Ballot Breakdown

Partisan gerrymanders. Voter purges. Cyberattacks. Electoral College backlash. With the voting system under stress — and with crucial elections looming — we asked Columbia professors for a status report on the central mechanism of US democracy. Here are eight things they want every reader to know.

By Paul Hond
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1. Faith in the system is fraying

“A healthy democracy is predicated on the electorate’s faith in the integrity of the voting system,” says Ester Fuchs, an expert in US elections and the director of the Urban and Social Policy program at the School of International and Public Affairs. “The losers have to accept the outcome of an election and in the period between elections have to be willing to abide by the laws and the decisions of those who are
elected. When the system is threatened — which is to say, when large numbers of people feel alienated or think that the system is rigged or that it’s not legitimate — you’re really threatening the foundation of democratic governance.”

For Fuchs, one of the major flaws in the voting system can be found in the Constitution itself: the Electoral College. In this much-maligned process, each state gets a share of 538 electoral votes, according to its number of senators and representatives in Congress. New York, for instance, has twenty-seven congressional districts, plus two senators, for a total of twenty-nine electoral votes. (Washington, DC, thanks to the Twenty-third Amendment, gets three.) The electors, handpicked by their state’s parties, pledge to cast their ballots for their party’s candidate. In most states, the winner of the popular vote gets all the state’s electoral votes. The candidate who nets a 270-vote majority becomes president.

“Interestingly, the founders put the Electoral College in place to take power away from the populace,” says Fuchs, who sits on the faculty steering committee of the Eric H. Holder Jr. Initiative for Civil and Political Rights, an undergraduate program that recently held events on the state of voting in the US. “In the early version of the Electoral College, electors were supposed to be independent — they didn’t have to follow the popular vote.” Alexander Hamilton, in Federalist No. 68, wrote that this flexibility “affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications.”

“But over time,” Fuchs says, “it became an accepted view that the Electoral College electors would be bound by the popular vote in each state, and would reflect it. So while in theory you might have a situation in which the popular vote does not reflect the electoral-vote victory, it would be like a hundred-year storm.

“Except that we just had Gore vs. Bush in 2000 and Clinton vs. Trump in 2016. Bush lost the popular vote, and Trump lost the popular vote. Once you win a state by 51 percent, that’s as good as winning by 98 percent, and the difference between the 98 and the 51 is lost in the national calculation. Votes are diluted in the presidential election because all those people beyond the 51 percent in each state are not counted.”

Until the 2000 election, the public never paid much attention to the Electoral College, Fuchs says, because the numbers usually worked out: not since the
nineteenth century — in 1876 and 1888 — had the popular-vote winner not prevailed. “But now that we’ve had these recent discrepancies, it’s just another area where people see the system as rigged against them. If you keep having elections where the popular vote is not consistent with the Electoral College vote, from a democratic-governance point of view, it’s a problem, and it’s dire.”

To abolish the Electoral College would take a constitutional amendment — a dim prospect, Fuchs says. “Because our politics is now so rabidly partisan and divided, and because each party is looking for leverage within legal and institutional arrangements, it will be more and more difficult to fix this. The small states and the rural states benefit from the status quo — why would they give up this system, when doing so would help more-populous places like California and New York be more fairly represented?”
2. SCOTUS opened a Pandora's box

6. Reality is under attack

The 1965 Voting Rights Act was a watershed in US history, outlawing repressive tactics, such as literacy tests, long used to disenfranchise minority voters. The act required states with a history of discrimination to get “preclearance” before changing any voting laws. "Packing" is when districts are drawn in a way that dilutes the voting power of a particular group, and "cracking" is when a group is split up to dilute their voting power. Shortly after the Voting Rights Act was passed, states began to pass laws that targeted minority voters. Some states used the pretext of voter fraud to pass laws that made it more difficult for minorities to vote. In 2016, the Supreme Court struck down the pre-clearance requirement of the Voting Rights Act, effectively gutting the law. The North Carolina NAACP sued the state, and in July 2016, a federal appeals court declared that the North Carolina law was unconstitutional. The issue remains live.

Every ten years, the US Census is conducted to determine how many representatives each state will have in the House of Representatives. The census is part of our democracy and our Constitution. The framers were conscious that if you live in this country, you have the right to representation, and you don't have to be a citizen. To challenge this undermines what the census has always meant.

Education campaigns are crucial. We need to put civics back into eighth-grade education. Few people understand how the government decides how much money goes to states, and that it affects their day-to-day lives, and that there's something at stake if they don't participate.

Within days of that Supreme Court decision, the states started passing laws. Some states have seized on the purported problem of rampant voter fraud — "millions and millions of people," as President Trump said — to purge voter rolls. Others claim to be doing it to protect the "honesty" and "integrity" of the system. The Department of Justice has made voter ID a priority. Some states have started disenfranchising citizens for failing to provide proof of citizenship. A 2014 Loyola Law School study estimates a fraud rate of one incident per thirty-two million ballots cast, and the FBI claims that the "voter fraud" rate is much lower. But according to SIPA professor Kenneth Prewitt, who directed the US Census Bureau from 1998 to 2001, this essential tool of American democracy is in serious trouble.

A federal judge allowed a suit brought by immigration groups to go forward, chiding the Trump administration for a "strong showing of bad faith." In the hours after the 2016 presidential election, Jonathan Albright, who is now research director for the Holder Initiative, was embedded with the Interference Countermeasures team at the Department of Homeland Security. He says these attacks are evolving as trolls adapt their tactics to a shifting digital landscape. "In 2016 we saw psychologists and political scientists synthesizing data on a specific event and then either collecting information on the participants or promoting the event to groups further out on the fringe." Albright has also untangled the IRA's targeting of certain audiences with messages "meant to sow distrust in the United States and the legitimacy of the participatory public sphere." He says these attacks have affected vote tabulations in Ukraine — why hack the voting machine when you can hack the tabulation database?"

Fraud is more likely to occur on the inside, through manipulations of the vote-counting machinery and absentee ballots. "Ballot security is the issue. Voter fraud is not. Yet all the rules we're seeing around voter ID and purging pertain to voter fraud," says Briffault. In a landmark 5–4 ruling, the Supreme Court effectively gutted Section 5 of the Voting Rights Act by declaring that "nearly 50 years later, things have changed dramatically." Albright believes that if you have a good election system, you should be able to go back and, if necessary, recreate the vote of the electorate. "In the end it's about trust in the electoral system. That's front and center, especially now."

We are quickly moving into an era where the ability to edit images or videos — even to change faces — is going to improve so much, "that you won't be able to trust anything."