



CASE STUDY: UNITED STATES OF AMERICA

Global State of Democracy 2023 Report

Maria Angeles Morales Gonzalez

Elections act as the fundamental check on power. They allow citizens to have control over decision making by empowering voters to hold representatives accountable for their actions. They further serve as popular assessments of incumbents' terms when re-election is possible. In congressional elections at the federal and state level, they also determine voters' agreement with the majority party's performance in law-making and in establishing the foundations for policy-building.

The power of elections was seen clearly in the aftermath of the overturning of *Roe v. Wade*. During the 2022 mid-term elections, voters rejected further restrictions on abortion access, even in conservative-leaning states (Stracqualursi, Cole and Le Blanc 2022; *New York Times* 2022). In a context where the majority of Americans consider themselves to be 'pro-choice' and in which access to abortion medication through a prescription is supported by nearly two-thirds of Americans, there is an evident disconnect between voters and lawmakers (Younis 2023; Oladipo 2023; Gallup 2023; Stracqualursi, Cole and Le Blanc 2022). Recently, Ohioans rejected an initiative to increase the threshold of support needed to amend the state constitution, which, had it been passed, would have thwarted the approval of an amendment to enshrine abortion protections to be voted on in November 2023 (Carr Smyth and Hendrickson 2023).

Yet the ability of elections to act as effective countervailing institutions (CIs) is obstructed by mechanisms like the electoral college, which skew the principle of 'one person, one vote', or phenomena such as voter suppression and disinformation, which can result in the manipulation of popular will.

In light of the upcoming presidential and congressional elections in November 2024, it is critical to examine the hurdles that get in the way of elections' success as a CI in the USA.

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IMPACT OF THE ELECTORAL COLLEGE

The electoral college system, originally created to act as a mediating mechanism to elect the president and vice president and to ensure representation of least densely populated states, has faced increasing criticism. In this process, the results of the popular vote of the presidential election in a state define the slate of electors that will cast their vote in the electoral college; each state is assigned the same number of electors as members in Congress, and the presidential candidate who wins the popular vote in a state obtains all votes from the state's chosen electors (Maine, Nebraska and Washington DC have different rules ([National Archives 2023](#); [Lau 2023](#))). In most cases, the total electors' votes mirror the total popular votes. On two occasions in the last five presidential elections, however, the winning candidate attained the presidency by obtaining the necessary electoral college votes but without obtaining the majority of the popular vote (2000 and 2016) ([USA gov 2023](#)). Because it has developed into a mechanism that leads to distortions in representation, and thereby electoral outcomes, public disapproval of the electoral college is increasing, and a majority favour the popular vote, though partisan affiliation seems to influence opinion in this regard ([Balz and Morse 2023](#); [Kiley 2022](#)). Experts have voiced concern over issues such as over-representation of some states—a disproportionate number of electors compared to the number of voters—as reasons to question the electoral college's adequacy for ensuring public trust in the legitimacy of elections and to view it as detrimental to political equality ([West n.d.](#); [Liasson 2021](#)). With the over-representation in the Senate of states with small populations already being criticized, the electoral college adds to the perception that American democracy risks being undermined by minority rule ([Levitsky and Ziblatt 2023](#)).

Some critics also consider that the consequences of measures such as voter suppression can be more far-reaching in the electoral college process, as competitive or 'swing states' become overly influential in deciding an election; as smaller margins decide elections in 'swing states', actions that restrict voting rights of even a small number of people can end up having state-wide consequences ([Liasson 2021](#); [Balz and Morse 2023](#)). The excessive focus of campaigns on these competitive states dilutes the power of voters elsewhere, particularly people of colour, who make up a significant proportion of voters in non-swing states, such as in the country's South ([Lau 2023](#)). The complex (and until 2020 sometimes unclear) rules regarding this process also increase its vulnerability to attempts to manipulate popular will, an issue that became evident in the events on 6 January 2021 on the Capitol (when the Vice President was asked to stop the certification of the electoral votes) and subsequent revelations about 'fake electors' ([Cheney 2023](#)).

VOTER SUPPRESSION AND MEASURES IMPACTING POLITICAL EQUALITY

Though Global State of Democracy data shows that the USA remains mid-range performing with regard to Rights, in the past five years it has experienced statistically significant decline in its performance in Social Group Equality. Flaws in addressing structural racism and measures that target political equality explain democratic contraction in this dimension.

Increasing disincentives to voting constitute a hurdle to elections acting as an effective CI. Restrictions such as strict ID requirements disproportionately burden minorities, persons with disabilities and populations that face income inequality, among other historically disadvantaged communities. The disenfranchisement of people on this basis is significant, as the percentage of voters who do not meet the ID conditions required in states with strict rules could be as high as 11 per cent (ACLU 2023; Brennan Center for Justice n.d.). In 2021, at least 19 states passed 33 laws that make voting more onerous for Americans, including limiting the use of drop-off boxes or mail voting (Weiser 2021; OHCHR 2022). Between January and May 2023, at least 13 restrictive laws were passed by 11 states. These measures also disproportionately affect minorities and marginalized populations, as they include limitations to providing voters who need it with assistance in filling and returning ballots.

While the number of expansive laws approved so far this year exceeds the number of those restricting access to voting, in some states voter suppression and measures detrimental to political equality remain a constant (Brennan Center for Justice 2023). Lawmakers in Texas pushed for restrictive measures that could impact minority voters the most (Human Rights Watch 2023), while in Alabama local officials have openly defied judicial decisions that require them to amend the state's congressional map to take account of population growth of racial minorities and their right to vote for their preferred candidates. Despite a Supreme Court ruling in June 2023 that affirmed a District Court's finding that Alabama had contravened the Voting Rights Act in its redistricting process by establishing only one Black-majority district, Alabamian lawmakers have thus far refused to comply (Firestone 2023; Liptak 2023). State officials have also requested the Supreme Court to once again consider the matter (VanSickle 2023).

THE RISK OF DISINFORMATION

Manipulation of popular will through disinformation also threatens elections' ability to act as effective CIs. Disinformation played a major part in fuelling distrust in the integrity of the electoral process of 2020. Theories surrounding rigging of the 2020 elections still linger ahead of the 2024 race. Notably, according to a recent poll, nearly a third of Americans continue to believe that voter fraud enabled President Biden's 2020 victory (Kamisar 2023).

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The risk of election disinformation will likely be greater in 2024 than in past years. Now widely accessible, artificial intelligence tools could be used to mislead voters and disseminate false information through automated calls and social media, exacerbating polarization and political confrontation, while the abundance of fake news also imperils people's trust in the political system, in the media and in other reputable sources of electoral information (Klepper and Swenson 2023; Panditharatne and Giansiracusa 2023; Sanchez and Middlemass 2022). Worryingly, disinformation campaigns have targeted minority voters disproportionately, which, along with other measures that undermine political equality, could considerably impact their power in the 2024 elections (Associated Press 2023).

Rather than offering alternatives that build trust in and among institutions, as well as checks and balances, some politicians have catered to an increasing demand for undemocratic governance.

COUNTERVAILING INSTITUTIONS IN THE BALANCE?

While polls indicate that a majority of Americans believe that the federal government holds too much power (Jones 2022)—which could signal voters' support for strong CIs and checks and balances—executive aggrandizement remains a campaign promise in the lead-up to the 2024 elections. Rather than offering alternatives that build trust in and among institutions, as well as checks and balances, some politicians have catered to an increasing demand for undemocratic governance.

Former President Trump, who as of early September 2023 has wide support in his aspiration to become a presidential candidate, has called for an expansion of presidential power over regulatory agencies, over career civil servants and over budget (Lowndes 2023; Swan, Savage and Haberman 2023a; *The Economist* 2023). Statements that make clear the intent to prosecute current officials have further raised concerns about the potential risk to the independence of prosecutorial and law enforcement officials (Swan, Savage and Haberman 2023b). A number of politicians have aligned themselves with a 'unitary executive theory', which favours less oversight from technical and specialized agencies, and fewer checks and constraints on executive orders, while increasing presidential control over the federal government (Lowndes 2023).

While there seems to be a partisan divide, some voters have increasingly expressed openness to the expansion of presidential power and considered that a number of the country's problems could be more adequately addressed if judicial and congressional oversight did not represent such a 'worry' for presidents (Pew Research Center 2019). In this sense, the 2024 presidential election might also serve as a measure of voters' views on the accountability of elected officials and the extent to which executive power should be checked.

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International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
+46 8 698 37 00
info@idea.int
www.idea.int