native Americans, however, it wasn't until the Snyder Act of 1924, which granted Native Americans born in the U.S. full citizenship, that they could enjoy the rights granted by the 15th Amendment¹³ (and in some states not until the 1960s, since it was left up to the states to decide who has the right to vote).

The passage of the 15th Amendment also exposed a racist fissure within the Women's Suffrage Movement in America. Some white women of the American Equal Rights Association, like Susan B. Anthony and Elizabeth Cady Stanton, who had been fighting for their own right to vote since the 1840s, refused to support the ratification of this amendment because it did not provide universal suffrage for women. The American Equal Rights Association dissolved in 1869 over the issue, and Susan B. Anthony and Elizabeth Cady Stanton formed the female-only National Woman Suffrage Association (NWSA).¹⁴ The NWSA primarily worked towards white women's suffrage and often utilized racist talking points. After all, just because you are oppressed doesn't mean you can't oppress others. For example, Elizabeth Cady Stanton said that the 15th Amendment, (quote) “creates an antagonism everywhere between educated, refined women and the lower orders of men, especially in the South.”¹⁵

As far as Black women were concerned, the American Suffrage Movement all but omitted them. Black women faced oppression from all sides, both gendered and racial. Intersectionality wasn't yet in the American vocabulary. We will delve into the racism of the Women's Movement in a later episode.

The population of formerly enslaved people that had been used to inflate representation in government for slave states via the Three-fifths Compromise could now, in theory, represent

¹² “The 15th Amendment of the U.S. Constitution,” National Constitution Center – The 15th Amendment of the U.S. Constitution, 2019, <https://constitutioncenter.org/interactive-constitution/amendment/amendment-xv>.

¹³ “Voting Rights for Native Americans,” Library of Congress, n.d., <https://www.loc.gov/classroom-materials/elections/right-to-vote/voting-rights-for-native-americans/>.

¹⁴ “American Equal Rights Association | American Organization | Britannica,” in *Encyclopædia Britannica*, 2019, <https://www.britannica.com/topic/American-Equal-Rights-Association>.

¹⁵ Little, Becky. “How Early Suffragists Left Black Women out of Their Fight.” *HISTORY*, HISTORY, 8 Nov. 2017, www.history.com/news/suffragists-vote-black-women.

themselves and their best interests—at least the Black men. Unfortunately, racists had other plans.

The Ku Klux Klan, established after the Civil War by white supremacist ex-Confederate soldiers and military officers, aimed to violently suppress these new Black voters, their allies, and in some instances, white Republicans. Keep in mind the more-progressive Republican Party at this time in American history does not reflect the modern-day version that is associated with more-conservative (and sometimes racist) values. The Klan had become a full-blown terrorist organization by the 1868 election. There were at least 1,000 politically and racially motivated murders in Louisiana and 2,000 in Kansas alone, and thousands more across the South in the lead-up to election day. Harassment, beatings, and other forms of intimidation were also rampant. New Orleans had 21,000 registered Republican voters, but only 276 would cast their votes in the wake of violence surrounding that election season.¹⁶

Despite that, the Republican candidate at the time, Ulysses S. Grant, still won the election with over 52-percent of the popular vote. In addition to the 15th Amendment, which lifted restrictions on the right to vote based on race, Grant then ushered in the Enforcement Acts in the early 1870s, making it illegal to interfere with registration, voting, officeholding, and jury duty. Needless to say, these laws were not often enforced.

Plantation owners also took full advantage of their workforce (in more ways than one) when it came to manipulating voting. Some proudly argued they gave their impoverished workers time off to vote and sometimes even drove them to the polls themselves. This was an overt display of “benevolence” to promote the idea that they were just, kind, and law-abiding Southerners. An act that was meant to show the North that the South was ‘rehabilitated,’ or even that there was nothing to worry about in the first place when it came to the disenfranchisement and treatment of formerly enslaved Blacks. What was not on display, however, was their denial of fundamental voter education and the strong encouragement, often through violence, to vote for a particular candidate or candidates of the plantation owner’s choosing.

Violent suppression did not apply only to voters, but Black candidates and anyone deemed an ally, as well. In fact, there was not a serious Black candidate for U.S. president until George

¹⁶ Silverbrook, Julie. “The Ku Klux Klan and Violence at the Polls.” Bill of Rights Institute, 2014, billofrightsinstitute.org/essays/the-ku-klux-klan-and-violence-at-the-polls

Edwin Turner ran in 1904 as an Independent. His votes were not recorded by any state, although estimates range from 2,000 to 65,000 votes nationally.¹⁷ The first Black president would not be elected for over a century when Barack Obama made history in 2008.

Representation in the United States government for people of color still remains unequal to this day. While the current Congress is the most racially diverse in the history of the country, only 124, or 23-percent of senators and representatives identify as Black, Hispanic, Asian/Pacific Islander, or Native American¹⁸—despite 40-percent of the U.S. population identifying with those same communities.

In the Jim Crow South, wholly legal methods accounted for the most common form of racist disenfranchisement and voter suppression. Remember, the original version of The Constitution did *not* guarantee suffrage, nor did the 15th Amendment; it merely stated that voting could not be denied based on “race, color, or previous condition of servitude.” Poll taxes and literacy tests, however, could instead be used to prevent people of color and, in some cases, poor white men from voting (as a reminder, generally only men could vote at this point in history, although some women could vote in newer Western states like Wyoming).

Poll taxes kept Blacks, the working class, and the poor from voting, and were implemented in at least 21 states following the Civil War. These fees ranged from \$1 to \$3, or roughly \$30 to \$100 in today’s money. While that may not sound like a huge expense, for the poorest people in society at the time, like servants, sharecroppers, factory workers, and laborers, it could often come down to a decision between using that money to feed their families or paying the poll tax. Ask yourself how you might choose, given the same circumstances.

The timing of poll tax deadlines in late winter was also strategic. Around this time of the year, farmers would buy supplies for the upcoming planting season, servants and sharecroppers might be paying back contractual fines to their “employers,” and many people who relied on seasonal work were coming out of the winter off-season without much, if any, financial savings.

¹⁷ Linton Weeks. “A Forgotten Presidential Candidate from 1904.” NPR.org, Dec. 2015, www.npr.org/sections/npr-history-dept/2015/12/01/455267676/a-forgotten-presidential-candidate-from-1904.

¹⁸ Schaeffer, Katherine. “Racial, Ethnic Diversity Increases yet Again with the 117th Congress.” *Pew Research Center*, Pew Research Center, 28 Jan. 2021, www.pewresearch.org/fact-tank/2021/01/28/racial-ethnic-diversity-increases-yet-again-with-the-117th-congress/.

Literacy tests were another common method to circumvent minority voting in the Jim Crow South. The State of Louisiana test went something like this:

“This test is to be given to anyone who cannot prove a fifth-grade education.

Do what you are told in each statement, nothing more, nothing less. Be careful as one wrong answer denotes failure of the test. You have 10 minutes to complete the test.

Draw a line around the number of letters of this sentence.

Draw a line under the last word of this line.

Cross out the longest word of this line.

Draw a line around the shortest word of this line.

Circle the first, first letter of the alphabet in this line.

In the space below, draw three circles, one inside by ([or] engulfed by) the other.”

Could you confidently pass this convoluted and confusingly worded test?

Literacy tests like this would not be outlawed entirely until President Richard Nixon expanded the Voting Rights Act in 1970.

A common phrase in American English, “grandfathered in,” is also derived from the Jim Crow era, when several states passed a law known as “the grandfather clause.” This racist law stated that if someone was allowed to vote before the 15th Amendment was passed, or if their ancestors (who were most certainly white) were allowed to vote, then they were exempt from having to take literacy tests or pay poll taxes: they were therefore “grandfathered in” to the right to vote.¹⁹ We may want to rethink our current common usage of this phrase.

These various legal barriers and intimidation tactics were effective: by 1940, only 3-percent of eligible Black voters in the South were registered to vote.²⁰

Even when Black voters did successfully cast a vote, racist gerrymandering prevented those votes from having any real impact on their representation. By the 1940s, racist apportionment

¹⁹ Lyons, Dylan. “11 Common English Words and Phrases with Racist Origins.” Babel Magazine, 2020, www.babel.com/en/magazine/common-racist-words-phrases.

²⁰ “Voting Rights Act: Major Dates in History,” American Civil Liberties Union, 2011, <https://www.aclu.org/voting-rights-act-major-dates-history>.

(or, the districting of politicians according to population) was such an enormous problem throughout the United States, that the U.S. Supreme Court agreed to hear a case about it. Their 1946 decision in *Colegrove v. Green* set a devastating precedent by removing all legal recourse available to voters who dared challenge these discriminatory district maps. The petitioner, Kenneth W. Colegrove, claimed that congressional districts in his state of Illinois were so uneven in their population counts that it was unconstitutional, therefore invalidating previous congressional elections. But The Supreme Court punted the responsibility away, ruling the obligation to regulate apportion lay outside the court system: it was the duty of Congress. Basically, they put the power to stop racist and disenfranchising practices in the hands of the people who were very proponents of it. Great plan.

In the 1962 case of *Baker v. Carr*, however, the Supreme Court ultimately reversed its decision.

The case involved a lawsuit that alleged the Tennessee State Legislature had redrawn districts outside of accordance with state law. The District Court stuck with the *Colegrove* precedent that this was a political matter, not something that the justice system should get involved with. The claimant appealed, and the Supreme Court ultimately made a decision stating that these cases were indeed under the purview of the court, and breaches of state apportionment law were in violation of the equal protection clause under the 14th Amendment to the U.S. Constitution.

Then, at the height of the Civil Rights movement in March of 1965, over 500 activists were attacked in a protest for fair and equal voting rights during a planned march from Selma to Montgomery, Alabama. State Troopers met peaceful protesters with violence, using nightsticks, dogs, and teargas. Many were left bloodied and beaten as they attempted to flee the police violence. Some of the brutality was captured on film and the day became known as 'Bloody Sunday.'

After the incident in Selma, President Lyndon B. Johnson stepped in and signed the Voting Rights Act into law. This Act aimed to end predatory voter suppression laws and violence. It was intended to bolster the 14th and 15th Amendments, with the premise of "one person, one vote." By the end of 1965, over 250,000 more Black people were registered to vote. States like

Mississippi saw an increase in registered Black voters from 6.7-percent in 1965 (prior to the Voting Rights Act passage) to nearly 60-percent in 1967.²¹

The initial Voting Rights Act had limitations, though. For example, it only outlawed literacy tests in places with under 50-percent non-white eligible voter registration. In places that were mostly people of color, literacy tests remained alive and well until President Richard Nixon expanded the Act in the 1970s. In part, this old provision had been included out of fear that Southern Democrats would filibuster (or obstruct proceedings) to avoid passing it at all. Unsurprisingly, the Voting Rights Act was not universally accepted; 85 representatives and 19 senators voted against the bill. Only six of the people who voted, in total, were Black, yet again, underscoring the lack of representation for people of color in Congress.

While this was unprecedented and monumental legislation that made strides towards equity within our voting system, it ultimately had to be expanded five times to address all the Jim Crow-era suppression issues. And, sadly, barriers to the ballot box have continued to plague our system.

2010 to Present

The year 2010 was an especially bad year for voting rights. The U.S. Supreme Court reversed long-standing campaign finance restrictions and expanded the influence of wealthy donors, corporations, and special interest groups in our elections in the infamous *Citizens United v. Federal Election Commission* case. A conservative nonprofit group called Citizens United sued after the Federal Election Commission blocked it from promoting and airing a film criticizing presidential candidate Hillary Clinton. A 5-4 majority of the Court sided with Citizens United, ruling that corporations and other outside groups can spend unlimited money on elections as part of First Amendment protections, so long as they are not formally coordinating with a candidate or political party. As The Brennan Center notes, "the justices who voted with the majority assumed that independent spending cannot be corrupt and that the spending would be transparent, but both assumptions have proven to be incorrect."²² The creation of super PACs (political action committees), which empower very wealthy donors, as well as the expansion of political spending from special interest groups and dark money through shadowy nonprofits that

²¹ Lopez, German. "How the Voting Rights Act Transformed Black Voting Rights in the South, in One Chart." Vox, March 6, 2015, www.vox.com/2015/3/6/8163229/voting-rights-act-1965.

²² Lau, Tim. "Citizens United Explained." Brennan Center For Justice, 12 Dec. 2019, <https://www.brennancenter.org/our-work/research-reports/citizens-united-explained>.

don't disclose their donors, have all been a devastating blow to a fair, democratic election process.

Also in 2010, Republicans (version 2.0 in this bizarro political world) took gerrymandering to an entirely new level. Dubbed REDMAP, the Redistricting Majority Project launched to target outlying congressional district races with thin margins that would otherwise never get any attention from the national party. Republicans funneled millions of dollars into flipping Democrat blue seats to Republican red. If they could take control in Blue swing states like North Carolina, Michigan, Wisconsin, Ohio, and Pennsylvania, they would be able to redraw congressional maps in 2011 to help keep them in power for the next decade.

Unsuspecting Democrats campaigning for re-election in districts with narrow margins across the United States suddenly found their voters besieged with mailed mudslinging flyers and aggressive muckraking television campaigns. The project was overwhelmingly successful. In 2010, Republicans gained nearly seven-hundred state legislative seats, the largest increase either party has seen in modern history.²³

By 2011, the sideswiped Democrats and newly empowered Republicans took turns redrawing their district maps to aggressively bolster their respective party's interests in the future. I don't think anyone will be shocked to learn that communities of color were (quote) "cracked" and "packed" to the benefit of white politicians all over the country.

The nearly decade-long case of *Abbot v Perez* challenged district maps in Texas redrawn from 2011-2013. The plaintiff in the case argued that the redistricting was not done in good faith and was intended to dilute Black and Latinx votes. They claimed it was in reaction to 2010 census records that showed Black and Latinx people accounted for nearly 90-percent of Texas' growth between 2000 and 2010. While state courts found several districts in breach of the Voting Rights Act and guilty of racial gerrymandering, the defendants appealed up to the U.S. Supreme Court and the state's ruling was overturned. All but one house district (HD90) was ruled constitutional in their findings. Legislators were ordered to redraw the offending district in 2019.

²³ Kolbert, Elizabeth. "'Ratf**Cked': The Influence of Redistricting." *The New Yorker*, The New Yorker, 20 June 2016, www.newyorker.com/magazine/2016/06/27/ratfcked-the-influence-of-redistricting.

The 1965 Voting Rights Act had included a provision that established a formula for the federal government to use in identifying jurisdictions with problematic histories of racial discrimination so that they would need to get pre-approval before changing their voting laws. But the Supreme Court's decision in the 2013 *Shelby County v Holder* case essentially gutted this special provision. That means that now in the wake of the recent Census, for the first time in decades as districts and states begin to draw their voting maps, areas with a history of racist voting practices won't have to get preclearance for their voting maps from the Justice Department.

Voter ID Laws

In yet another move that disproportionately affects voters of color, despite in-person voter fraud being exceedingly rare, Alabama, Kansas, Mississippi, New Hampshire, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin all passed new voter identification laws in 2011 or 2012. Some states have especially strict valid photo I.D. laws which require voters to present one of only a few forms of government-issued photo I.D. in order to vote, even though according to the American Civil Liberties Union (ACLU), since 2000 “there were only 31 credible allegations of voter impersonation...during a period of time in which over 1 billion ballots were cast.”²⁴ These types of laws unfairly discriminate against Black and brown voters, of whom 25-percent do not have a current, valid I.D., as compared to roughly only 8-percent of white voters who don't.²⁵

Fraud when voting by mail is also incredibly rare. Yet, many states require extensive signature matching, witness affidavits, copies of photo identification, and other barriers that make it easier to discard perfectly legal ballots. For example, the ACLU also found that at least 97-percent of discarded mail-in ballots in Ohio from the 2020 elections were authentic.²⁶ Many people were not even notified when their ballot had been discarded, despite it being a legal requirement to do so.

²⁴ “Oppose Voter ID Legislation - Fact Sheet.” American Civil Liberties Union, 2014, www.aclu.org/other/oppose-voter-id-legislation-fact-sheet

²⁵ “Voter ID Laws Passed since 2011.” Brennan Center for Justice, 2011, www.brennancenter.org/our-work/policy-solutions/voter-id-laws-passed-2011.

²⁶ Graham, David A. “The Atlantic.” *The Atlantic*, theatlantic, 21 Oct. 2020, www.theatlantic.com/ideas/archive/2020/10/signature-matching-is-the-phrenology-of-elections/616790/.

Conclusion

In response to record voter turnout in 2020, as well as voting rights activist and past gubernatorial candidate Stacey Abrams' successful voter registration initiative in Georgia that helped turn the state Blue for the first time since 1992, Republicans have produced a slew of new voter suppression bills in 2021 aimed at making voting harder for most people.

As of March 24, 2021, 361 bills aimed at restricting voting access have been introduced in 47 states; these bills include reducing access to early voter registration, early vote casting, and absentee voting.

The sour cherry on top of this curdled sundae?

Anticipating these changes will make voting on election day a much longer affair and may exclude the same people who have historically been underrepresented, and in some areas, polling places are even forbidden from handing out snacks and water to those who have long waits to vote. So far, Georgia, Iowa, Arkansas, and Utah have passed versions of these restrictive laws.²⁷

What's worse, some of these new bills regurgitate racist language from days gone by. For example, a Texas voter suppression bill recently reintroduced the phrase "Purity of the Ballot Box." Democratic Representative Rafael Anchía questioned the bill's sponsor, Republican Briscoe Cain, about whether or not he knew the origins of the terminology. Representative Cain admitted he had no idea, so Anchía proceeded to give the young representative a history lesson.

Roll the clip.

Following this embarrassing spectacle, the particular phrase was stricken from the bill, but the covert racist principles behind it remain, and at the time of this recording the bill is predicted to

²⁷ Boschma, Janie. "See Where Lawmakers Have Introduced Bills That Would Make It Harder to Vote." *CNN*, 3 Apr. 2021, www.cnn.com/2021/04/03/politics/state-legislation-voter-suppression/index.html.

pass into law.

Too many of us and our elected officials don't know our history (or don't care to address it), so we keep repeating it.

So, how can we change course? It would take a constitutional amendment, which would require the votes of two-thirds of both chambers of Congress, and three-fourths of the states, to get rid of The Electoral College. It would take the same to undo *Citizens United*, or a reversal by the Supreme Court, both of which are extremely unlikely in our current political climate. Advocates for abolishing The Electoral College say there is another possible way: a number of states have signed onto an agreement called the National Popular Vote Interstate Compact (NPVIC) that guarantees their Electoral College votes to the winner of the popular vote, no matter the outcome in their individual states. The compact would only go into effect once the number of states involved surpasses the 270 Electoral College vote threshold that is required to win the presidency. As of November 5, 2020, 15 states and Washington, D.C., adopted legislation to join the National Popular Vote Interstate Compact. Together, they represent 196 Electoral College votes.²⁸

A legislative effort to vastly reform our electoral process is underway, and is probably our best chance at getting fairer elections. We must push our elected officials to pass the For the People Act. Introduced on January 24, 2021, it aims to:

“...includ[e] automatic voter registration and other steps to modernize our elections; a national guarantee of free and fair elections without voter suppression, coupled with a commitment to restore the full protections of the Voting Rights Act; small donor public financing to empower ordinary Americans instead of big donors (at no cost to taxpayers) and other critical campaign finance reforms; an end to partisan Gerrymandering; and a much-needed overhaul of federal ethics rules. Critically, the Act would thwart virtually every vote suppression bill currently pending in the states.”²⁹

²⁸ “National Popular Vote Interstate Compact.” Ballotpedia, n.d., https://ballotpedia.org/National_Popular_Vote_Interstate_Compact.

²⁹ “Congress Must Pass the ‘for the People Act’ | Brennan Center for Justice,” www.brennancenter.org, n.d., <https://www.brennancenter.org/our-work/policy-solutions/congress-must-pass-people-act>.

Job one to fight back against the manipulation of democracy is to reinforce and bolster the Voting Rights Act, not further pick it apart and dismantle it. The people working to restrict voting access are the same ones who benefit from fewer people voting. Remember that.

To put it plainly, we are in the middle of an existential crisis; bit by bit, year by year, hard fought rights that took decades to pass are being dismantled. It's time we fight for ALL citizens to easily exercise their right to vote and have it be counted.

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https://www.google.com/books/edition/Let_the_People_Pick_the_President/HlisDwAAQBAJ?hl=en&gbpv=1&dq=electoral+college&pg=PT173&printsec=frontcover.

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<https://www.theatlantic.com/ideas/archive/2019/11/electoral-college-racist-origins/601918/>.

Source Notes

<https://www.theatlantic.com/ideas/archive/2019/11/electoral-college-racist-origins/601918/>

- The electoral college was designed to empower southern white voters
- The involvement of race and slavery in the establishment of the Electoral College is downplayed today.
- Popular vote= too much democracy in the eyes of the framers, but it also put the Southern slave-owning south at a disadvantage.
 - Most of their population consisted of enslaved people who could not vote. The popular vote would have consisted of more white northern voters than southern. 1/3 of the southern population were slaves
 - Establishing an electoral college put landowning slave owners in complete charge of all political matters in the south. (the birth of the 3/5 compromise)
- 93% of the nation's slaves were in 5 southern states.
- Thomas Jefferson prevailed over Adams because of his advantage with the slave-holding states.
 - "That election continued an almost uninterrupted trend of southern slaveholders and their dough-faced sympathizers winning the White House that lasted until Abraham Lincoln's victory in 1860."
- 1876 election- Samuel Tilden won the popular vote, but Rutherford B. Hayes won the election after " an ad hoc commission of lawmakers and Supreme Court justices was empaneled to resolve the matter," of a few contested electoral votes from Florida. They ultimately awarded the contested electoral votes to Hayes, and made a new compromise:
 - The Compromise of 1877- Republicans pulled Federal troops out of the south, effectively ending Reconstruction and removing all Federal protection for black voters.
 - Jim Crow was born.
- The Electoral College continues to empower white voters in the South:
 - "Despite black voting patterns to the contrary, five of the six states whose populations are 25 percent or more black have been reliably red in recent presidential elections."

<https://www.pbs.org/newshour/nation/the-racial-history-of-the-electoral-college-and-why-efforts-to-change-it-have-stalled>

In 2017, Lawmakers in several key swing states rallied bipartisan support to change the electoral college system, but support waned quickly, and the effort died with a whimper.

- It's viewed as a "way of undermining the Republican party."
 - Republicans who favored a national popular vote dipped from 54 percent in 2011 to 19 percent in December 2016.

- “The Electoral College was built in part to accommodate white, male slave owners who could not have anticipated a two-party system, that slaves would be freed or that black people and women would be able to vote.”
- “Though the framers could not foresee that by 1800, Thomas Jefferson, whose state of Virginia was the largest because of its 40 percent slave population, would beat out John Adams, who was opposed to slavery.”
- Bush and Trump both won their presidential elections without having the popular vote—the Electoral College favors the Republican party.

<https://populationeducation.org/a-brief-history-of-how-gerrymandering-distorts-u-s-politics/>

- Gerrymandering- in 1812, Governor of Massachusetts Elbridge Gerry re-drew the district lines of the state to benefit his political party. The practice spread like wildfire.
- Every 10 years, states redraw their districts in accordance with the census results.
- “Partisan gerrymandering occurs when district lines are drawn to give one political party or group an advantage over another.”
- Cracking: when a large concentration of party voters is cracked to distribute their numbers to more districts, making their impact on a single district much less meaningful.
 - “When Maryland Democrats re-drew the maps after the 2010 census, they cracked one of the most reliably Republican districts into multiple other districts, turning it, and surrounding districts blue. The changes were upheld in court and remain to this day.”
- Packing- redrawing district lines so there is a higher concentration of party voters in a single district.
 - “One of the most notorious examples of packing was North Carolina’s 12th District, which was thrown out in the courts on the basis of racial gerrymandering. North Carolina’s Republican-held state legislature created a district to pack as many Democratic voters into the same district, regardless of location. The district snaked along the middle of the state, intersecting or bordering five other districts.”
- Voting Rights Act of 1965
 - Supposedly did away with racial gerrymandering.
 - 1986 Thornburg v Gingles, the Supreme Court defined criteria for determining if racial gerrymandering was taking place:
 - “The minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.”
 - “The minority group must be able to show that it is politically cohesive.”
 - As a result, districts representing a majority-minority were drawn, giving representation to notoriously underrepresented minority communities.
 - “The minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it usually to defeat the minority’s preferred candidate.”

- “After the *Thornburg v Gingles* ruling, many newly drawn districts in the South elected their first African American representative since Reconstruction.”
- Drawing the lines: “Elected state legislatures are responsible for drawing congressional district lines in 31 states, 27 of which are subject to a veto from the governor. Many of the remaining states require an advisory commission or political appointee commission to draw the maps. Advisory commission maps must still be approved by state legislatures, allowing for ample partisan manipulation, and political appointee commissions are frequently chosen for the sole purpose of gerrymandering. However, in four states – Michigan, Colorado, California, and Arizona – independent commissions both draw and approve congressional district maps.”
- Are independent commissioners the solution? Possibly, but it’s going to take a legal mandate to enforce the role of independent commissioners in some states; gerrymandering is lucrative and effective, and some states will not give it up without a fight. Plus, independent commissioners can be partisan as well.

Hoffman, Matthew. *The Illegitimate President: Minority Vote Dilution and the Electoral College*. , digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=scholar.google.com/&httpsredir=1&article=7664&context=ylij.

- “so long as minority voters have different political preferences than the majority—a fact that is almost self-evident in many parts of the country—their votes will be virtually meaningless in the final selection of the President”
- Voters who cannot participate effectively in choosing the electors realistically have no voice in selecting the President.
- Exit polls indicate that, in the past five presidential elections, between 82% and 90% of black voters nationwide have voted for the Democratic candidate. ***Up until 1992
 - In a presidential election with a Black candidate, that candidate overwhelmingly gets the majority of the Black vote
 - Jesse Jackson in 1984 and 1988 primaries received over 90%
 - [Obama in 2008 received 95.5% and in 2012 received 93% **not in the article, but added for modern stat]
 - Asian and Lantix also overwhelmingly tend to vote for people of color and vote Blue
- US Constitution art. II “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.”
 - There is no explicit instruction or direction on how electors have to be chosen
 - Electors do have to meet and vote in their states all on the same day
 - Initially, some believed that this would help curtail lobbying on behalf of one presidential candidate as they were all spread far apart (state by state). It was an attempt to reduce corruption.

- 12th amendment needed to “sure up” the system
- Winner-take-all system not required by the Constitution
 - Not all states used this until 1860
 - This system benefits the two-party system by essentially ensuring no minor party/third party have much of a chance, if any, to gain electoral votes
- One of the “principal forces driving it (Southern Republican voting block) has been the violent opposition of white Southern politicians to the civil rights policies of the national Democratic party”
 - “Southern politicians have attempted to use their influence in the electoral college to exert control over national issues relating to race and civil rights.”
- 1948- segregationist ticket headed by J. Strom Thurmond
 - 4 Southern Democrats abandoned their usual support to support Thurmond-Dixiecrats
 - “the true force that bound them together was their violent opposition to any measure of social and political equality for African-Americans.”
 - February 1948- Truman gave a speech calling for abolition of poll taxes and the creation of an anti-lynching law. The KKK responded with rallies and cross burnings.
 - Full speech: <https://www.blackpast.org/african-american-history/1948-harry-s-truman-s-special-message-congress-civil-rights-2/>
 - Thurmond wrote a resolution in response to Truman’s Civil Rights initiatives stating “the racial integrity and purity of the white and the negro races alike,”
 - Wanted to force the election to the House where Southern influence could lead to his election
- 1968- George C Wallace, another attempt to overtly manipulate the electoral college system
 - Speech in 1963 “In the name of the greatest people that have ever trod this earth, I draw the line in the dust and toss the gauntlet before the feet of tyranny ... and I say... segregation now ... segregation tomorrow ... segregation forever.”
 - More organized, got his name on the ballot in all 50 states and used the anger among segregationists nationwide to gain support
 - His aim was to block one party from getting the majority of electoral votes so they would be forced to work with him, namely Nixon (R) as he would be more willing to give concessions on Civil Rights
 - This election solidified Republican domination of the South, which it has held on to for the most part. **exception GA in 2020, kind of FL in 2000 etc.

Finkelman, Paul. *THE PROSLAVERY ORIGINS of the ELECTORAL COLLEGE.* ,
 people.uncw.edu/lowery/pls101/wilson_chapter_outlines/The%20Proslavery%20Origins
 %20of%20the%20Electoral%20College.pdf.

- Winner-takes-all does not ensure the candidate with the popular vote is elected president
- The issue of how to elect the president was hotly contested by the Framers of the Constitution, most of whom were slave owners.
 - James Madison was concerned with who had the right to suffrage- “right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election on the score of the Negroes.”
 - He, therefore, supported the idea of the electoral college.
- The states with higher populations of enslaved people shared Madison’s concerns, and recognized that without the electoral college they would have a harder time electing pro-slavery candidates into presidential office.
 - Its important to note that many of the New England states that benefited from the Slave Trade were also on board with this line of thought.
- ⅔ compromise factored into the electoral college in the same way that it factored into representation in Congress.
 - “examine the election of 1800 between John Adams, who never owned a slave, and Thomas Jefferson, who owned about 200 at the time. The election was very close, with Jefferson getting seventy-three electoral votes and Adams sixty-five. Jefferson’s strength was in the South, which provided fifty-three of his electoral votes. If Jefferson had received no electoral votes based on counting slaves under the 3/5ths clause, John Adams would have won the election”
 - “For example, when we purchased Louisiana we would have had a president opposed to slavery. In addition, when he left the Presidency, Adams was on the verge of extending diplomatic relations to Haiti. In contrast, Jefferson opposed relations with Haiti and did everything he could, short of war, to undermine the black regime there. If Adams had remained in office our whole relationship with Haiti would have been different, since we would probably have extended diplomatic relations with the young nation and expanded what was emerging as a useful economic and trade relationship.”

Bennett, Robert W. *Taming the Electoral College*. Stanford, Calif., Stanford Law And Politics, 2006.

https://www.google.com/books/edition/Taming_the_Electoral_College/wYjvr7iCJVUC?hl=en&gbpv=1&dq=electoral+college&pg=PP11&printsec=frontcover

- There was no election in the 20th century where a presidential candidate lost the popular vote but won the electoral vote
 - 1824: John Quincy Adams
 - 1876: Rutherford B. Hayes
 - 1888: Benjamin Harrison
 - 2000: George W. Bush
 - 2016: Donald Trump **not in book as it predates this election, but relevant
- The constitution says little about the requirements to vote

- Ex-felon disenfranchisement is a huge issue, especially in Florida, that often is the center of election disputes, like in 2000

Wegman, Jesse. *LET the PEOPLE PICK the PRESIDENT: The Case for Abolishing the Electoral College*. S.L., Griffin, 2021.
https://www.google.com/books/edition/Let_the_People_Pick_the_President/HlisD

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www.motherjones.com/politics/2021/01/the-electoral-college-is-racist-heres-how-to-kill-it-without-a-constitutional-amendment/.
[AQBAJ?hl=en&gbpv=1&dq=electoral+college&pg=PT173&printsec=frontcover](https://www.amazon.com/dp/B08QBAJ?hl=en&gbpv=1&dq=electoral+college&pg=PT173&printsec=frontcover)

Akhil Reed Amar. *America's Constitution : A Biography*. New York, Random House, 2006.

- p.20-21: "Another clause of Article I, regulating congressional apportionment, gave states perverse incentives to maintain and even expand slavery. If a state freed its slaves and the freedmen then moved away, the state might actually lose House seats; conversely, if it imported or bred more slaves, it could increase its congressional clout. Article II likewise handed slave states extra seats in the electoral college, giving the South a sizable head start in presidential elections.

<https://www.theconstitution.org/news/understanding-the-three-fifths-compromise/> - Interesting OP ed and response (link at top of article) about the 3/5 compromise.

<https://www.businessinsider.com/threats-wont-deter-electors-voting-joe-biden-december-14-2020-12> - Electors harassed ahead of the Dec 2020 vote for POTUS

<https://www.theatlantic.com/magazine/archive/2018/10/james-madison-mob-rule/568351/> - James Madison's fears of "Mob Rule"

<https://teachingamericanhistory.org/library/document/the-three-fifths-clause-revisited/> - Transcripts of the June/July debates at the 1787 Constitutional Convention over the 3/5 compromise.

https://www.senate.gov/about/officers-staff/vice-president/VP_Elbridge_Gerry.htm - Information about Eldridge Gerry.

- Governor of Massachusetts
- VP under James Madison 1813-1814
- Invented Gerrymandering

<https://www.smithsonianmag.com/history/where-did-term-gerrymander-come-180964118/> -
Smithsonian article about the 1812 Incident

- Quote on the district drawn by Eldridge’s party in 1812: “Long and thin, the redrawn state senate district in Massachusetts stretched from near Boston to the New Hampshire border, where it hooked east along the Merrimack River to the coast. It sliced up Essex County, a political stronghold for the Federalist Party – all by design of its ascendant political rival, the Democratic-Republicans. It worked: the freakishly shaped district elected three Democratic-Republicans that year, 1812, breaking up the county’s previous delegation of five Federalist senators.”
- “The word “gerrymander” was coined at a Boston dinner party hosted by a prominent Federalist in March 1812, according to an 1892 article by historian John Ward Dean. As talk turned to the hated redistricting bill, illustrator Elkanah Tisdale drew a picture map of the district as if it were a monster, with claws and a snake-like head on its long neck.”
- “Tisdale’s drawing, headlined “The Gerry-mander,” appeared in the *Boston Gazette* of March 26, 1812. “

<https://www.prisonersofthecensus.org/ma/towns.html> -prison gerrymandering

[http://encyclopedia.federalism.org/index.php?title=Colegrove_v._Green_\(1946\)](http://encyclopedia.federalism.org/index.php?title=Colegrove_v._Green_(1946))
- Colegrove v. Green

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