



# Issue Brief: Election Systems

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**IMPACT**  
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**1 - 2 Abstract**

**3 - 7 Campaign Finance**

**8 - 10 Access**

**11 - 12 Eligibility**

**13 Works Cited**

## **Executive Summary**

The democratic nature of our federal republic emanates from the ability of US citizens to participate in government through the free and fair election of their public representatives. These rights are the keystone of the American experiment, as made clear by the US Constitution, from the second section of Article I to the 26th Amendment, and by Congress on behalf of the people, through its expansion and protection of these rights since 1787. There is a penumbra of details concerning the implementation of our elections, however, that are not explicitly determined by the Constitution (at least in consensus interpretation). How candidates may campaign, how parties may advocate, how people vote--these are just a few examples of processes determined or materially affected by federal, state and local legislation. As a result, we, the citizens, must appraise laws related to our Election Systems to ensure that they appropriately reflect our rights to self-determination in government, and hold our elected representatives accountable accordingly. The civic debate surrounding elections, voting and campaign law has reached a fever pitch in 2016 with the Presidential General Election fast approaching. At Impact Elections, we will survey the state of US Federal and New York State Elections Systems, exploring the key debates and their potential impact on the electorate in coming decades.

## **Key Questions for Discussion**

1. What makes a successful and useful electoral system?
2. What are key elements of New York's and the United States' electoral systems?
3. What are our most significant problems and opportunities?

## **Overview**

We start with a constitutional background and etymology. The First Amendment States: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Since the adoption of the Constitution, Congress has passed several Amendments to further protect the rights of citizens related to elections, including the 15th in 1870 (no discrimination by race or past enslavement), the 19th in 1920 (no discrimination by gender), the 24th in 1964 (prohibition of poll taxes), and the 26th in 1971 (setting the universal voting age to 18). In addition, Congress has passed several major pieces of legislation to ensure fair and free elections for all, including most notably the Voting Rights Act of 1965, which prohibited racial discrimination in voting. Congress amended this act five times to expand its protections to include provisions such as outlawing literacy tests and providing bilingual ballots.

The word elect comes from the Latin eligere, meaning "to pick." There are over 500,000 elected public officials in the United States.<sup>1</sup> New York State elects one governor, one lieutenant governor, one comptroller, one attorney general, two U.S. senators, 27 representatives in Congress, 63 state senators, and 150 state members of assembly.<sup>2</sup> New York City alone has 51 council members, five District Attorneys and five borough presidents. Given the fundamental role elections play in selecting our President, Senate, Congress, Governors, and legions of other public officials, Impact NY has produced this document to frame the key issues around Election Systems in New York and beyond.

In this brief, we focus on the history of and current debates regarding what we believe are the three main issues underpinning Election System legislation: access, eligibility, and campaign finance. We define these concepts as follows:

- I) **Campaign Finance:** The funding techniques and strategies around financing campaigns for public office.
- II) **Access:** The tools and services we make available in order to allow people to vote.
- III) **Eligibility:** The rules we set around who can vote.

# Campaign Finance

## HISTORY

Campaign finance laws are made at three levels: federal law regulates races for federal office (i.e. President, senators, representatives); state laws govern races for state office (i.e. governor, state senate, state assembly, attorney general, comptroller) and generally local elections as well; and local regulations apply to citywide or countywide races. All laws are subject to relevant Federal legislation and the United States Constitution. The regulation of election finance can be divided into four broad categories: (a) expenditure limits, (b) contribution limits, (c) disclosure, and (d) the public financing of campaigns. In addition, we add two categories in our discussion of current issues: (e) participation, and (f) enforcement.

### a) Expenditure limits

Expenditure limits generally refer to the amount that candidates can spend; on what they are allowed to spend campaign funds, and in particular, public campaign funds, is a different topic, often referred to as “prohibited expenditures”. In 1911, spending limits were set for all Congressional candidates through the amendment of the [Publicity Act of 1910](#). That was partially overturned in [Newberry v. United States](#)<sup>3</sup> in 1921. The Supreme Court ruled that Congress does not have the authority to regulate primary parties, the Supreme Court has since reversed this position and upheld federal regulation of primaries. In 1925, Congress amended the Federal Corrupt Practices Act to include spending limits for House and Senate candidates. The [Federal Election Campaign Act of 1971](#) limited spending on media advertisements, which was later repealed. The 1974 amendments imposed strict limits on campaign expenditures at the federal level. This amendment was overturned in 1976 via [Buckley v. Valeo](#)<sup>4</sup> because such restrictions were held to violate the First Amendment.

Presidential candidates who forego public funding are able to raise and spend monies from several sources including individuals, their party, and PACs. However, candidates who accept public funding face several restrictions in expenditures. For example, candidates agree to not raise any private contributions and abide by the the spending limit of \$45.6 million for the primary election and \$91.2 million for the general election (modern day Presidential candidates spend over \$1 billion on their campaigns) as of 2012.<sup>5</sup> Modern candidates have not taken federal funding due to it’s small size, with the exception of Martin O’Malley. Today, there are no spending limits for candidates running for federal office or state office in New York unless they accept public funding.<sup>6</sup> Some candidates accept a voluntary spending limit.

### b) Contribution limits

The laws around contribution limits have transformed greatly over the last century from prohibiting national banks and corporations from donating money to federal campaigns to giving corporations and unions the same rights as individuals with the potential to contribute an unlimited amount of money to elections. The history is as follows: The first federal regulation of campaign finance was the [Naval Appropriations Bill in 1867](#) which banned seeking donations from navy yard workers. This was followed by the first law to regulate federal campaigns, the Tillman Act, passed in 1907, which



prohibited national banks and corporations from donating money to presidential or congressional general election campaigns. Several other restrictions followed in the subsequent years: the [Public Utilities Holding Companies Act in 1935](#), the [Hatch Act in 1940](#), and the [Smith Connolly Act in 1943](#) restricted public utility companies, federal employees, and labor unions from contributing to federal campaigns respectively. The last act gave rise to the first political action committee established by the Congress of Industrial Organizations. The Taft-Hartley Act of 1947 strengthened the ban on corporations, banks, and labor unions from making expenditures in federal elections, their contributions were already illegal. However, the [Federal Election Campaign Act of 1971](#) legalized the practice where corporations and unions could use treasury funds to manage political action committees or PACs. The 1974 amendments imposed strict limits on campaign contributions at the federal level. *Buckley v. Valeo* upheld the constitutionality of such restrictions. 1976 amendments put restrictions in place on political action committee solicitations. Through more amendments to Federal Election Campaign Act in 1979, a loophole was created to allow “soft money” (individuals, unions, and corporations could contribute unlimited funds for voter registration, get-out-the-vote and certain grassroots activities).

The [Bipartisan Campaign Reform Act of 2002](#)<sup>7</sup> limited the role of “soft money”. *McConnell v. FEC*<sup>8</sup> in 2003 and the [Republican National Committee v. FEC in 2010](#)<sup>9</sup> upheld the Bipartisan Campaign Reform Act. [Citizens United v. FEC in 2010](#)<sup>10</sup> established that corporations and unions have rights to independent spending under the First Amendment. As a result, the government is prohibited from restricting such entities from making unlimited independent expenditures for elections. [SpeechNow.org v. FEC](#)<sup>11</sup> in 2010 gave rise to Super PACs, which can raise and spend an unlimited amount of money for elections with the restriction that they cannot coordinate directly with campaigns.<sup>12</sup> *McCutcheon v. FEC*<sup>13</sup> in 2014 ruled that a limit on an individual’s aggregate contribution to national parties and federal candidates over a two-year period was unconstitutional.

The amount an individual can give to a presidential candidate is \$2,700 per election (primary and general are separate limits – so the total is \$5,400). The amount an individual can give to a candidate for governor of NYS is \$44,000 for the general election but there is a separate contribution limit for the primary election. The contribution limit for citywide candidates in NYC is \$4,950 (this is for the primary and general combined). Corporations in New York State can give up to \$5,000 in any calendar year (to all candidates combined), LLC’s are treated differently than corporations.

### **c) Disclosure**

In 1910, the [Publicity Act](#) was the first legislation regarding campaign disclosure passed; it required House candidates to disclose the sources of their contributions and their expenditures. One year later, the Federal Corrupt Practices Act was amended to include Senate candidates. The [Federal Corrupt Practices Act](#) was amended in 1925 and required candidates to disclose the source of any contribution more than \$50. However, disclosure requirements could be subverted if a candidate claimed to have no knowledge of spending on his or her behalf. In 1971, the [Federal Election Campaign Act](#) addressed this loophole by requiring comprehensive reports on contributions to and expenditures on campaigns by federal candidates, political parties, and political action committees for donations greater than \$100. Contributions more than \$5,000 had to be disclosed within 48 hours. The [Bipartisan Campaign Reform Act of 2002](#) instituted disclosures related to “electioneering communication” applying to broadcast ads only, currently not newspaper, direct mail, or robocalls. The State Board of Elections and the Campaign Finance Board require disclosure by campaigns and independent spenders. New York City also requires a copy of the communication paid for by the spenders.

#### **d) Public Financing**

Congress implemented the [Revenue Act in 1973](#) to collect tax dollars from citizens to finance Presidential campaigns. This effort yielded the first publically funded federal election in 1976. In 1974, amendments were passed that added matching Federal funds for Presidential primary candidates and funding to political parties for their Presidential nominating conventions. Today, thirteen states provide some public financing option. Maine, Connecticut, and Arizona offer “[clean election](#)” programs in which candidates receive public support after collecting a number of signatures and contributions in the amount of five dollars. Some studies of Clean Elections have reported an increase in the number of candidates as well as an increase in the diversity of donors relative to elections with candidates who rely on private fundraising. Other studies have asserted that interest groups still play a significant role in fundraising and no decrease was found in the number of legislators with traditional backgrounds.<sup>15</sup> At the very least, most scholars agree that public financing results in more competition. And in New York City, public financing has increased the number and proportional role of small donors from minority and low income neighborhoods.<sup>16</sup>

The enforcement of the campaign finance regulations has historically been met with challenges. To address growing proof of campaign abuses, the [Federal Election Commission](#) was created in 1975 as an independent agency to monitor compliance to campaign regulations. The Commission is made up of six members serving six year terms, appointed by the President and confirmed by the US Senate. The Commission cannot have more than 3 members from a given political party and the Chairmanship rotates each year.

## **CURRENT ISSUES**

#### **a) Expenditure limits**

Expenditure limits exist for candidates that take public funds in New York City. Thresholds depend on the position.<sup>17</sup> The New York State Board of Elections has interpreted law prohibiting the use of campaign funds for personal reasons to permit expenses such as country club memberships, car leases, and babysitters. For example, former Senator Martin Conner spent \$70,000 for a new Jeep and ex-Senate Majority Leader Bruno spent \$8,000 on a trip to Italy.<sup>18</sup> It is worth noting that New York City’s law spells out more clearly than state law permissible expenses for campaign funds.<sup>19</sup>

#### **b) Contribution Limits**

The campaign contribution limits in the state of New York are significantly higher than the federal limit and the average in other states. For example, a person can contribute \$2,700 to a Presidential candidate<sup>20</sup> but up to \$44,000 for Gubernatorial candidate in New York in the general election.<sup>21</sup> Contrary to New York State limits, the individual contribution limit is only \$4,950 for the positions of Mayor, Public Advocate, and Comptroller in New York City.<sup>22</sup>

Corporations can contribute up to \$5,000 to candidates or political parties by State Law, however Federal Law still bans corporate donations to candidates and parties in federal campaigns. Each subsidiary or affiliated corporation can individually donate \$5,000.<sup>23</sup> For example, nine separate corporations related to MetLife contributed to elections for a total of \$45,000 in 2011. Limits can also be avoided by contributing through limited liability companies, which are treated as individuals.<sup>24</sup> For example, an individual supplemented his personal contribution limit for a candidate with additional contributions from each of his three limited liability companies. In New York City however, contributions from corporations, limited liability companies, and limited liability partnerships are prohibited.<sup>25</sup>

There are no limits on contributions for ballot issues or “housekeeping expenses” (known as “soft money”; it is used to maintain headquarters, staff, and activities unrelated to the promotion or opposition of a specific candidate).<sup>26</sup>

### **c) Disclosure**

There are disclosure rules for campaigns and disclosure rules for independent expenditures.<sup>27</sup> New York City requires the following information be disclosed for all contributions: name, home address, occupation, employer name, employer address, type of contribution, and amount of contribution.<sup>28</sup> Campaign expenditures are also disclosed regularly.<sup>29</sup>

### **d) Public Financing**

Though the state of New York does not participate in public financing, New York City does. New York City matches contributions \$6-to-\$1 for up to \$175 from New York City residents for City offices.<sup>30</sup> Requirements to receive public funds include collecting a minimum number and amount of contributions from the area the candidate would represent. There is a spending limit for each candidate that accepts public funding (limit varies depending on the office sought) and the cap on the total amount of public funds available to a candidate is equal to 55% of that limit.

### **e) Participation**

Limited financial resources of the average citizen coupled with the popular strategy of reaching out to higher-income citizens for fundraising undermines broad participation in campaign financing. Studies have shown that a person’s income is the greatest determinant in their financial contribution to elections. Therefore, wealthier individuals are responsible for a disproportionate amount of campaign financing.<sup>31</sup>

### **f) Enforcement**

The New York State Board of Elections is responsible for enforcement of state election law. However, numerous cases have been reported of campaign finance law violations: several people donate more money than the limit, candidates do not disclose in accordance with requirements, and campaign funds are used for unreasonable non-campaign reasons. For example, the New York Public Information Research Group (NYPIRG) found 103,805 violations in filings submitted between January 2011 and January 2013 of which 18,156 of the donations were reported without the address of the donor. NYPIRG also found hundreds of corporations who have exceeded the contribution limit of \$5,000 per calendar year. When the Board of Elections was notified of these violations, they launched an investigation that resulted in informing the violators of the indiscretion. No further action was taken because violators claimed they were unaware of the limit. Similarly, the Board of Elections informed candidates that did not file on time of their delinquency via a letter and imposed a small fine in the range of \$100 to \$1000. Still, NYPIRG found over \$31 million of campaign funds unaccounted for in August of 2012.

The Board of Elections has cited the following reasons for their lack of adequate enforcement: they are overworked, understaffed, and underfunded. Others believe that the system is broken partly due to the partisan structure of the Board of Elections (which is made up of two Republicans and two Democrats) and it does not have an adequate punitive mechanism in place to deter violations. Recently, the legislature provided for the creation of an independent enforcement counsel which has been active in bringing cases.



The New York City Campaign Finance Board (CFB), in contrast, has a strong record of enforcement. The program administered by the CFB only covers the following municipal offices: mayor, comptroller, public advocate, borough president and city council though it has a policy of auditing the campaigns of all candidates who run for the offices covered by the Campaign Finance Program, whether they received public funds or not. All of the findings of those audits are available to the public.

In 2009, the state Board of Elections received notification of 346 corporations that had donated more than their limit, letters were mailed but no penalties were levied. Meanwhile, the New York City Campaign Finance Board imposed 128 penalties on 31 candidates for contributions over the limit the same. In the same year, the Board of Elections completed zero audits while the New York City Campaign Finance Board completed 219 audits as of April 2013. The New York City Campaign Finance Board also has a history of holding public meetings to review the fairness of their system. The NYPIRG recommends “the creation of a new, independent campaign finance enforcement entity modeled on the New York City Campaign Finance Board.”<sup>32 33 34 35</sup>

# Access

## HISTORY

In Colonial America, sheriffs notified the public of elections by posting notices. Voters then traveled to a courthouse to cast their votes. In some colonies, people cast their votes in public by voice or standing up. Voter turnout was very low, especially in rural areas, because voters would have to travel long distances to the courthouse. The effort, cost of food and lodging, and time lost from their jobs was a strong deterrent. By the late 19th century, secret paper ballots started being used.<sup>36</sup>



In the last century, several federal laws have been passed to ensure that voting is as accessible as possible. For example<sup>37</sup>:

LAW	MANDATE
<b>The Voting Rights Act of 1965</b>	Requires that ballots and voting information be provided in the language of the minority groups in jurisdictions.
<b>The Voting Accessibility for the Elderly and Handicapped Act of 1984</b>	Requires that polling places be accessible to people with disabilities.
<b>The Uniformed and Overseas Citizens Absentee Voting Act of 1986</b>	Allowed voters who are overseas and/or in the U.S. Armed Forces to register and vote by mail. This was updated by the <a href="#">Military and Overseas Voting Empowerment Act</a> of 2009 that requires states to provide voting access electronically.
<b>The Help America Vote Act of 2002</b>	Authorized federal funding to create the U.S. Election Assistance Commission to help states comply with minimum voting standards. <sup>38 39</sup>

Despite these laws, more than 20,000 polling places across the United States fail to meet the minimum accessibility standards. In 1999, a survey found that less than 10% of polling places in New York fully complied with laws governing accessibility for persons with disabilities. Voting technology is also a major concern, given that the current machines need to be updated and further federal funding is unlikely. The Presidential Commission on Election Administration recommended “addressing the impending crisis in voting technology” in 2014.<sup>42</sup>



In 2009 and 2010, Congress allotted eight million dollars to the Election Assistance Commission for a three-year research and development project to improve voting accessibility. Forty-five technological and administrative solutions have resulted from the [Accessible Voting Technology Initiative](#).<sup>43</sup>

## CURRENT ISSUES

### a) Early Voting

Early voting grants certain citizens the ability to vote before election day. New York has no early voting, unlike 37 other states. Supporters of early voting believe that it reduces logistical barriers to voting and increases voter turnout. However, others believe it may prevent voters from incorporating information that may have otherwise affected their decision had they cast their vote on election day.<sup>44</sup>

## **b) Election Day Registration**

Unlike 13 other states and the District of Columbia, New York has no election day registration (voters must register at least 10 days in advance before an election). Proponents of election day registration believe that it increases voter turnout. Opponents however, are concerned about the logistical complications, cost burden, and risk of fraud.<sup>45</sup>

## **c) Absentee Balloting**

New York joins 19 other states by instituting excuse-only absentee balloting. This means that voters must prove that they will either be out of town on Election Day or have a disability. No-excuse early voting and no-excuse absentee voting is not permitted. This is in contrast to 27 states and the District of Columbia, which allow any qualified voter to submit an absentee ballot without an excuse. Of these, seven states plus the District of Columbia have a permanent absentee ballot in which a voter will automatically receive an absentee ballot for future elections once they have been added to the list. Finally, three states institute all-mail voting. The pros for excuse-only absentee balloting include the reduction of error that comes with ballots that are mailed in and a decrease in the risk for fraud. On the other hand, the main con for excuse-only absentee balloting compared to no-excuse absentee balloting is that the requirement of a valid excuse creates an obstacle which can decrease voter turnout.

## **d) Technology**

Although the Accessible Voting Technology Initiative started the process of exploring how to use technology to improve voting accessibility, it will take time to roll out new systems. In the meantime, companies such as Google have introduced their own measures to increase accessibility. On July 18, 2016, Google launched a new search feature that will help users learn how they can register to vote according to their state's requirements.<sup>47</sup>

## **e) 2016 Election**

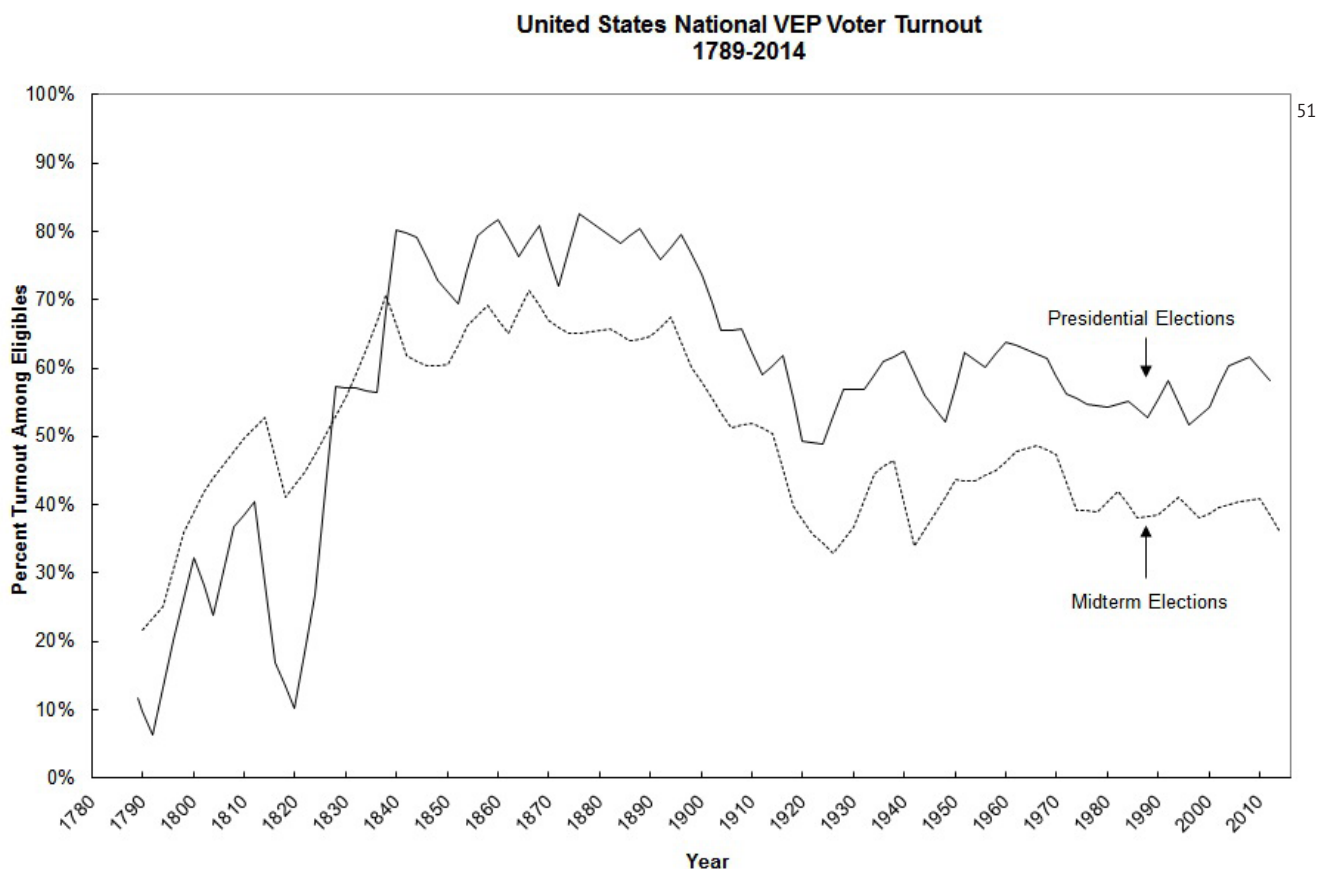
After receiving 1,000 complaints in April 2016 (compared to 150 from the 2012 election), New York's Attorney General announced an investigation into the New York City's Board of Elections.<sup>48</sup> Issues include the removal of 126,000 Democrats from the rolls.<sup>49</sup>



# Eligibility

## HISTORY

The eligibility requirements for voters have dramatically changed over time. Before the American Revolution, the 13 colonies each imposed limitations on voting eligibility that restricted the privilege largely to white, adult, Protestant males that owned property. [After the Constitution was adopted in 1788](#) (upon ratification by nine of the 13 states), the right to determine voting eligibility was formally given to the states.<sup>50</sup> Each state varied its voting restrictions in terms of gender, race, property ownership, religion, and age. Obstacles such as literacy tests, poll taxes, and religious tests were enacted to restrict citizens from voting that otherwise had the legal right to do so.

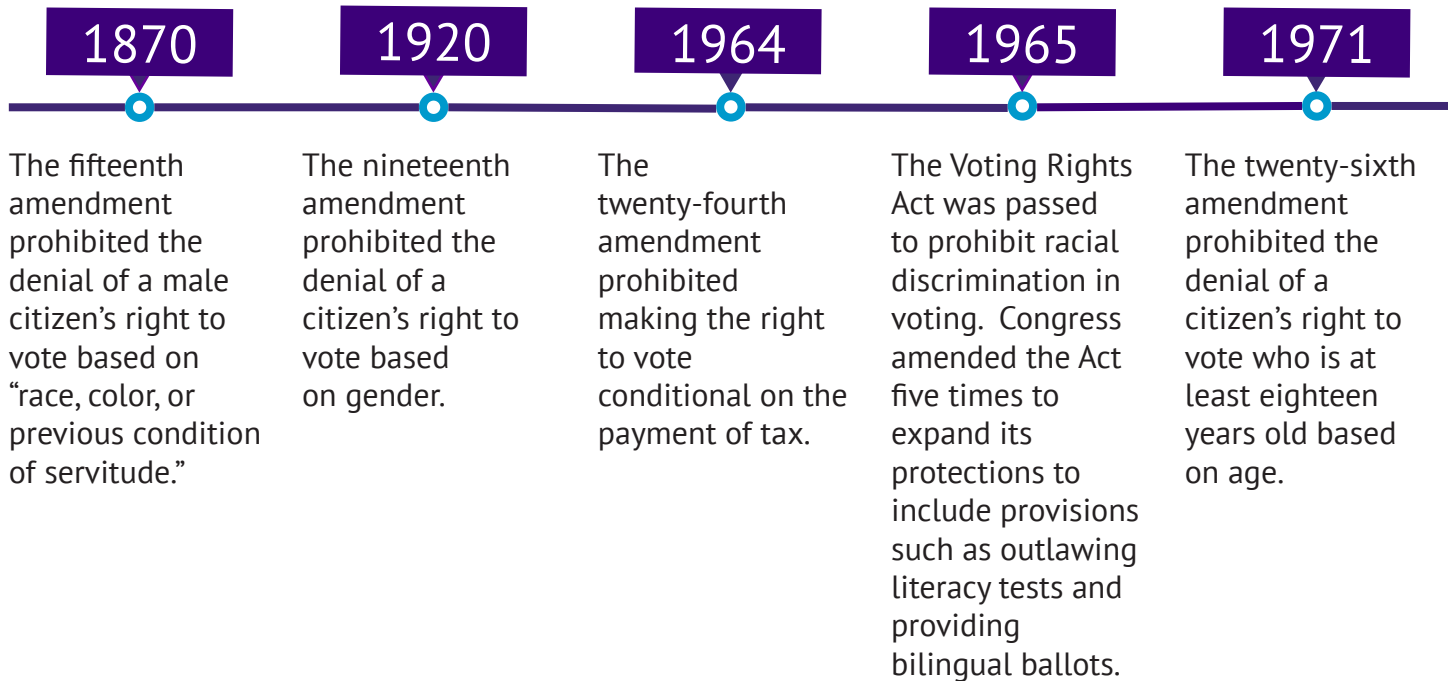


Meanwhile, citizenship was also used as a tool to restrict voting rights. For example, the [Chinese Exclusion Act in 1882](#) denied Chinese persons from U.S. citizenship, *Takao Ozawa v. United States*<sup>52</sup> in 1922 established that persons of Japanese origin could not qualify for citizenship, and *United States v. Bhagat Singh Thind* in 1923 declared that persons of Indian descent were also ineligible for citizenship.

To address the restrictive nature of state and local laws, the federal government passed legislation and a few key amendments to the Constitution<sup>53</sup>:



## Timeline of Constitutional Amendments Affecting Voting in America



## CURRENT ISSUES

### a) Voting registration

In the state of New York, the voter registration deadline is 25 days before the April 19th primary. In addition, independent and unaffiliated voters have to change their affiliations to either the Democratic or Republican parties 193 days before April 19th. This requirement reportedly disenfranchises 27% of New York's registered voters in primaries.<sup>54</sup>

### b) Criminal Status

Voting rights for criminals are defined by states. In New York, anyone convicted of a misdemeanor, convicted of a felony but not sentenced to serve time in prison, discharged from prison after serving their maximum sentence, discharged from parole, or pardoned can vote. Anyone convicted of a felony and currently serving time in prison or on parole cannot vote. If the person has previously registered to vote, their registration would be cancelled. A person may vote from prison if they are serving a misdemeanor sentence or charged with a crime but not yet convicted by applying for an absentee ballot.<sup>55</sup>

### c) Homelessness

Voting Courts have repeatedly ruled that homeless people have the right to vote. In New York, a homeless person may vote as long as they can identify a specific location that they regularly return to where they can receive communication.<sup>56</sup>

### d) Voter ID

New York does not have any voter ID requirements. While this is less restrictive than the 33 states that have some form of Voter ID requirement, New York has not adopted more inclusive legislation such as automatic voter registration passed by Oregon, California, Vermont and West Virginia.

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