

## Democracy in New Jersey:

### Increasing Representation, Expanding Participation, and Improving Security

There are many reasons to cheer New Jersey's democratic well-being. The State's redistricting process has led to divisions that are less partisan than those in most other states. New Jersey has avoided the restrictions on voting rights that have spread elsewhere. Indeed, voter registration levels are relatively high and voter turnout is high during presidential election years. Pay-to-play laws have reduced some of the influence of money in government.

There are other reasons to worry. The [failed] Democratic push in 2018 to change the redistricting rules would have resulted in more partisan control. Voter participation in non-presidential election years is still too low. Barriers to voting remain, particularly for underrepresented populations such as communities of color and youth. New Jersey does not have as much "civic infrastructure" as other states, and the absence of a strong set of statewide civic engagement organizations or coalition means that advocacy is more often reactive than generative. New Jersey's election systems are in need of investment and security upgrades.

### **Increasing Representation: Focus on Redistricting**

Redistricting is the process of drawing new voting district boundary lines for state legislative and federal Congressional districts based on population data derived from the decennial Census. The accuracy of the upcoming 2020 Census, particularly among hard-to-count (HTC) communities, will shape political representation for the next decade. A complete count of all New Jersey residents is necessary. But it is not sufficient.

New Jersey is one of nine states that uses a politically appointed commission to draw state legislative maps. Four states use an independent commission, six states use an advisory commission, one state uses a politician commission, and the remaining 30 states vest authority in state legislatures to draw state legislative districts, with many requiring specific criteria to be used when drawing lines and mandating citizen input.<sup>1</sup>

When the redistricting process is not fair, the result can be gerrymandered districts – manipulated by the ruling political party so as to maintain and consolidate its power, thus eroding the principles underpinning a representative democracy. Communities' voting strength is diluted, under-responsive elected officials remain in "safe" seats where they are less likely to respond to the diverse needs of their constituents, and public trust in the political process erodes.<sup>2</sup> Gerrymandering has been particularly egregious in those states that leave redistricting to their legislatures, as the party in power after the decennial Census cements its gains by drawing distorted maps to further its grip on power.<sup>3</sup> In states where citizens have the power to initiate ballot measures without legislative approval, citizens have approved ballot measures

stripping legislators of the power to draw their own maps or establishing strong criteria that must be used.<sup>4</sup> Although state and federal district courts have taken strong stands against partisan gerrymandering, in June 2019 the U.S. Supreme Court ended a role for federal courts. Chief Justice Roberts wrote for the majority, “We conclude that partisan gerrymandering claims present political questions beyond the reach of the federal courts.” Consequently, the role of the states – through state courts, state legislatures, and voter-led ballot efforts in states that permit them – is more important than ever. States are now the only place to challenge and correct partisan gerrymandering.

New Jersey’s redistricting process is first-in-the-nation because of our odd-year elections. The process operates under tremendous time pressure because the primary elections are held in June and all state legislative offices are affected.

The State Constitution requires that state legislative districts be formed of compact and contiguous territory and roughly equal population. To achieve this goal, the Constitution provides for a 10-member bipartisan Apportionment Commission, with five appointments selected by each of the chairmen of the state’s two major political parties. Appointments are to be made by November 15 of a census year (November 15, 2020 for the upcoming cycle) and the commission has until February 1 of the following year (February 1, 2021) or 30 days after the Governor receives the Census data for New Jersey, whichever is later, to redraw the legislative district boundaries. If the Commission does not reach agreement – which is typical – the Chief Justice of the State Supreme Court appoints an 11th, public member, and the expanded Commission has 30 more days to redraw the legislative district boundaries.<sup>5</sup>

In 1992, the Legislature adopted a law creating a similar process for establishing New Jersey’s Congressional district lines,<sup>6</sup> although that process yields 12 members (each state party chair and state senate and assembly leader, majority and minority, appoint two people; in the event of a tie, each side submits a candidate to the Chief Justice of the State Supreme Court who appoints a 13th person).

New Jersey does reasonably well in representing the democratic will of the voters as measured by responsiveness to electoral tides and being unbiased between the parties. A commission is held up by national experts to be fairer and more representative than a process led by the state legislature. National experts utilizing a variety of methods have found New Jersey’s Congressional districts to be relatively less gerrymandered and more efficient at reflecting the will of the voters.<sup>7</sup>

[Other states (California, Colorado, Arizona, and most recently, Michigan) have independent commissions that empanel public members. This approach is lauded by many, including League of Women Voters of New Jersey. But it is not a feasible option at present, given New Jersey’s constitutional provisions that require significant legislative leadership to effectuate such a change.]

But partisan interests persist. In December 2018, the New Jersey legislature attempted to make several changes to the bipartisan commission and redistricting process, notably proposing to amend the State Constitution to cement a formula based on partisan voting behavior at a particular point in time. The bill, which was opposed by voting experts, good government advocates, Republican Party members, and a broad array of nonprofits, was subsequently withdrawn.

That salvo sparked two nonpartisan reports advocating reform of the state legislative redistricting process. In September 2019, the League of Women Voters of New Jersey and its coalition Fair Districts New Jersey issued *Redistricting Reform for a Fairer New Jersey* and in July 2019, a related group that included academics issued *Improving New Jersey's Legislative Apportionment Process*. Decades earlier, Don Stokes, then-Dean of Princeton University's Woodrow Wilson School and "public member" for both the 1981 and 1991 Apportionment Commissions, issued two reports (funded by The Fund for New Jersey) recommending modest improvements to the process.

Although the specific recommendations vary among the reports, these three themes emerged:

- **Improve the current bipartisan political commission by expanding its membership and increasing diversity.** Specific suggestions include:
  - increase the number of independent commissioners and appoint them at the start of the apportionment process;
  - require racial, ethnic and gender diversity on the commission;
  - restrict participation of elected officials, their staff, party leaders, etc.;
  - require that a final map be approved with a majority plus one before it can be certified; and
  - appoint a court-appointed special master in case of disagreement.
- **Create fair and equitable apportionment guidelines.** Specific suggestions include:
  - ensure apportionment guidelines foster partisan fairness;
  - end prison-based gerrymandering by instead counting incarcerated people at their home address (NOTE: In January 2020, Governor Murphy signed into law a prohibition on prison-based gerrymandering meaning that incarcerated people will now be counted at their last known home address for the purpose of drawing the state's legislative districts.); and
  - create a ranked order of priority of line-drawing rules to guide commissioners as follows: standards should comply with U.S. Constitution and federal law, have contiguous boundary lines, reinforce racial equity principles of 1965 Voting Rights Act, preserve communities of interest within the same legislative district, and minimize division of municipalities and counties; to the extent practicable, after legal and community-drive standards are met, districts should be compact and politically competitive.
- **Enhance transparency and public engagement.** Specific suggestions include:

- increase opportunities and extend period for public comment;
- disclose precinct and voting data (NOTE: In January 2020, Governor Murphy signed a new law requiring the Secretary of State to post all local and county election boundary data with matching election results on an official website and make the results available for public download.);
- make available digital tools to allow residents and community groups to offer comments and submit maps during the decision-making process;
- require redistricting reports that justify all map-making decisions; and
- expand timeline for legislative map creation by postponing the state primary elections.

### **Opportunities for Action.**

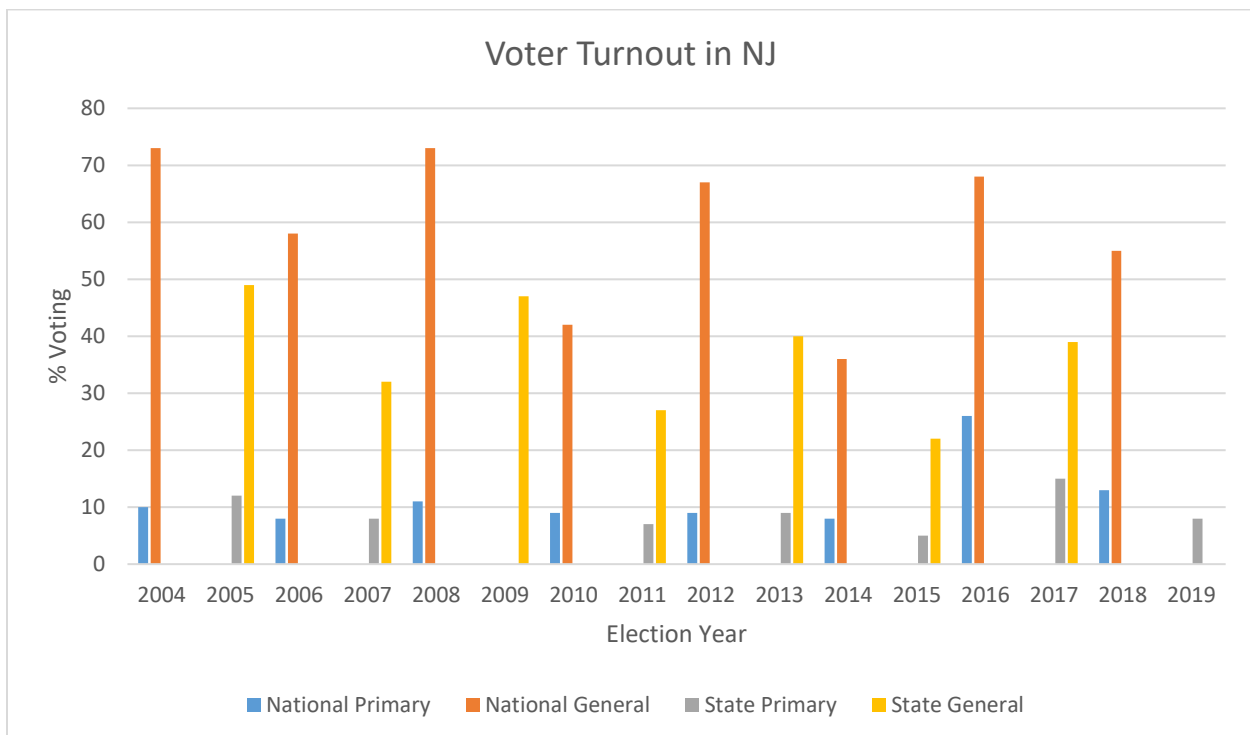
New Jersey will be the first state in the nation to undertake redistricting after the 2020 Census, creating an opportunity for New Jersey to lead. While the tight timeline and political landscape limit the possibility of changes to the legislative redistricting commission’s membership structure and apportionment guidelines at this time, other opportunities could be pursued to enhance transparency and public engagement:

- Support public engagement with the process by **developing mapping and analytical tools and making them available to the public** and to organizations representing communities of color and other interested groups. Provide metrics to help the public analyze the fairness of the maps. Find creative connections with groups interested in other issues, with the understanding that fair representation affects the ability to make progress on a wide array of public policy issues.
- **Advance public understanding of redistricting**, including analyses of the strengths and limitations of New Jersey’s current system. Offer education and trainings to cultivate a larger group of interested New Jerseyans who will want to improve the fairness and independence of the redistricting process. Build a cadre of people who will both watchdog and contribute to the discourse about redistricting. Encourage policy advocacy groups to draft a joint set of redistricting criteria to inform comment on the 2021 process and perhaps work together to make structural changes in advance of 2031.

## Expanding Participation: Focus on Voting

The good news is that New Jersey's voter turnout rate exceeded the national averages in both the 2018 midterm election (NJ 55% vs US 47%) and the 2016 presidential election (NJ 68% vs US 60%). Voter registration rates are reasonably high at approximately 85% of the citizen voting age population: according to the Census Bureau, New Jersey's July 1, 2018 citizen voting age population was 6,954,877 and according to the Secretary of State's office, in November 2018 the state had 5,937,432 registered voters.<sup>8, 9</sup>

The bad news is that New Jersey's voter turnout rates have been decreasing over time and they are particularly low in primary elections.<sup>10</sup>



The League of Women Voters of New Jersey (LWVNJ), in its September 2019 report, *Redistricting Reform for a Fairer New Jersey*, attributes New Jersey's low voter participation rates in primary elections to several interrelated factors. It notes that primary elections tend not to be contested in New Jersey, lowering voter interest in participation. Under the legislative district map that has been in place for nearly a decade based on 2010 census data, Assembly primary elections were contested anywhere from 7.5% (2015) to 32.5% (2019) of the time for Democratic races and from 5% (2015) to 20% (2011) of the time for Republican races. On the Senate side, the Democratic and Republican parties have not had contested elections in more than 15% of districts (6 of 40). Further, the rate of successful challenges to incumbents in general elections is very low. In the November 2017 Assembly races, incumbents were on the ballot in all 40 districts, with 10 districts having one incumbent running and 30 districts having both incumbents running for two open seats. 100% of the incumbents won re-election in 2017.

Similarly, in the 2017 Senate races, incumbents appeared on the ballot in 36 of 40 districts, and 97%, all but one, won re-election. Similarly, in the November 2019 Assembly races, incumbents were on the ballot in all 40 districts, with five districts having one incumbent running and 35 districts having both incumbents running. All but two incumbents won re-election in 2019.<sup>11</sup> In short, New Jersey's primaries tend not to be competitive, and incumbents almost always remain in power. These factors contribute to low voter turnout as well as to lagging racial, ethnic, and gender diversity representative of the state's population.<sup>12</sup>

New Jersey's dismal primary turnout rates come despite its relatively strong voting access laws. Other states have aggressively adopted laws to shrink voting rights and suppress voter participation, particularly among communities of color that are disproportionately affected by the changes. Since 2010, 25 states have enacted new voting restrictions, including strict photo ID requirements (15 states), rollbacks of early voting (10 states), restrictions on registration and purges of voting rolls (12 states), and shrinking voting rights for people with past criminal convictions (3 states). Some of these changes were precipitated by a 2013 U.S. Supreme Court ruling, *Shelby County v. Holder*, 570 U.S. 529, which struck down a key part of the 1965 Voting Rights Act, finding that racial discrimination in voting no longer represents a major issue; this enabled nine states to change their election laws and approve new redistricting maps without first obtaining federal approval.<sup>13</sup> Alabama, Mississippi, and Texas moved quickly thereafter to institute restrictive voting requirements.<sup>14</sup>

In three other states, expansive voting reforms passed in 2019. New York enacted major reforms including: early voting, pre-registration for 16- and 17-year olds, and intrastate portability of registration records. The state legislature also passed constitutional amendments to permit same-day registration and no-excuse absentee voting, which will need to pass again and then be ratified by voters. Colorado enacted laws restoring voting rights for individuals on release from incarceration, expanding automatic voter registration, and improving voting access for voters with disabilities and those living on Indian reservations. Nevada enacted laws providing immediate rights restoration to people on release from incarceration and authorizing same day registration, improving the provisional ballot process, and extending early or absentee voting deadlines. In 2018, Florida voters restored voting rights for up to 1.5 million people with felony convictions but the Florida legislature subsequently restricted these voting rights in 2019 by imposing new requirements to pay back fines and fees before being allowed to vote; the new law is currently in litigation.<sup>15</sup>

**Expanding Eligibility Criteria.** Although New Jersey's first state Constitution (adopted October 31, 1776) allowed citizens to vote, regardless of gender or race, as long as they had established residence and met a wealth threshold (more than £50), this practice ended via legislative action in 1807. In 1844 the State's second Constitution limited the vote to white men and denied the right to vote to people with criminal convictions.<sup>16</sup>

After extensive advocacy, New Jersey's 175-year old law was overturned in December 2019, when Governor Murphy signed legislation restoring the right to vote for people on probation or

parole. This advance affected 83,000 state residents.<sup>17</sup> But there is still room for improvement. In two states – Maine and Vermont – people convicted of a felony never lose their right to vote, even when incarcerated.<sup>18</sup> In New Jersey, a more than 19,000 incarcerated people could be eligible to vote if reforms were enacted.<sup>19</sup> Racial disparities in the state’s criminal justice system mean that most of those who are disenfranchised under the law are African-American or Latinx.

New Jersey could further expand eligibility to populations that have been excluded from participation in New Jersey’s representative democracy. Voting is now limited to citizens 18 years and older. Opportunities for excluded groups of people include:

- **Expanding youth voting.** The 26th amendment to the U.S. Constitution, enacted in 1971, lowered the voting age from 21 to 18 but it does not prevent states and localities from further lowering the voting age. Oregon is considering lowering the voting age to 16 via a ballot initiative and several other states have bills pending. Four Maryland localities have lowered the voting age to 16 for local elections.<sup>20</sup> More than one-third of states already permit 17-year olds to vote in party primaries as long as they will turn 18 by the time of the general election. New Jersey offers only pre-registration by permitting 17-year olds who will be 18 by election day to register to vote (though 14 other states and the District of Columbia permit pre-registration as young as 16).<sup>21</sup>
- **Expanding non-citizen voting.** In 1996, the U.S. enacted the Illegal Immigration Reform and Immigrant Responsibility Act, which banned non-citizens from voting in federal elections. On the state and local level, however, non-citizen voting can be made legal. While no state to date has legalized non-citizen voting, Chicago has permitted non-citizens to vote and serve on its school councils since 1989 and San Francisco just last year extended the right to vote for local school board to non-citizens. Ten other cities allow non-citizen voting, all in Maryland, which allows cities to enact laws about non-citizen voting without state approval. Takoma Park has been held up as a model, having permitted non-citizen voting since 1992. With a population of 18,000, 347 non-citizens registered to vote in 2017.<sup>22</sup> At the same time, there are concerns that fears of immigration enforcement may limit actual participation numbers among non-citizens who are undocumented.

**Expanding Access to the Polls.** While not yet adopting a comprehensive set of reforms to expand voting rights as New York did in early 2019,<sup>23</sup> New Jersey starts from a positive baseline in that it does not impose many of the restrictive voting hurdles that other states do, such as strict photo ID requirements, and has recently made some progress in enacting more progressive reforms. In April 2018, New Jersey expanded voting rights with Governor Murphy’s signature into law of expansive **automatic voter registration (AVR)** provisions. The Center for American Progress estimated that 600,000 new New Jersey voters could register as a result of the new law.<sup>24</sup> Fifteen other states and the District of Columbia also have AVR laws. Since Oregon became the first state in the nation to implement AVR in 2016, that state has seen registration rates quadruple.<sup>25</sup> At least 36 states, including New Jersey, now have electronic

(though not necessarily automatic) registration at their Divisions of Motor Vehicles. Under New Jersey law, the Motor Vehicle Commission must automatically register any eligible person who applies for a permit, license, or ID card unless the applicant declines the AVR. The New Jersey law also expands AVR to any other state agency that collects proof of voter eligibility, as verified by the Secretary of State. New Jersey is only the seventh state nationally to include this more expansive state social service agency automatic voter registration provision,<sup>26</sup> although social service agency implementation has yet to take place.

Further, in August 2018, Governor Murphy signed a law that automatically signs up some voters for **vote-by-mail** (VBM) ballots unless they opt-out, seeking to make it easier for residents to vote by mail. At least 21 states have provisions allowing certain elections to be conducted by mail, including four states – Oregon, Washington, Colorado, and Hawaii – that distribute all their ballots by mail.<sup>27</sup> As a result of inconsistent interpretations of the law by the state Division of Elections and county clerks, Governor Murphy signed an updated law in August 2019 clarifying that voters who requested mail-in ballots for any election since 2016 will receive a mail-in ballot in all future elections. In January 2020, Governor Murphy signed a law providing local governments \$3 million in dedicated funding to implement the law, thereby curing a previous November 2019 Council on Local Mandates finding that the law was an unfunded mandate. In the 2019 general elections, nearly 600,000 New Jersey voters received mail-in ballots, of which 437,000 were new VBM ballots; approximately 278,000 voters returned these ballots by mail, marking a substantial increase in voters voting by mail.<sup>28</sup> In comparison, 182,744 VBM ballots were cast in the 2017 state general elections and 114,132 VBM ballots cast in the 2015 general elections.<sup>29</sup> In sum, the new law is clearly increasing the number of people who vote by mail, but its effect on overall turnout is unclear. The MIT Election Lab, in a national review of literature, determined that “extending [VBM] options increases turnout modestly in midterm and presidential elections but may increase turnout more in primaries, local elections, and special elections.”<sup>30</sup> Some advocates have noted the potential for abuse of the vote-by-mail system through collection and illegal altering of mail-in ballots, as occurred last year in North Carolina<sup>31</sup> and has occurred in local races in New Jersey.<sup>32</sup>

Most recently, Governor Murphy signed into law a new provision allowing eligible voters to **register online**, becoming the 38<sup>th</sup> state to do so.<sup>33, 34</sup>

Other opportunities enacted in other states to make it easier for eligible voters to register and vote include the following, which New Jersey could also consider:

- **Same-day registration.** Twenty-one states and Washington D.C. have enacted same-day registration, allowing any qualified resident of the state to register to vote and cast a ballot all in the same day.<sup>35</sup> Same-day registration has been shown to significantly increase turnout, particularly among youth who tend to move frequently and potentially also among voters of color.<sup>36, 37, 38</sup> In New Jersey, voters must register 21 days prior to Election Day.<sup>39</sup>



- **Early voting.** New Jersey currently permits early voting of up to 45 days in advance of an election but restricts early voting to those casting a VBM ballot. Thirty-nine states and the District of Columbia, including New Jersey, offer some form of early voting, either early voting, in-person absentee (New Jersey), or all-mail with early voting options.<sup>40</sup> New Jersey does not provide for early in-person voting other than for absentee purposes.
- **Language access.** Since 1975, Section 203 of the 1965 Voting Rights Act (VRA) has required certain jurisdictions and states to provide certain types of language assistance for voters, including non-English ballots and other election materials.<sup>41</sup> As of 2016, the most recent update from the U.S. Census Bureau’s American Community Survey, 263 jurisdictions and three states (California, Texas, and Florida) were covered.<sup>42</sup> New Jersey counties governed by the language access provisions of the VRA include: Bergen (Hispanic, Korean), Camden (Hispanic), Cumberland (Hispanic), Essex (Hispanic), Hudson (Hispanic), Middlesex (Asian Indian, Hispanic), Passaic (Hispanic), and Union (Hispanic).<sup>43</sup> States may go beyond federal requirements, and in 2015, the New Jersey legislature passed the “Democracy Act” which included provisions for pre-election materials to be printed in additional languages, but the package was vetoed by former Governor Christie.
- **Mandatory voting.** More than 20 countries around the world have mandatory voting, including Belgium and Australia, with many of these nations enforcing the requirement to vote through means such as explanation by the non-voter in the case of non-voting, fines, or disenfranchisement. Countries with mandatory voting had an average 85% turnout rate over the 1945 to 2015 time period.<sup>44</sup> Some academics have made the case for the United States to follow suit and mandate voting as a strategy to increase voter participation and greater democratic engagement.<sup>45,46</sup> Alternative ideas have been to create incentives for voting, such as offering a lottery ticket as a voting receipt.<sup>47</sup> In a 2015 article in *The Atlantic*, *A Feasible Roadmap to Compulsory Voting*, Norm Ornstein recommends applying mandatory voting at the local level first to build support for the concept and test its feasibility, and then expand the concept to states and eventually, the nation.<sup>48</sup> New Jersey has yet to pilot mandatory voting.

**Expanding Voter Engagement.** Providing real choice at the ballot box is another factor that affects voter participation and engagement. Policies other states have enacted include:

- **Ranked choice voting.** Ranked choice voting (RCV) or Instant Run-off Voting (IRV) is a “fair representation voting system where voters maximize the effectiveness of their vote by ranking candidates in single- and multi-seat districts.” RCV benefits include: promotes majority support, discourages negative campaigning, provides more choice for voters; saves money when replacing primaries or runoffs; promotes reflective representation compared to winner-take-all elections; minimizes strategic voting; and mitigates the impact of money in politics.<sup>49</sup> Voters can rank as many candidates as they want in order of choice. In the instance of electing a single candidate such as a governor or mayor, RCV uses an “instant runoff” system to elect a candidate that better reflects the support of a majority of voters.

When used as a form of fair representation voting to elect more than one candidate such as a city council or state legislature, RCV helps to more fairly represent the full spectrum of voters. Maine is the only state that presently uses RCV statewide. In Virginia and Texas RCV is used for state Democratic party nominations, and several states use RCV for military and overseas voting in Congressional runoffs. At the local level, several jurisdictions around the country use RCV for mayor, city council and school board elections. New York City became the most recent large city to adopt RCV for all city primary and special elections starting in 2021.<sup>50</sup> New Jersey presently does not use RCV in any of its elections despite the fact that several municipalities employ nonpartisan elections that require a majority of the voters in order to win, and thus require run-off elections in the event no majority is achieved.

- **Randomize ballot position.** The order in which candidates appear on a ballot can have an outsized effect on election results, with those in first position at a distinct advantage, particularly in lower profile races where names may be unfamiliar to voters, in nonpartisan general elections, and in primaries.<sup>51,52</sup> In 19 of New Jersey's 21 counties, the primary candidates endorsed by the Republican and Democratic organizations appear on the first, party-line column, associating them with other candidates who have also been endorsed by their respective organizations, and creating an advantage for those endorsed candidates by virtue of their position on the ballot. Only Sussex and Salem counties do not use this system. Other states create more competitive primaries by randomizing ballot position. In Ohio, for instance, each precinct has its own ballot order; in Texas, each county randomizes the ballot order, while in California candidates are rotated by state assembly districts.<sup>53</sup>
- **Switch to open primaries.** Primaries can be categorized as closed (must be a registered party member; nine states), partially closed (political parties choose where to allow unaffiliated voters or voters not registered with the party to participate before each election cycle; seven states), partially open (voters may cross party lines but must publicly declare their ballot choice; six states), open to unaffiliated voters (allow only unaffiliated voters to participate in any party primary they choose but do not allow voters who are registered with one party to vote in another party's primary; nine states), open (states that do not ask voters to choose parties on the voter registration form and voters may choose privately in which primary to vote; 11 states) or top-two (top two vote getters regardless of party advance to general election; two states). The remaining states use a hybrid or other process. New Jersey uses a system that is open only to unaffiliated voters. Unaffiliated voters may vote in the primary (but will become registered under that party affiliation unless they subsequently re-register as unaffiliated).<sup>54</sup> Closed primaries are generally considered to contribute to a strong party organization while open primaries have the benefit of giving voters maximal flexibility and maintaining privacy.<sup>55</sup>

### **Opportunity for Action.**

Convene a “**voting rights table**” where policy advocates can gather to develop a coordinated agenda or to share resources. These diverse stakeholders could explore the opportunity to support coalition-building, organizing, and advocacy efforts to advance expanded voting rights and access.

### **Improving Security: Focus on Voting Systems**

A 2018 New York Times Magazine feature article, *The Crisis of Election Security*, summed up the importance of free and fair elections to democracies: “The ballot box is the foundation of any democracy. It’s not too grand to say that if there’s a failure in the ballot box, then democracy fails. If the people don’t have confidence in the outcome of an election, then it becomes difficult for them to accept the policies and actions that pour forth from it.” Well-documented Russian efforts to target the 2016 U.S. Presidential election have raised public visibility of election security as a national security issue.<sup>56</sup> Threats include influence operations through traditional and social media, cyber espionage against campaigns/candidates, and sabotage of voting systems.<sup>57</sup> This paper will focus on the third threat – to voting systems – because this is a realm in which state policy action is practicable.

More information continues to be revealed about the scope of Russian intervention. In July 2019, the public learned that Russia targeted all 50 U.S. states’ election systems, not just 21 states as was previously understood; Russia successfully infiltrated Illinois’ voter registration system, though no records were changed.<sup>58</sup> Although more than 80% of cybersecurity experts identify Russia as the number one threat to American elections,<sup>59</sup> the federal government has yet to offer a coordinated response. Instead, the U.S. President and several Republican members of Congress continue to deny Russia’s interference and spread debunked conspiracy theories that Ukraine interfered in the 2016 election.<sup>60</sup> Efforts to shore up the U.S. election system were enacted only in December 2019 after months of roadblocks, when Congress agreed on a \$425 million investment in election security through the 2002 Help America Vote Act (HAVA)<sup>61</sup> as part of a broader deal to avert a government shutdown. This followed a \$380 million appropriation in 2018 (including \$9.7 million for New Jersey with a 5% state match).<sup>62</sup> While partial funding is an important first step,<sup>63</sup> Senate Majority Leader McConnell continues to block federal adoption of minimum state and local security standards.<sup>64</sup> While some states have enacted new election security laws,<sup>65</sup> the lack of a coordinated federal response and delayed investment in election security substantially increase the likelihood of successful cyberattacks by a broader set of foreign actors on U.S. elections in 2020 and beyond.<sup>66, 67</sup>

**Threats to System Security.** There are three levels of risk when it comes to America’s system of elections:

- Level 1: core systems that make elections function including voter registration databases, electronic poll books (NJ does not use these), vote capture devices, vote tally systems, and election night reporting systems;
- Level 2: intermediary government functions that connect to multiple election system components, namely state- and county-level systems and election officials’ internal communication channels; and
- Level 3: external functions that affect the entire election process, such as vendors and traditional and social media.<sup>68</sup>

Today, just three vendors – Dominion, ES&S, and Hart InterCivic – provide more than 80% of the voting machines in use across the country, representing a \$300 million annual business.<sup>69</sup> In New Jersey, voting machines in 19 counties come from Dominion and those in two counties (Sussex and Warren) are from ES&S.<sup>70</sup> These vendors are largely unregulated by the federal government, even though voting systems face significant threats from foreign and domestic actors. Unlike defense contractors, election system vendors are subject to few requirements related to supply chain integrity.<sup>71</sup> Further, these companies have successfully resisted regulation through litigation, campaign contributions (primarily to the Republican party), and other means, making it difficult to improve security.

The nation’s 350,000 voting machines fall into two categories: optical-scan machines and direct-recording electronic (DRE) machines, each of which carries security risks, depending on state implementation. New Jersey uses DRE machines for in-person voting and optical-scan machines for voting by mail.<sup>72</sup> With optical-scan machines, voters fill out paper ballots and feed them into a scanner, which stores a digital image of the ballot and records the votes on a removable memory card. The paper ballots can be used to verify digital tallies, as long as the state performs a manual audit. With DREs, voters use touch screens or other input devices to make selections on digital-only ballots, and votes are stored electronically. It is possible for DREs to produce a voter-verifiable paper audit trail, though it does not provide the same level of integrity as do paper ballots and optical-scan machines. Eighty percent of voters in the United States now cast ballots either on DREs that produce a paper trail or on optical scanned paper ballots. But five states, including New Jersey, still use DREs that offer no paper record.<sup>73</sup>

In February 2018, the Center for American Progress (CAP) evaluated election security in the states<sup>74</sup> based on seven factors:

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| 1. minimum cybersecurity standards for voter registration systems | 4. ballot accounting and reconciliation      |
| 2. voter-verified paper ballots                                   | 5. return of voter paper absentee ballots    |
| 3. post-election audits that test election results                | 6. voting machine certification requirements |
|   | 7. pre-election logic and accuracy testing   |

New Jersey received a D grade and was among the bottom 17 states. It was ranked “unsatisfactory” or “fair” on six of the seven measures, receiving a “good” rating only for

requiring minimum cybersecurity standards for voter registration systems. Most damaging, New Jersey allows use of voting machines that do not provide a paper record (voter-verified paper audit trail) and does not mandate post-election audits to ensure that the votes are cast as the voter intends and are counted as cast. In addition to recommending a paper trail and post-election audits, CAP recommends that New Jersey strengthen its ballot accounting and reconciliation procedures by requiring precincts to compare and reconcile the number of ballots with the number of voters who sign in at the polling place and requiring counties to compare and reconcile precinct totals with composite results.

A July 2018 U.S. Committee on House Administration – Democrats’ *Election Security Update* report similarly ranked New Jersey poorly, identifying it as one of the five most vulnerable states in the country for election security, together with Georgia, South Carolina, Louisiana, and Delaware.<sup>75</sup> The National Academies of Sciences, Engineering, and Medicine also released a report in September 2018; *Securing the Vote: Protecting American Democracy* recommended that elections be conducted with human-readable paper ballots, states should mandate risk-limiting audits prior to certification of election results, and the internet should not be used for return of marked ballots.<sup>76</sup>

The CAP and National Academies reports both recommend post-election audits, specifically risk-limiting audits, which require a paper trail and make it possible to fix an incorrect outcome through a manual inspection and determination of voter intent. Colorado and Rhode Island are the only states now requiring such an audit.<sup>77</sup>

**State and County Actions.** Although New Jersey adopted legislation in 2005 requiring all voting machines to have a verified paper trail by January 1, 2009, former Governor Christie withdrew the funds, and New Jersey lawmakers subsequently suspended the requirement to purchase new machines. At the time, Warren County was the only county in the state with machines providing a paper trail.<sup>78</sup> In the 2018 midterm elections, three counties – Essex, Gloucester, and Union – piloted new equipment with paper backup in select municipalities (with Passaic set to join pilot in 2019),<sup>79</sup> in November 2019 Union County adopted verified paper trail machines throughout the county,<sup>80</sup> and Mercer County piloted new equipment with paper backup in 2019 in selected school board elections. A total of seven counties are now piloting machines with verified paper trails.<sup>81</sup>

New Jersey counties testing the new voting equipment with paper backup will be required to undergo such risk-limiting audits as a condition of receiving the new machines, but the state has not enacted legislation to require risk-limiting audits statewide. Cost remains a barrier to more widespread adoption, with the Brennan Center estimating that \$40 to \$64 million would be needed to replace all the state’s machines.<sup>82</sup> New Jersey will be receiving \$10.9 million from the federal government through the 2020 HAVA appropriation with a 20% required state match for a total of \$13.1 million for election security, a portion of which will likely be allocated for voting machine upgrades.<sup>83</sup>

### **Opportunities for Action.**

Support public education and advocacy about election security including development of strategies to improve integrity of voting systems in the state so that the public trusts the accuracy of the outcome of elections, and fears of hacking do not dampen participation. For example: inform and engage the public in county decision-making about the types of machines the county will purchase, or inform and engage the public in the state regulatory process with regard to risk-limited audits.

### **Other Issues Not Covered Here**

- Restoration of the **Office of the Public Advocate**
- **Initiative & referendum** process
- **Public awareness and understanding** among adults of U.S. government, civics, and law
- **Mandatory civics education** in grades K-12
- Require employers to provide **paid time off to vote**
- Strong, independent **public media**
- **Public financing of elections**
- Increasing transparency and **public accountability in party politics**
- Consolidate elections to **November**
- **Full-time legislators** paid a full-time wage/limits on outside income
- Legislative **term limits**
- Strengthen New Jersey's **Open Public Records & Open Public Meetings Laws**
- **Corruption** in government

### **Further Challenges**

New Jersey does not have as much “civic infrastructure” to advance policies to expand democratic participation. New Jersey does not have obvious funders to support this work. Funding partners must be cultivated.

## End Notes

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- <sup>1</sup> <https://www.brennancenter.org/our-work/research-reports/who-draws-maps-legislative-and-congressional-redistricting>
- <sup>2</sup> [LWVNJ September 2019](#)
- <sup>3</sup> North Carolina and Pennsylvania represent two examples of extremely gerrymandered states that both faced litigation leading to federal court-ordered new maps, with Pennsylvania required to use new court-drawn maps for the 2018 midterm election cycle while North Carolina was permitted to continue with its gerrymandered maps (due to the late timing of the decision), with very different results.  
<https://www.nytimes.com/interactive/2018/11/29/us/politics/north-carolina-gerrymandering.html>
- <sup>4</sup> Colorado, Michigan, Missouri, Ohio, and Utah are recent examples.
- <sup>5</sup> Don Stokes, Legislative Reapportionment in New Jersey, 1991
- <sup>6</sup> Don Stokes, Legislative Redistricting by the New Jersey Plan, 1993
- <sup>7</sup> <https://www.washingtonpost.com/news/wonk/wp/2014/05/15/americas-most-gerrymandered-congressional-districts/> We have not seen analysis of New Jersey's legislative districts' competitiveness compared with other states.
- <sup>8</sup> <https://www.federalregister.gov/documents/2019/10/04/2019-21663/estimates-of-the-voting-age-population-for-2018>
- <sup>9</sup> <https://www.state.nj.us/state/elections/assets/pdf/svrs-reports/2018/2018-1106-voter-registration-by-county.pdf>
- <sup>10</sup> [New Jersey Division of Elections Summary of Registered Voters and Ballots Cast](#)
- <sup>11</sup> <https://nj.gov/state/elections/assets/pdf/election-results/2019/2019-official-general-results-general-assembly.pdf>
- <sup>12</sup> LWVNJ report.
- <sup>13</sup> <https://www.nytimes.com/2013/06/26/us/supreme-court-ruling.html>
- <sup>14</sup> <https://www.brennancenter.org/sites/default/files/2019-11/New%20Voting%20Restrictions.pdf>
- <sup>15</sup> <https://www.npr.org/2020/01/08/794089324/florida-faces-a-rocky-rollout-to-restore-voting-rights-after-felony-convictions>
- <sup>16</sup> [https://d3n8a8pro7vhmx.cloudfront.net/njisi/pages/1355/attachments/original/1569347349/We\\_Are\\_1844\\_No\\_More\\_Report.pdf?1569347349](https://d3n8a8pro7vhmx.cloudfront.net/njisi/pages/1355/attachments/original/1569347349/We_Are_1844_No_More_Report.pdf?1569347349)
- <sup>17</sup> <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-new-jersey>
- <sup>18</sup> <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>
- <sup>19</sup> <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-new-jersey> (Note that these individuals would be required to meet other eligibility criteria, most notably citizenship.)
- <sup>20</sup> <https://www.youthrights.org/issues/voting-age/voting-age-status-report/#info>
- <sup>21</sup> <http://www.ncsl.org/research/elections-and-campaigns/preregistration-for-young-voters.aspx>
- <sup>22</sup> <https://www.thenation.com/article/noncitizen-voting-trump/>
- <sup>23</sup> <https://www.nytimes.com/2019/01/08/nyregion/voting-rights-nj-murphy.html>
- <sup>24</sup> <https://www.americanprogress.org/issues/democracy/reports/2017/11/30/443333/close-elections-missing-voices-automatic-voter-registration-projected-impact-50-states/>
- <sup>25</sup> <https://www.brennancenter.org/our-work/research-reports/automatic-voter-registration-summary>
- <sup>26</sup> <https://www.brennancenter.org/our-work/research-reports/automatic-voter-registration-and-modernization-states>
- <sup>27</sup> <http://www.ncsl.org/research/elections-and-campaigns/all-mail-elections.aspx>
- <sup>28</sup> <https://www.njspotlight.com/2019/11/changes-in-vote-by-mail-ruled-null-and-void-unfunded-mandates/>
- <sup>29</sup> <https://www.state.nj.us/state/elections/assets/pdf/election-results/vote-by-mail-ballot-chart-years-03-18.pdf>
- <sup>30</sup> <https://electionlab.mit.edu/research/voting-mail-and-absentee-voting>
- <sup>31</sup> <https://apnews.com/7fcfea814fe3479eb5623ce9511b09f0>
- <sup>32</sup> <https://www.nj.com/opinion/2019/01/early-voting-protects-integrity-of-the-ballot-opinion.html>
- <sup>33</sup> <https://www.nj.com/politics/2020/01/nj-will-soon-allow-you-to-register-to-vote-online.html>

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- <sup>34</sup> <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx#Table%20of%20states%20w/ovr>
- <sup>35</sup> <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>
- <sup>36</sup> <https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>
- <sup>37</sup> <https://www.nytimes.com/2019/06/26/opinion/graphics-an-excitingly-simple-solution-to-youth-turnout-for-the-primaries-and-beyond.html>
- <sup>38</sup> <https://www.demos.org/research/what-same-day-registration-where-it-is-available>
- <sup>39</sup> <https://www.state.nj.us/state/elections/voter-registration.shtml>
- <sup>40</sup> <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>
- <sup>41</sup> <https://www.pewresearch.org/fact-tank/2016/12/16/more-voters-will-have-access-to-non-english-ballots-in-the-next-election-cycle/>
- <sup>42</sup> <https://www.eac.gov/assets/1/6/EAC-ClearinghouseBrief-LanguageAccessibility.pdf>
- <sup>43</sup> <https://www.justice.gov/crt/file/927231/download>
- <sup>44</sup> <https://www.theatlantic.com/politics/archive/2015/11/a-feasible-roadmap-to-compulsory-voting/413422/>
- <sup>45</sup> <https://www.nytimes.com/2019/10/15/opinion/united-states-voting-mandatory.html>
- <sup>46</sup> <https://www.theatlantic.com/politics/archive/2012/07/the-us-should-require-all-citizens-to-vote/259902/>
- <sup>47</sup> Ibid.
- <sup>48</sup> <https://www.theatlantic.com/politics/archive/2015/11/a-feasible-roadmap-to-compulsory-voting/413422/>
- <sup>49</sup> <https://www.fairvote.org/rcv#rcvbenefits>
- <sup>50</sup> [https://www.fairvote.org/rcv#where\\_is\\_ranked\\_choice\\_voting\\_used](https://www.fairvote.org/rcv#where_is_ranked_choice_voting_used)
- <sup>51</sup> <https://www.npr.org/2016/07/27/487577930/why-the-first-name-on-the-ballot-often-wins>
- <sup>52</sup> <https://www.wbur.org/politicker/2015/12/14/ballot-order-effects>
- <sup>53</sup> Ibid.
- <sup>54</sup> [https://www.nj.com/politics/2016/06/can\\_njs\\_26\\_million\\_unaffiliated\\_voters\\_cast\\_a\\_ball.html](https://www.nj.com/politics/2016/06/can_njs_26_million_unaffiliated_voters_cast_a_ball.html)
- <sup>55</sup> <https://www.ncsl.org/research/elections-and-campaigns/primary-types.aspx>
- <sup>56</sup> <https://www.intelligence.senate.gov/press/intel-committee-releases-unclassified-summary-initial-findings-2017-intelligence-community>
- <sup>57</sup> <https://www.csis.org/analysis/csis-election-cybersecurity-scorecard-outlook-2018-2020-and-beyond>
- <sup>58</sup> <https://www.nytimes.com/2019/07/25/us/politics/russian-hacking-elections.html>
- <sup>59</sup> <https://www.csis.org/analysis/csis-election-cybersecurity-scorecard-outlook-2018-2020-and-beyond>
- <sup>60</sup> <https://www.nytimes.com/2019/11/22/us/politics/ukraine-russia-interference.html>
- <sup>61</sup> <https://www.eac.gov/eac-commissioners-welcome-deal-to-make-available-425-million-in-new-help-america-vote-act-funds-for-elections>
- <sup>62</sup> <https://www.ncsl.org/research/elections-and-campaigns/election-security-state-policies.aspx>
- <sup>63</sup> The Brennan Center estimates \$2.2 billion is needed to fully upgrade the nation's election security systems. <https://www.brennancenter.org/our-work/analysis-opinion/what-does-election-security-cost>
- <sup>64</sup> <https://www.washingtonpost.com/news/powerpost/paloma/the-cybersecurity-202/2019/12/17/the-cybersecurity-202-pressure-still-on-mcconnell-after-425-million-election-security-deal/5df7b70288e0fa32a5140757/>
- <sup>65</sup> <https://www.ncsl.org/research/elections-and-campaigns/election-security-state-policies.aspx>
- <sup>66</sup> Ibid.
- <sup>67</sup> <https://www.nytimes.com/2018/09/26/magazine/election-security-crisis-midterms.html>
- <sup>68</sup> <https://www.belfercenter.org/sites/default/files/files/publication/StateLocalPlaybook%201.1.pdf>
- <sup>69</sup> <https://www.nytimes.com/2018/09/26/magazine/election-security-crisis-midterms.html>
- <sup>70</sup> <https://www.state.nj.us/state/elections/county-voting-equipment-vvpat.shtml>
- <sup>71</sup> [https://www.brennancenter.org/sites/default/files/2019-11/2019\\_10\\_ElectionVendors.pdf](https://www.brennancenter.org/sites/default/files/2019-11/2019_10_ElectionVendors.pdf)
- <sup>72</sup> <https://www.state.nj.us/state/elections/county-voting-equipment-vvpat.shtml>
- <sup>73</sup> <https://www.nytimes.com/2018/09/26/magazine/election-security-crisis-midterms.html>
- <sup>74</sup> <https://www.americanprogress.org/issues/democracy/reports/2018/02/12/446336/election-security-50-states/>
- <sup>75</sup> [https://cha.house.gov/sites/democrats.cha.house.gov/files/Election\\_Security\\_Update\\_v5.pdf](https://cha.house.gov/sites/democrats.cha.house.gov/files/Election_Security_Update_v5.pdf)
- <sup>76</sup> <https://www.nap.edu/resource/25120/Securing%20the%20Vote%20ReportHighlights.pdf>
- <sup>77</sup> <https://www.americanprogress.org/issues/democracy/reports/2018/02/12/446336/election-security-50-states/>



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<sup>78</sup> <https://www.njspotlight.com/2017/11/17-11-06-pols-push-for-voting-machines-that-offer-paper-trail-for-every-ballot-cast/>

<sup>79</sup> <https://www.northjersey.com/story/news/new-jersey/2019/03/11/new-nj-voting-machine-pilots-being-rolled-out-across-state/1266947002/>

<sup>80</sup> <https://www.njtvonline.org/news/video/check-out-union-countys-new-more-secure-voting-machines/>

<sup>81</sup> <https://www.northjersey.com/story/news/new-jersey/2019/03/11/new-nj-voting-machine-pilots-being-rolled-out-across-state/1266947002/>

<sup>82</sup> <https://www.brennancenter.org/our-work/research-reports/proposed-election-infrastructure-spending>

<sup>83</sup> [https://www.eac.gov/sites/default/files/news/documents/2020HAVA\\_State\\_Allocation\\_Chart\\_with\\_Match.pdf](https://www.eac.gov/sites/default/files/news/documents/2020HAVA_State_Allocation_Chart_with_Match.pdf)