

# The New York Times

## Will Biden Lose the Fight Over Voting Rights?

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In a speech in Atlanta last week, President Biden threw the full weight of his office and his legacy behind two voting rights and administration bills. Comparing the measures' opponents to slaveholders and segregationists, he called for the bills to be passed by any means necessary, including getting rid of the filibuster, the Senate procedure that effectively requires a 60-vote supermajority for legislation to pass.

But within days, this new push collided into announcements by two senators from Biden's own party, Kyrsten Sinema of Arizona and Joe Manchin of West Virginia, reiterating their opposition to getting rid of the filibuster under any circumstances.

It was, as The Times's Carl Hulse reported, "an embarrassing setback for Mr. Biden." What avenues, if any, are left for Congress to reform the way elections are conducted, and what would the failure to do so mean for U.S. democracy? Here's what people are saying.

What's at stake

Senate Democrats are focusing their efforts on two bills that have already passed in the House, the Freedom to Vote Act and the John Lewis Voting Rights Advancement Act. As my colleagues David Leonhardt and Ian Prasad Philbrick have explained, the contents of those bills fall into two broad categories:

- The first includes issues that voting rights activists have long fought for, like expanded voting access — through mail-in ballots and extended early voting, for example — as well as restrictions on partisan gerrymandering and campaign donations. Voting rights experts and activists have championed these policies as necessary countermeasures to Republican efforts to restrict voting, especially among Black, Latino and younger Americans, and to redraw electoral maps in their favor.
- The second, more novel category of reforms aim to prevent local or federal officials from subverting an election after it has occurred, as Donald Trump and his supporters tried to do in the 2020 election and have indicated they may try again. Last year, Republican-controlled legislatures in 14 states passed at least 24 laws to increase their control over how elections are run, stripping secretaries of state of their power and making it easier to overturn results. Election law experts have warned that such laws pose a serious risk that the 2024 presidential election, and other future U.S. elections, will not be conducted fairly.

## Why Republicans haven't budged

On both the left and the right, it has long been an article of faith — a mistaken one, many argue — that higher voter turnout hurts the Republican Party. Some Republicans, including Trump himself, have outright said as much. Others say that long voting periods and different methods to cast ballots risk degrading the security of elections, even though electoral fraud remains exceedingly rare, or that reforms to make voting easier are unnecessary, citing the record turnout levels of the 2020 election.

“Dating back to 1996, Black voter turnout has increased in five out of six presidential elections,” Senator Pat Toomey, Republican of Pennsylvania, writes in The Philadelphia Inquirer. “Ironically, the biggest gaps in turnout between Black and white voters are in primarily Democratic-controlled states with supposedly liberal election laws, like Massachusetts, Oregon and Colorado.”

It's true, as Toomey intimates, that some blue states have had quite restrictive voting laws that belie their progressive reputation. But last year, 19 states enacted 33 laws that make it harder for Americans to vote, and they overwhelmingly lean Republican. And this year, another wave of Republican legislation to restrict voting access is expected in Florida, New Hampshire, Oklahoma, South Carolina, and Tennessee, among other states.

Yuval Levin, a contributing Opinion writer and the director of constitutional studies at the American Enterprise Institute, thinks so. Both parties, he argues, should be able to put aside their concerns about voter suppression and voter fraud — problems “that barely exist,” in his view — to deal with the more urgent threat of election subversion.

A compromise Senate bill could, for example, limit the ability of state officials to remove local election administrators without cause; prohibit the harassment of election workers (as happened in Georgia after the 2020 election); mandate a mechanism for postelection audits; require a clear standard for rendering election results final; and modernize the Electoral Count Act of 1887, an ambiguously written law that governs the Electoral College counting procedure.

“Our debates about election reform this past year have been misdirected in ways that have rendered them more divisive than they have to be,” Levin writes. “By beginning from shared concerns and real dangers and from a proper understanding of the strengths of our system and not just its weaknesses, Congress can do better in the year to come.”

**Whether a narrower bill could earn the support of at least 10 Republicans remains an open question.** In the view of Andy Craig of the Cato Institute, Republicans do have self-interested reasons to at least modify the Electoral Count Act.

“It's likely that we'll see another election where Republicans win the Electoral College while getting fewer popular votes nationwide,” he writes. “Under the essentially unlimited ability of Congress to toss out votes under the E.C.A., Democrats could easily abuse the procedure to overturn that outcome, citing their belief that the national popular vote should be determinative.”

And sure enough, Mitch McConnell, the Republican Senate leader, has suggested that he might be open to changing the Electoral Count Act. Susan Collins of Maine has also convened a bipartisan group to discuss changes to the 1887 law as well as new protections for state election officials against harassment.

**But some voting-rights experts and advocates argue that the threat of election subversion shouldn't be used to defang efforts to curb voter suppression.** “It’s all one related attack,” Wendy Weiser of the Brennan Center for Justice told The Times. “It’s not enough to just stop the attempt to sabotage at the very end of the process if the process is being undermined at every other phase.”

While changing the act is necessary, Hayes Brown of MSNBC writes, “McConnell knows better than anyone that reforming the Electoral Count Act absent ‘all the other things’ Democrats want in terms of voting rights would be a new coat of paint on a house that’s about to collapse.”

**Still others say that neither the bipartisan effort to revise the act nor even the Democrats’ more ambitious bills go far enough to address the threat of election subversion.** While they might protect access to voting or clarify how Congress counts electoral votes, The Times’s Nate Cohn points out that all of these proposals are largely silent on the crucial period during election years between November, when polls close, and January, when Congress gathers to count electoral votes that have been certified by state administrators.

“Many analysts believe the electoral process may be at its most vulnerable during this period, when the actions of even a handful of officials could precipitate a constitutional crisis,” he writes. Yet the proposed laws do not regulate the process of certifying the vote at the state level — “the focal point for Mr. Trump and his allies as they tried to overturn the last election.”

What’s next

Senate Democrats plan to press ahead this week with debate about their voting rights bills despite Manchin’s and Sinema’s announcements, with an expectation of almost certain failure. The prospects for a much narrower compromise bill to amend the Electoral Count Act are less dire, but still very far from assured.

**If Democrats don’t deliver on voting rights protections, they may face blowback from a demotivated base.** “For a year, activists have been screaming and pleading and begging and getting arrested, trying to get the White House to put the full weight of the presidency behind protecting voting rights, only to be met by silence or soft-pedaling,” The Times columnist Charles Blow writes. “If voting protections fail, many in the Black community will feel like they have been stabbed in the back.”

**And if Congress fails to enact protections against election subversion, U.S. democracy itself could be in jeopardy.** In The Times, the election law expert Richard L. Hasen sketches out a scenario in which a Democratic presidential candidate wins a key swing state in 2024 according to a fair count of the vote, but the state legislature sends in an alternative slate of electors for Trump or another Republican. A Republican majority in the House in 2025 could then certify this alternative slate, overturning the will of the electorate.

If such a scenario comes to pass, Hasen says, collective action would be the only recourse. “These gerrymandered legislators may not respond to entreaties from Democrats, but they are more likely to respond to widespread public protests made up of people of good faith from across the political spectrum,” he writes. “If Republicans have embraced authoritarianism or have refused to confront it, and Democrats in Congress cannot or will not save us, we must save ourselves.”

