

Lessons from the 2020 Election Cycle

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SUMMARY. While the COVID-19 pandemic brought uncertainty during the primaries, states learned from those early contests and put measures in place to ensure voter access and safety while protecting the integrity of the elections process. These efforts were successful – voter turnout in the 2020 General Election broke records, with 66.7% of eligible voters participating in the election, the highest turnout since 1900. This turnout also resulted in success for a number of public health measures, success that was facilitated in part by state efforts to expand options available to voters, including expanded absentee ballot eligibility, extended voter registration deadlines, and a push for early and absentee voting. Success was also due to strong community organizing and the efforts of private individuals and businesses to ensure that the election was adequately staffed and resourced in the absence of additional federal funding. While some states have made or are making permanent changes to facilitate voter participation, and despite the record turnout and reports that this election was the most secure in American history, other states want to roll back changes made to elections policy during the pandemic and restrict voter access. The courts also seem to support restricting voting rights protections that conflict with state legislative decisions, and public health and elections officials experienced threats to their safety due to tensions over the pandemic and the outcome of the election that remain high. The Biden administration, Congress, and state governments must prioritize taking action to protect the right to vote, facilitate voter participation, and ensure the continued safety and security of future elections.

Introduction

The 2020 election cycle, like 2020 itself, has been described as unprecedented, and in many ways it was. There was record participation by the voting eligible population across voting methods in the primaries and in the November general election. States adapted elections administration to ensure the health and safety of voters even as information about the transmission and prevention of COVID-19 continued to evolve and officials debated the most effective public health interventions. The elections were also a victory for public health, both in terms of conducting safe elections (with few reports of COVID-19 infection related to in-person voting), and in terms of advancing health equity by enacting laws that increased voter participation and otherwise addressed the conditions that can create more equitable health outcomes for people of color and other historically marginalized populations.

While states made changes to expand ballot access, most states already have pro-voter laws in place for everything from automatic, same-day, and online voter registration, to no-excuse absentee voting and early voting options. These options exist in states with Democratic or Republican trifectas (where one party controls the executive branch and both chambers of the legislature) and in states with split governance structures. COVID-19 expanded the

options available, and exposed voters to what it is like to vote in an election when the government makes it easier to vote. Voters also experienced a relatively smooth election despite inadequate resources and continued voter suppression efforts in some states, thanks in large part to community mobilization efforts, election protection, and the efforts of private individuals and businesses to ensure adequate elections resources. Going forward, it will be necessary to preserve and protect changes made during the 2020 election cycle that facilitated both voting and public health.

Looking Back at Preparations for the General Election

In August 2020, it was clear what needed to happen in November to ensure a successful election in the midst of a pandemic – voters needed access to different voting options and information about ways to vote safely and stay healthy. The primaries showed that elections officials could anticipate long lines and high turnout on Election Day, as well as continued record levels of mail-in and absentee ballots. It was clear that a new generation of poll workers would need to be recruited and that polling places would need to accommodate large numbers of voters in a way that was accessible and allowed for COVID-19 health and safety protocols to be enforced. These things all happened, albeit with

significant variation across states. Early voting was expanded, voter registration deadlines were extended, poll workers were successfully recruited, polling locations were successfully modified or established, and there were broad-based voter education campaigns to emphasize both the importance of voting and ways to create a safe voting plan. There were also successful efforts to address voter issues that disproportionately impact voters of color, such as preventing voter purges in Indiana and Wisconsin, and organized efforts to cure absentee ballots, which have a higher rate of rejection for voters of color, low-income voters, and young voters (Nichols et al., 2020).

Three of the biggest concerns leading up to the general election were the shortage of poll workers, limitations on polling places, and adequate funding. Organizations like More than a Vote and Power the Polls helped to successfully recruit more than 40,000 poll workers across the United States, and More than a Vote also teamed up with elections officials to allow sporting arenas to be used as early voting sites, drop box locations, and vote centers (NBA, 2020). States must now make these changes permanent by updating state law to expand poll worker eligibility; increase incentives for poll workers like improved compensation; and set standards for polling place closures and consolidation that ensure that voters will still have meaningful access.

Some states took these steps in 2020 by, for example, setting quotas for the number of open polling places, and lowering age restrictions and eliminating residency requirements for poll workers. Notably, Massachusetts enacted legislation that, although temporary, required election commissioners to consider whether polling place changes would have a disparate impact based on race, national origin, disability, income, or age (An Act Relative to Voting Options in Response to COVID-19, 2020). This may serve as a model for one way that states may respond to polling place closure in a post-*Shelby* environment where the preclearance provisions of the Voting Rights Act of 1965 for jurisdictions with a history of discrimination in voting no longer apply (*Shelby County v. Holder*, 2013).

This is not to suggest that all changes during this election cycle were pro-voter. Some state legislatures enacted more restrictive measures and courts limited election policy changes imposed due to the pandemic. In addition, funding was inadequate across the board, but is critical for ensuring health and safety by resourcing poll workers, polling locations, education campaigns, machines and equipment, cleaning supplies, and training. One analysis pre-pandemic illustrated unfunded security needs like voting equipment and software updates, cybersecurity improvements, and post-election audits (Howard et al., 2019). While the CARES Act allocated \$400 million to the states for these kinds of costs, it was estimated that \$4 billion would be needed to ensure election security in 2020, and the deficit was largely made up by donations of money, PPE, space (like sporting arenas), and other supplies by individuals, businesses, and non-profits (Córdova McCadney et al., 2020). Congress must make a commitment to sustained federal funding for elections to promote voter access and election security.

A Push for Electoral Reform

State legislatures enacted a number of election reforms in response to COVID-19, some permanent, and some temporary. These reforms largely facilitated voting by making changes to mail or absentee voting processes, and also addressed concerns raised during the primaries about the number of poll workers and polling locations (discussed above).

Among the more significant changes was the expansion of absentee voting eligibility. Of the 16 states in which voters must have an excuse to request an absentee ballot, 12 expanded eligibility by allowing COVID-19 as an excuse, allowing illness or disability generally, or eliminating the need for an excuse. States also mailed absentee ballots or ballot requests to all registered voters, provided pre-paid postage for all mail ballots, extended ballot receipt deadlines, and changed ballot processing time frames (NCSL, 2020a). While all states require valid signatures on absentee or mail-in ballots, 32 states require signature matching verification, and only 18 states require notice to voters of missing or discrepant signatures with an opportunity to cure (NCSL, 2020b). In response to COVID-19, five states expanded or enacted a notice or notice and cure policy (Michigan, New Jersey, New York, North Carolina, and Virginia). Notably, all of these changes occurred in both Democratic, Republican, and split governments and nearly all of these changes were temporary.

Many of these changes were made under existing election day emergency authority or authority granted to the governor under emergency conditions. Now, states are revisiting both the changes made to elections administration and the authority to make them. Kentucky is perhaps the best example of this. Under Section 39A.100 of the Kentucky Revised Statutes, the governor has emergency power to modify an election and, upon the recommendation of the Secretary of State, to declare by executive order a different time, place, or manner for holding elections during a declared state of emergency. For the 2020 election, Kentucky expanded absentee ballot eligibility due to COVID-19 concerns and created an online absentee ballot request process; expanded early voting; required vote centers in counties that consolidated polling places; enabled online ballot tracking; and allowed ballots postmarked by November 3, 2020, and received by November 6, 2020, to be counted. Now, in the 2021 legislative session, the legislature has passed a bill that removes the governor's authority to change the manner of elections by executive order (although time or place can still be changed) and the executive order itself cannot be changed except by action of the General Assembly (S.B.1, 2021). Kentucky made a number of changes that facilitated voter turnout and ensured voter safety and election security during 2020, and efforts to limit the authority to adapt elections for public health emergencies in future elections are a step in the wrong direction.

Kentucky is not alone — the Georgia General Assembly will be considering bills to eliminate no-excuse absentee voting (which has been in place since 2005), the use of ballot drop boxes, and unsolicited absentee ballot application mailings, as well as a

ban on the use of early voting buses and requiring a photo ID for absentee voting (usually only required for in-person voting). These are all measures that will make voting harder, and that will disproportionately impact people who have historically experienced limited access to the polls, due to age, disability, access issues, and racist voter suppression efforts.

The bottom line is that changes made to elections administration due to COVID-19 were a necessary response to ensure a safe and secure election, but they are also changes that present opportunities for long-term improvements that will ensure robust participation in future elections. State legislatures must ensure that legislation that is introduced addresses legitimate questions about the process of administering an election rather than ways to suppress the opposition or alternative views.

The Role of the Courts

Hundreds of lawsuits involving election administration were filed in the lead-up to the general election, and another 54 lawsuits were filed post-election in an attempt to overturn the election results. Prior to the election, it was noted that courts may be reticent to change election policy close to an election in consideration of the *Purcell* principle that courts should not change election procedures close to an election (*Purcell v. Gonzalez*, 2006). It was also recommended that courts reconsider their role and be more willing to apply the *Anderson-Burdick* test to balance the interests of the state against the burden on the right to vote to determine which measures are necessary to facilitate the right to vote while maintaining the integrity of the ballot (*Anderson v. Celebrezze*, 1983; *Burdick v. Takushi*, 1992). Indeed, both the *Purcell* principle and the *Anderson-Burdick* test played a key role in litigation, from reinstating witness requirements in South Carolina (*Andino v. Middleton*, 2020), to limiting ballot drop box sites in Texas (*Texas League of United Latin American Citizens v. Abbott*, 2020), and allowing an extended deadline for receipt of ballots to stay in place in North Carolina (*Moore v. Circosta*, 2020).

However, a more threatening legal theory took shape during the 2020 election cycle that the federal courts have a role to play in preventing state courts and other state actors from making changes to protect the vote under state law if those changes are inconsistent with the state legislature's actions (*Moore v. Circosta*, 2020; *Republican Party of Pennsylvania v. Boockvar*, 2020). This could potentially upend the Supreme Court's past decisions upholding the rights of states to enact election laws through a lawmaking process, including by ballot initiative (See, e.g. *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 2015), which held that the Elections Clause of the U.S. Constitution and 2 U.S.C. § 2(a)(c) permit the use of an independent commission to adopt congressional districts). A potential consequence is that other state laws governing the electoral process that were enacted through a lawmaking process (but not through the legislature itself) could be subject to challenge.

This theory was evidenced in the denouement to the flurry of post-election lawsuits in *Texas v. Pennsylvania*, with the Texas Attorney General arguing that four decisive states in the 2020 general election (Georgia, Michigan, Pennsylvania, and Wisconsin) used the

COVID-19 pandemic to make unconstitutional changes to voting laws through non-legislative means (*Texas v. Pennsylvania*, 2020). While the Supreme Court declined to hear the case for lack of standing, some questions about the authority to make changes to election policy remain unresolved and without federal legislation, state level changes to federal elections processes will continue to be vulnerable to legal challenges. Ultimately, these disputes over executive or legislative authority to ease voting requirements became a fight over the legitimacy of the election, arguably contributing to the insurrection at the Capitol on January 6, 2021.

One way to avoid some of these disputes is for Congress to take action to set minimum federal elections standards that expand voting access and protect the right to vote. These minimum standards should include expanded voter registration, which continues to be one of the main barriers to voting, by establishing automatic, same-day, and online registration. Voters in record numbers also took advantage of absentee, mail-in and early voting during the pandemic as safe alternatives to Election Day voting, and any federal standards should permanently expand access to the ballot by establishing national no-excuse absentee voting, establishing a minimum nationwide early vote period, and preventing the purge of eligible voters from voter rolls. Changes states made due to the pandemic facilitated turnout, and it is necessary to make those changes permanent to ensure continued civic participation.

Other Concerns

As the pandemic has progressed and struggles continue across the United States – with high levels of unemployment, congressional stalemates over financial relief, misinformation and distrust about public health measures, and record cases, hospitalizations, and deaths – tensions among the public have escalated. Pre- and post-election, these tensions were inflamed by false claims about widespread voter fraud and challenges to elections policy in key states, undermining trust in the election outcome. This often resulted in violence or threats of violence against both public health and elections officials. States must enact or strengthen provisions to protect public officials, ensuring that there are penalties and mechanisms of enforcement.

Finally, the 2020 election cycle was also significant because it coincided with decennial census, the data from which determine legislative redistricting. New legislative and congressional maps are drawn by the state legislature or through redistricting commissions (or both), making the outcomes of the 2020 election critical for determining who controls the redistricting process. The maps drawn determine representation, and representation determines the distribution of resources and power and drives policy across the social determinants of health. State legislatures must take action to reduce or eliminate partisan gerrymandering to ensure equitable representation. Options include establishing independent redistricting commissions or using algorithms to create new districts using measures related to district compactness or other factors like political or geographical boundaries (for example, a town or city), or otherwise establishing objective criteria.

A Successful Election Cycle for Public Health

What did record turnout mean for public health and health equity? Economic measures that narrow the racial wealth gap and improve economic stability, like Medicaid expansion and minimum wage increases, were successful this year. Missouri and Oklahoma became the latest states to adopt Medicaid expansion by ballot measure, with expansion coverage expected to start by July 1, 2021 in both states. That leaves just 12 states that have not expanded Medicaid, despite the clear evidence that it has reduced racial disparities in health coverage and access to care in expansion states, a decision that largely impacts people of color, who comprise nearly 60% of the four million uninsured adults in non-expansion states (Cross-Call, 2020).

Florida became the latest state to approve an increase in its minimum wage by approving a ballot initiative to increase the minimum wage to \$15 an hour by 2026. This follows on the heels of 24 states and 48 cities and counties that implemented minimum wage increases in 2020 (Lathrop, 2019). Popularity for economic measures like this has grown during the COVID-19 pandemic, and recent research has demonstrated that increasing the minimum wage decreases racial economic disparities (Derenoncourt et al., 2020). However, the federal minimum wage remains \$7.25 an hour and wage preemption continues to disproportionately impact women and people of color amid reports of significant job losses for both groups during the pandemic.

Both of these economic initiatives are also significant because they may lead to better health, and better health leads to a more engaged electorate. Research shows a consistent association between voter participation and health conditions, with health and socioeconomic disparities linked to reduced voter turnout (Brown et al., 2020). People experiencing chronic health conditions or living with a disability are less likely to vote, as are people making less than \$30,000 a year and people with a high school degree or less, who are disproportionately Black and Hispanic

or Latino voters. By enacting laws that improve both health and socioeconomic conditions, states are likely to see improved voter turnout and the continued introduction and success of similar initiatives that address inequities.

Other significant public health victories in the 2020 election cycle include voter enfranchisement in California and Washington, DC; decriminalization of low-level drug possession in Oregon; the election of sheriffs who ran on eliminating contracts and/or cooperation with ICE; an increase in income tax on high earners in Arizona to fund public education; pre-school for all in Multnomah County, OR; increased taxes to pay for public transit in cities like Austin, Denver, Fairfax, San Antonio, and Seattle; paid medical and family sick leave in Colorado; and establishment or strengthening of police oversight boards in cities like Boston, Philadelphia, Pittsburgh, San Diego, and San Francisco. These are all initiatives that impact social conditions, education, access to opportunity, and economic stability and can have the effect of reducing disparities for people of color, immigrants, women, and other marginalized populations.

Participation in the voting process is one way to dismantle the laws and policies that create barriers to education, health, power, and economic opportunity by ensuring that elected officials better represent the electorate and have shared experiences with their constituents. One of the biggest lessons from the 2020 election cycle is that facilitating participation in democratic processes is one way to build power in communities, and post-election, it will be important to continue to facilitate participation, build civic infrastructure and promote civic education, and equip communities to organize on issues and hold elected officials accountable. Creating a more equitable future means investing in and building the capacity of communities year-round. 🌱

Recommendations for Action

All levels of government must take steps to protect democracy in order to make meaningful movement toward health and racial equity.

Federal government:

- The Biden administration should develop an infrastructure to include voices from the community in policy development and implementation.
- The Biden administration should invest in civic infrastructure and education.
- Congress should ensure sustained funding for elections administration.
- Congress should enact minimum elections standards including automatic, same day, and online voter registration; national no-excuse absentee voting; a minimum nationwide early vote period; and preventing the purge of eligible voters from voter rolls.

State governments:

State legislatures should:

- Eliminate felony disenfranchisement laws.
- Set fair standards for drawing electoral boundaries by creating independent redistricting commissions, using algorithms, and/or establishing objective criteria for districts that preserve communities of interest and ensure racial fairness, among other factors.
- Ensure protections for elections, public health, or other public officials.
- Update state law to expand poll worker eligibility; increase incentives for poll workers; and set standards for polling place closures and consolidation that ensure that voters will still have meaningful access.
- In the absence of federal standards, enact laws that facilitate voter access and protect the right to vote.

About the Author

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