



# Beefing up Voter Rolls Automatically

*by Cheryl Baisden*

As part of the democratic process, most United States citizens are entitled to the right to vote—that is, as long as they register for the privilege. According to the Brennan Center for Justice, 51 million potential U.S. voters have failed to register.

Although the reasons why so many citizens remain unregistered are varied, legislators in numerous states are debating the status of those potential voters.



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## One Person, One Vote—Sounds Simple

*by Robin Foster*



The concept of one person, one vote has been a principle of our political system for more than a half century. It promotes the ideal of political equality, meaning no vote carries more weight than another.

In 2010, two Texas voters, Sue Evenwel and Edward Pfenninger, claimed that the state's redistricting practices violated the principle of one person, one vote, making their votes count less than other Texas voters.

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# Decoding the Presidential Primaries

*by Phyllis Raybin Emert*

The 2016 election cycle seems like it's been going on forever. With each party having different rules for selecting its presidential candidate, the process leading up to Election Day on November 8 can be confusing.



Basically, individuals vote in primary elections or caucuses for delegates who represent the candidates of both major parties at each party's national convention. Seventeen candidates ran for the Republican presidential nomination and it was businessman Donald Trump who collected enough delegates to be nominated at the Republican National Convention (RNC) in Cleveland. Former Secretary of State and Senator Hillary Clinton ran against Vermont Senator Bernie Sanders and won the Democratic presidential nomination at her party's convention in Philadelphia.

## Primary vs. caucus

Eugene Mazo, a professor at Rutgers School of Law—Newark who specializes in election law, explains that primaries and caucuses are just different ways of selecting candidates. In a primary, for instance, the candidate who wins the most individual votes statewide from primary voters will receive all [or a larger portion] of the delegates from that state. Those delegates are then bound, in other words they must vote for that particular candidate at the

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# Money in Politics: Are Elections For Sale?

by Jodi L. Miller

Surveys have shown that the majority of Americans believe there is too much money in politics and the system is rigged in favor of the wealthy. A 2015 *New York Times*/CBS News poll revealed that 84 percent of respondents think that money is too influential in political campaigns and 66 percent believe that the rich have more influence in the election process.

Part of the mistrust is blamed on the 2010 U.S. Supreme Court decision in *Citizens United v. Federal Election Commission*, which ruled that corporations are just like people and entitled to the same free speech rights as a private person. Speaking about the *Citizens United* decision in his 2010 State of Union address, President Barack Obama said, "It reversed a century of law that I believe will open the floodgates for special interests." Two years later, however, the president urged his supporters to give contributions to the super PAC backing his 2012 re-election.

In an interview with *The New Republic*, U.S. Supreme Court Justice Ruth Bader Ginsburg, who was one of the four justices that **dissented** in the case, said, "If there is one decision I would overrule, it would be *Citizens United*. I think the notion that we have all the democracy that money can buy strays so far from what our democracy is supposed to be...I think members of the legislature, people who have to run for office, know the connection between money and influence on what laws get passed."

## Who's paying?

According to Ian Vandewalker, who works on campaign finance reform issues for the Democracy Program at the Brennan Center for Justice, the Court's *Citizens United* decision changed the rules about who pays

for elections, making them unfairly favor the rich. "That makes it harder for everyone to participate and for all voices to be heard," he says and points out that at the federal level the amount of money needed to run a successful campaign has increased tremendously.

"Our elected leaders now spend most of their time raising money rather than doing their jobs," Vandewalker says. "It's not clear how much the vast amounts of money being spent affect election outcomes, but the money chase makes elected officials too focused on keeping wealthy special interests happy and acts as a barrier to ordinary Americans becoming political leaders."

David Jolly, a Florida congressman, explained in an interview on *CBS This Morning*, "You have to raise sufficient money for your own re-election, but then there's also an expectation that you will spend time asking people to support your party and hitting certain targets—a half million dollars, \$1 million and so forth." Jolly compared the practice to a "telemarketing firm."

Democracy for the People, a project of Public Citizen, reported that by some estimates Congress members spend between 30 and 70 percent of their time raising campaign funds.

## Dark money

The *Citizens United* decision gave rise to what is known as the super PAC. In the 2016 election cycle, the number of super PACs rose to more than 2,300. In the 2012 election cycle there were a little over 1,300. The decision also brought the term "dark money" to the forefront. According to the Brennan Center, dark money comes from entities that do not publicly disclose their donors, so the source of the money is not known. For

example, non-profit social welfare groups that promote a certain political issue (not a particular candidate) and trade associations are not required to disclose their donors. Super PACs are legally required to disclose their donors; however, they can accept unlimited contributions from political non-profits who don't have the same requirement.

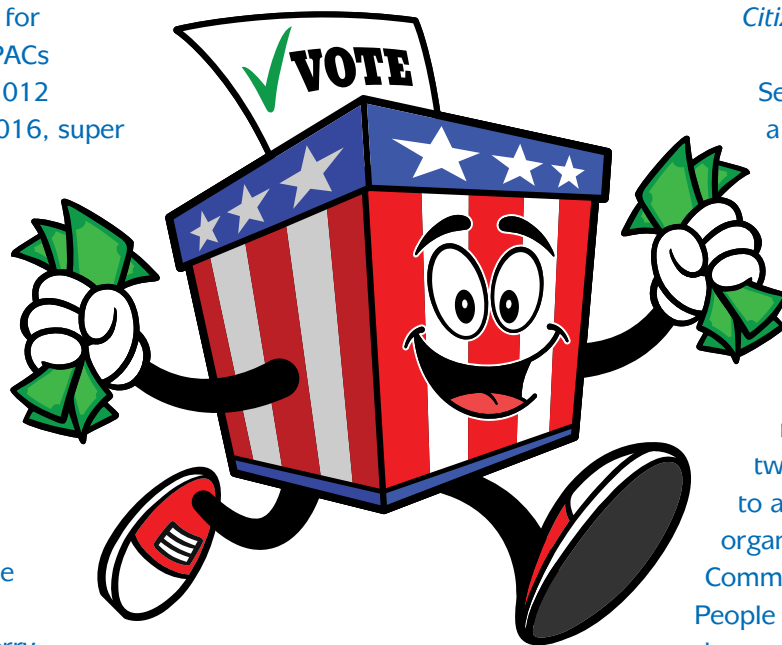
According to the Center for Responsive Politics, super PACs raised \$828 million in the 2012 election cycle. As of June 2016, super PACs had raised more than \$755 million for the current election cycle, making them on target to far surpass the 2012 number.

### Nothing new

In many ways, money in politics has been around since before the U.S. was even a country. Even George Washington, that pillar of honesty (remember the cherry tree?), played a little loose with ethics in 1758 when he ran for a seat on the House of Burgesses, what was then the lower house in the legislature of colonial Virginia. The rumor is that after losing the previous election, the then Colonel spent £39 (\$195 at the time and roughly \$8,000 in today's money) on alcohol for voters on Election Day. Soon after, the House of Burgesses passed a law making it illegal to give directly or indirectly any gift of money, meat or drink to potential voters.

Corruption in politics only got worse from there. The first federal campaign finance reform law was passed in 1867 making it illegal to pressure workers for contributions at naval yards. Another law, passed in 1883, expanded that measure to include civil service workers.

Political corruption really came to a head with William McKinley's 1896 presidential campaign. McKinley's chief fundraiser Mark Hanna raised more than \$6 million in corporate donations by promising a big-business agenda in a McKinley Administration. Hanna was famously quoted as saying, "There are two things that



are important in politics. The first is money and I can't remember what the second is."

After the 1896 scandal, the public demanded regulation of campaign funding practices. In 1907, Congress passed the Tillman Act, which prohibited contributions to national political campaigns by corporations and national banks. In 1910, the Federal Corrupt Practices Act was passed and then expanded in 1925. These laws instituted spending limits on U.S. House elections (later including the Senate as well) and required full disclosure of money spent during federal campaigns.

There would be more campaign finance reform laws passed over the decades until in 1976, the U.S. Supreme Court struck down key fundraising limits with its decision in

*Buckley v. Valeo*. Many believe this decision paved the way for *Citizens United*, since the Court ruled in *Buckley* that political money is speech.

### Amending the problem

Whether Republican or Democrat, the majority of Americans would like to see legal changes instituted that would offset the outcome of the *Citizens United* decision.

In September 2014, the Senate voted 79 to 18 to debate a constitutional amendment that would overturn the controversial decision.

After the debate, 54 senators voted to move the amendment forward, 42 senators voted no, effectively blocking the measure since 60 votes, a two-thirds majority, was needed to advance it. Still, grass roots organizations like Public Citizen, Common Cause, Free Speech for People and others are pushing the movement for a constitutional amendment, collecting 3.2 million signatures in support. They have also managed to get 16 states (New Jersey included) and nearly 600 communities to formally support a constitutional amendment.

Vandewalker says there are a few reasons why change is hard. "For one thing, some politicians and wealthy special interests are benefiting from the way the rules are now, so they want to keep the rules the same," he says. "For another, it's very hard to go against a constitutional decision by the Supreme Court." Vandewalker says the Brennan Center is working for reforms at the state level that would be allowed by the Court's ruling, as well as getting the Court to "change direction and allow states and Congress to pass commonsense rules that let everyone's voice be heard."



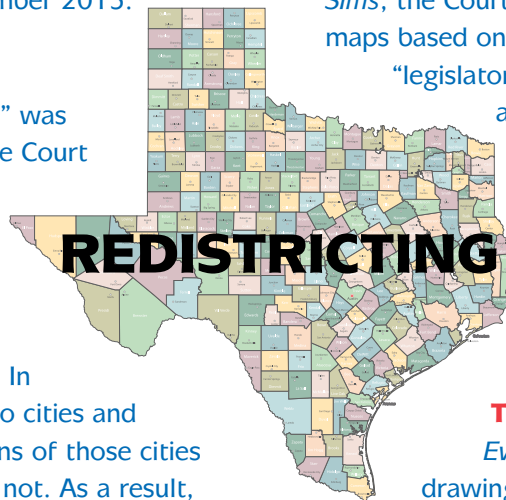
The process of redistricting—redrawing voter district maps—happens every 10 years following the national census and is designed to ensure that state legislatures are representative of their **constituents**. As people move around the state and populations change, district maps are redrawn to make sure that each congressional member represents roughly the same number of people. Almost every jurisdiction in the U.S. today draws its district maps based on total population using federal census data.

In 2014 a district court in Texas rejected the challenge in *Evenwel v. Abbott*, noting “the U.S. Supreme Court has generally used total population as the metric of comparison.” The case went to the U.S. Supreme Court, which heard oral arguments in December 2015.

### History of apportionment

The phrase “one person, one vote” was first coined in the 1963 U.S. Supreme Court decision *Gray v. Sanders*, one of several “apportionment cases” heard by the Warren Court in the 1960s. Apportionment refers to the number of representatives afforded a district, allocating power to voters. In the late 1930s, as citizens moved into cities and away from rural areas, the populations of those cities increased but their voting power did not. As a result, issues of malapportionment—where representation in state legislatures was not equitable—became more and more prevalent.

In a 1958 *New York Times* opinion piece outlining the issue, John F. Kennedy, then a senator in Massachusetts, wrote, “In at least eighteen states the city-dweller’s vote is in effect worth less than his rural neighbors. In at least seven of the states, a Congressman from a sparsely settled area represents less than half as many people as his colleague from that state’s major urban area.”



The U.S. Supreme Court was reluctant to enter into what it called the “political thicket” with regards to the apportionment of voting districts. With the 1946 case of *Colegrove v. Green*, the Court ruled that the judiciary didn’t have the authority to interfere on issues of apportionment and only Congress could determine whether fair representation for citizens had been achieved.

The 1962 case of *Baker v. Carr*, however, changed that perception. In that case, the Court ruled that malapportionment claims under the equal protection clause of the 14th Amendment were not exempt from judicial review. By the end of 1962, redistricting lawsuits had been brought in 34 states. With the 1964 case of *Reynolds v. Sims*, the Court required that states redraw voter district maps based on population, not on geographic area, stating “legislators represent people, not trees or acres”

and “weighting votes differently based on where they reside is discriminatory.” The Court stated, “The overriding objective must be substantial equality among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state.”

### The stakes in *Evenwel*

*Evenwel v. Abbott* challenged the tradition of drawing district maps based on total population, arguing that in a state like Texas, which has large numbers of non-citizens who can not vote, some districts have larger numbers of voters than others. So, while the population is relatively equal, districts with a larger number of voters actually have less voting power per capita than districts with fewer voters. In other words, if a voter is in a district with many non-voters, the contention is that his or her vote counts less when calculated by total population. Attorneys for *Evenwel* and Pfenninger argued this practice violates the one person, one vote principle, making votes in

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national party convention. A caucus is slightly different.

“People meet and debate the candidates in small groups, called caucuses and the winning candidate takes the vote of every member of the caucus,” Professor Mazo says. “Caucuses are typically small in nature—sometimes no larger than neighborhood

groups. When the votes of the caucuses come in, they are added together and the person with the most votes wins that state’s delegates [or a larger portion of them].”

Whether a state has a primary or a caucus is determined by party rules and regulations. In addition, Professor Mazo explains that some states hold “closed primaries,” meaning voting

is restricted to party members only. In other states, parties hold “open primaries,” meaning that they allow members of both parties, as well as independents to vote in their primaries. “The rules are set by the state branch of the political parties, not by state law,” Professor Mazo says.

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Texas unequal. They argued district maps should be drawn based on the number of voters, not the total population. Redistricting based on voters would, however, ignore children, legal and illegal immigrants, **disenfranchised** felons and prisoners from the district maps.

At stake in the *Evenwel* case was the question: Who counts in drawing district maps—all residents, or just the voters? And, do our elected officials have a responsibility to represent all of the people in their districts, or just those people who can vote?

During oral arguments before the Court, Justice Sonia Sotomayor asked whether states have a “representational interest” in addition to a “voting interest.” From the bench she said, “A state has to be able to say... the legislature is protecting not just voters; it’s protecting its citizens—or noncitizens. The people who live there.” Justice Stephen Breyer seemed to agree and said, “What we actually want, is the kind of democracy where people, whether they choose to vote or whether they don’t choose to vote, are going to receive a proportionate representation in Congress.” Both justices questioned the fairness of erasing children from district maps since they have an interest in representation as well.

Justice Ruth Bader Ginsburg pointed out, “Nonvoters have an important stake in many policy debates” and therefore, should be counted in drawing district maps. Based on the plaintiffs’ logic, Justice Ginsburg challenged, women would have been excluded from district maps before 1920. “Would that have been right?” she asked the attorney arguing for *Evenwel* and Pfenninger.

Chief Justice John G. Roberts Jr., on the other hand, seemed to have no problem with counting only voters. “It is called ‘one person, one vote,’” he said. “That seems designed to protect voters.”

Seeking a middle ground, Justice Anthony Kennedy wondered why districts had to be drawn based solely on total population or number of voters. He asked, “Why can’t you have both?”

There is currently no reliable metric to determine the number of voters in a given region. The only reliable data is from the federal census, which only gives total population numbers.

### Everyone counts

Ultimately, in April 2016 the Court unanimously ruled in *Evenwel* that states may count all residents when drawing election district maps, and this does not violate the principle of one person, one vote.

While the decision refused to allow Texas to redraw its district maps based solely on the number of voters, it did not decide whether using a metric besides total population in drawing district maps was possible, leaving that decision for another day.

“What constitutional history and our prior decisions strongly suggest, settled practice confirms,” Justice Ginsburg wrote in the Court’s **majority opinion**. “Adopting voter-eligible apportionment as constitutional command would upset a well-functioning approach to districting that all 50 states and countless local jurisdictions have followed for decades, even centuries. **Appellants** have shown no reason for the court to disturb this longstanding use of total population....As the Framers of the Constitution and the Fourteenth Amendment comprehended, representatives serve all residents, not just those eligible or registered to vote.”

Stuart Gold, an attorney who teaches constitutional law at Rutgers University—Newark, explains that through this decision, the Supreme Court has reaffirmed its position that “using general population is a constitutionally legitimate means to draw district lines.” At the same time, the Supreme Court leaves it up to the states to decide if there is another possible metric that can be used. Moving away from using total population would be a significant step, Gold says, because this has been the long-standing tradition in drawing district maps. 🗳️

New Jersey held a closed primary on June 7, 2016. Donald Trump won New Jersey’s Republican primary with 80.4 percent of the vote. Hillary Clinton won the New Jersey Democratic primary with 63.2 percent of the vote.

The rules and regulations of each party are different and can change each year. For instance, in 2016 the Democratic candidate needed to obtain 2,383 of the total

4,765 delegates available to win the nomination. The Republican candidate had to obtain at least 1,237 of the 2,472 delegates to win the party’s nomination.

### What’s a superdelegate?

Democrats also have what are referred to as superdelegates—the Republicans do not. This is not a delegate with super powers. The

concept of the superdelegate was introduced in 1982, when the Democratic National Committee (DNC) awarded certain party leaders or elders the power to nominate the candidate if no clear winner emerged at the convention.

These unpledged delegates include all current Democratic members of Congress, governors, DNC members, former presidents and vice

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### Road to registration

Voter registration laws vary from state to state, but until recently they generally required that the individual fill out a voter registration form, which was then reviewed before being approved. In the past year, a handful of states have passed automatic voter registration legislation, and many others are considering revamping their laws. A Lincoln Park Strategies National Poll found that 60 percent of Americans support automatic voter registration through motor vehicle registration.

“The goal of these laws is to make it easier for citizens to exercise their right to vote,” explains former New Jersey Supreme Court Justice Gary S. Stein, who served as counsel to the New Jersey Election Law Revision Commission and now practices in Hackensack and teaches election law at Rutgers School of Law—Newark. “This is a big change from what has been the trend in many states in recent years—making voting more difficult for people by imposing restrictions on voter participation.”

Between 2011 and 2015, in fact, 395 new voting restrictions were introduced in 49 states, and 21 states adopted new laws that make it harder to vote, according to the Brennan Center.

“By controlling who can vote, it’s basically possible to control the outcome of an election, which means the party that has control of the government can manipulate the voter laws in order to maintain it,” says Stein. “The movement away from that is a recent shift, and it’s encouraging.”

### It all began in Oregon

In 2015, Oregon became the first state to pass automatic voter registration legislation, followed by California a short time later. Under Oregon’s new law, residents are automatically registered to vote when they obtain or renew a driver’s license or state identification card, and anyone who officially changed their address with the state agency since 2013 will also be added to the voting rolls. Once registered, they are notified by mail that they are eligible to vote, and given three weeks to request to be removed from the voting rolls. If they don’t opt out, they will automatically receive a ballot in the mail before the next election, since all voting is done through mailed ballots in Oregon.

The automatic registration law was designed to bring 800,000 residents onto the state’s voting rolls, which already included 2.2 million people.

Between the law’s implementation in January 2016 and the end of April of that year, almost 52,000 residents were registered.

“Oregon’s system is truly groundbreaking—and it offers a clear path forward for states looking to make their elections more accessible and convenient for voters. It costs less, increases the accuracy and security of our voter rolls, and curbs the potential for fraud,” Jonathan Brater, an attorney with the Brennan Center’s Democracy Program, told *The Nation*.

As she signed the bill into law, Oregon Governor Kate Brown told reporters, “During testimony on the bill, a legislator said to me, ‘It’s already so easy to register in Oregon, why would we make it easier?’ My answer is that we have the tools to make voter registration more cost-effective, more secure and more convenient for Oregonians. Why wouldn’t we?”

Vermont became the third state to pass automatic voter registration, in April 2016, followed by West Virginia, Connecticut and Illinois. A total of 23 other states and Washington, DC, have considered laws in the past year.

### Where New Jersey stands

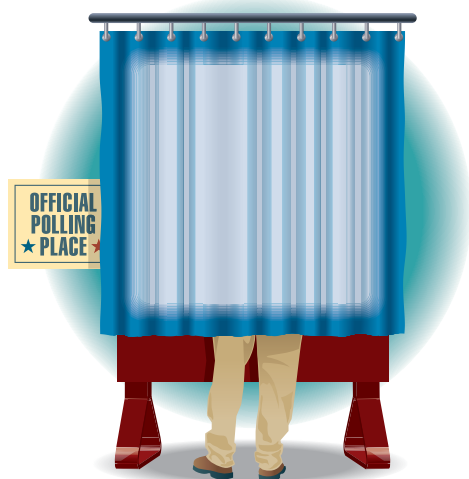
In 2015, after the 2014 mid-term elections resulted in the lowest voter turnout in state history, the New Jersey Legislature passed the Democracy Act, which included a provision for automatic voter registration. Enactment of the law would have added approximately 1.6 million eligible voters to New Jersey’s rolls. Republican Governor Chris Christie failed to sign the measure, claiming it would cost too much to implement, that residents already had several ways to register, and that it would encourage voter fraud.

In his monthly radio program at the time, Governor Christie stated: “I don’t think that people ought to be automatically registered to vote. Is it really too much to ask someone to fill out a form?”

While there has been some discussion about placing the question on the November ballot so voters can decide, no definite steps have been taken in that direction. “The other option would be for the Legislature to override the governor’s veto with a two-thirds vote,” says Stein, “but the Republicans won’t vote to do that.”

### All about the party

“Generally speaking, it’s the states where the Republicans have control that have pursued restrictive registration laws and the states where the Democrats have



control where automatic voter registration is supported,” says Stein.

In fact, of the six states that have passed automatic registration only West Virginia is not controlled by the Democrats. The reason for the political party divide, Stein and others contend, is voting trends.

“When you get people living in poverty, people of color, young people registered, yes, they tend to vote progressively,” Jennifer Williamson, the Democratic majority leader of the Oregon House of Representatives, said in an interview for *The New York Times*. “But regardless of what the outcome is, removing the barriers for people to vote is the right thing to do.”

That trend toward the Democratic Party played out in Oregon. According to numbers provided in April 2016, of the automatically registered new voters who chose a party 4,776 became Democrats and 2,671 became Republicans. The May presidential primary in that state, however, did not result in an actual increase in voting.

“Most studies show that election reforms don’t affect turnout very much, and when they do, the people who turn out look a lot like the people who are already voting,” Barry C. Burden, the director of the University of Wisconsin-Madison’s Elections Research Center, told *The New York Times*.

President Jimmy Carter suggested automatic registration should be a national policy in 1976. In a speech at the Democratic National Convention in 1992, California Governor Jerry Brown said: “Every citizen in America should have not only the right but the real opportunity to vote. And it’s the responsibility of government to ensure that by registering every American....They know how to get

our taxes—why don’t they get our votes, and the votes of everyone in this country?”

### Making it mandatory

President Barack Obama would take automatic registration a step further. When asked how to offset the political influence of big money, he suggested the solution might be to introduce *mandatory* voting. A total of 22 countries have a policy of mandatory voting, where citizens can be fined or required to do community service for not voting.

It’s not a popular suggestion in the United States, as many believe it violates personal freedom. The argument for requiring citizens to vote is that the elected candidate is truly representative of the majority of the population. The argument against the practice is that it violates the United States’ freedom of speech guarantee, which includes the right not to speak. There is also the question of whether a mandatory voter would be an informed voter.

In a *New York Times* op-ed piece, Gary Gutting, a University of Notre Dame philosophy professor, wrote, “... given a large number of poorly informed voters, we might consider dropping campaigns urging everyone to vote or even insisting that we all have a duty to vote.” Gutting also suggested adding “no acceptable candidate” as a ballot choice.

“Mandatory voting, where you are forcing people to vote, would be a violation of our constitutional rights,” says Stein. “But making it easier for them to exercise their right to vote, through things like automatic registration, allows them to more easily be a part of the democratic process.”

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presidents and other party leaders.

According to Professor Mazo, super delegates are free to support whomever they want at the party’s national convention but are often strong party loyalists.

“The candidates know the rules under which the party’s national convention will function ahead of time, and they must factor in the free votes of these super delegates,” Professor Mazo explains.

There were a total of 714 super delegates at the Democratic national convention, which amounted to about 15 percent of the overall convention vote. During the 2016

presidential primary season, there were some who claimed the system is rigged because of those super delegates.

“Candidates who lose tend to believe that the system is rigged against them...That’s politics,” Professor Mazo says. “We live in a federal system where 50 states each have their own laws, customs, and traditions. And each state’s local political party gets to design the rules by which it will send delegates to the national convention and the rules according to which those delegates will vote for a presidential candidate. As long as everyone knows the rules

ahead of time,” he states, “we can’t say the system is rigged.”


### Contested conventions

There was a time during the 2016 primary season when Republicans thought that no particular candidate could win enough delegates to be nominated on the first ballot (round of voting) at the convention. That situation would have produced what is known as a “contested convention.” In a contested convention, delegates are free to vote for whomever they want after the first ballot and are no longer bound.

On the first day of the RNC,

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disgruntled members of the party, not satisfied with Trump as the potential nominee, staged a protest on the convention floor. Several states called for a roll call vote on the rules that would serve at the four-day convention. What they wanted was for each state, one-by-one, to be given the chance to voice its support or opposition for the rules package, with the hope of changing the rules and possibly selecting a different candidate.



The effort failed, but not before the delegations of Iowa and Colorado walked out of the convention. Ultimately, Donald Trump collected more than enough delegates for a first round victory. On the Democratic side, there was also dissension among Sanders' supporters who were not happy with Clinton as the nominee, questioning her majority of super delegates. Clinton, however, clinched the nomination without invoking the power of super delegates. That protest also fizzled out quickly. Neither of the 2016 conventions were considered "contested."

Controversy at the national conventions is nothing new for either party, but history has shown that whenever a convention has been contested the nominee

goes on to lose the general election. In 1924, the Democrats took 103 ballots to nominate John W.

Davis, who lost to Republican Calvin Coolidge in the general election. In 1948, Republican Thomas Dewey was nominated on the third ballot at the Republican convention and lost to Democrat Harry Truman.

Now it's time to move on to what's known as the general election where the two candidates travel


the country trying to win voter support.

### The Electoral College

The president of the United States is elected not by popular vote, but by a system known as the Electoral College. While there is a nationwide presidential election, it is actually separate elections in each of the 50 states and Washington, D.C. in which voters select a slate of electors. There are a total of 538 electors up for grabs and the magic number to win the presidency is 270.

The number of electors that a state has is determined by its representation in Congress, but no state has fewer than three electoral votes. For example, California, the largest populated state, has 55 electoral votes (New Jersey

has 14), representing the state's 53 congressmen and its two senators. Whichever candidate wins the most votes in California will get all of California's electoral votes. With the exception of Maine and Nebraska, all other states operate on a winner-take-all basis.

The Electoral College promotes the two-party system, making it difficult for third parties to break through and win electoral votes. There have been hundreds of proposed amendments to the U.S. Constitution attempting to abolish the Electoral College in favor of the popular vote; however, those attempts have ultimately failed. 



**appellants**—persons or group of people in a legal action who appeal a judicial decision to a higher court.

**constituents**—persons represented by a government officeholder.

**disenfranchise**—to deprive of a privilege or right.

**dissent**—to disagree with the majority.

**majority opinion**—a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues.