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
Fall 2018 issue

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?”
SCOTUS opened a Pandora's box
Reality is under attack
Voter engagement is the answer
The 2020 census needs our full attention

The 1965 Voting Rights Act was a watershed in US history, outlawing repressive tactics, such as literacy tests, long used to suppress voting rights. The act also prohibited voter discrimination and required jurisdictions with a history of such discrimination to obtain federal approval—preclearance—before implementing changes to their voting laws. This process had significant implications for states covered under Section 5 of the law, which included Texas, Georgia, Alabama, and Mississippi.

In a landmark 5–4 ruling, the Supreme Court effectively gutted Section 5 of the Voting Rights Act by declaring that states with a “history of voter discrimination” could no longer be required to obtain preclearance. The decision, which was later upheld in Shelby County v. Holder, dealt a major blow to efforts to protect minority voting rights.

In response to this decision, states passed laws that restricted voting rights, with a focus on early voting, which was often used by minorities to increase their turnout. One such law, passed in North Carolina in 2016, required voters to present a “government-issued photo ID” to vote. The law was aimed at ensuring voter legitimacy, but it was also criticized for potentially disenfranchising minority voters who were more likely to lack such identification.

The lawsuit, filed against North Carolina, was brought by the NAACP. The federal appeals court ruled that North Carolina had illegally purged some 6,700 voters, including those who did not have government-issued photo IDs. It ordered the state to restore these voters to the rolls. The court also ruled that the new law would result in a “racially significant effect” on minority voters.

The court’s ruling highlighted the need for continued vigilance to ensure that all citizens have equal access to the polls. Preserving the right to vote is essential for maintaining democratic participation and ensuring that the voices of all Americans are heard.