

UNDER FIRE SERIES — REPORT #3

ERECTING SYSTEMIC AND STRUCTURAL BARRIERS TO MAKE CHANGE HARDER

JUNE 2023



UNDER FIRE

THE WAR ON LGBTQ PEOPLE IN AMERICA



movement advancement project ▶

This report was authored by:

Movement Advancement Project

MAP's mission is to provide independent and rigorous research, insight, and communications that help speed equality and opportunity for all people. MAP works to ensure that all people have a fair chance to pursue health and happiness, earn a living, take care of the ones they love, be safe in their communities, and participate in civic life. For more information, visit www.mapresearch.org.

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**THIS REPORT
IS THE 3RD IN THE
"UNDER FIRE" SERIES
FROM THE MOVEMENT
ADVANCEMENT PROJECT.**

**THE ENTIRE SERIES IS
AVAILABLE [HERE](#).**

WHAT MAKES THIS MOMENT DIFFERENT: A FIRESTORM

LGBTQ people in America are under attack like never before. Some of what is happening across the country is appearing in the media. Certainly, there has been increased attention to so-called “Don’t Say Gay or Trans” bills and efforts to censor school curricula, ban books, ban transgender youth from playing sports, and ban transition-related care for transgender youth.

However, seeing each of these issues individually is like focusing on a single skirmish without understanding that they are part of a larger war against LGBTQ people in America. Anti-LGBTQ forces will settle for nothing less than eliminating openly LGBTQ people from the fabric of society. They are launching fast, furious, and coordinated attacks that are astonishing in their breadth, cruelty, and flagrant disregard for personal freedoms.

In this series from the Movement Advancement Project, and outlined in more detail below, opponents of LGBTQ people are pursuing their goals through policies that:

- **Erase LGBTQ people from schools and public life.** They want to make it impossible for LGBTQ youth to be themselves in schools—banning or fining teachers and schools for even talking about LGBTQ people or issues, pulling books off library shelves, and banning teachers from supporting LGBTQ students. In short, they want LGBTQ youth to be treated like they don’t exist, and those who disagree will be fired, fined, or even imprisoned.
- **Criminalize and ban transition so transgender people can’t be themselves.** Opponents want to make it impossible for transgender people to be themselves by banning transition-related care and criminalizing supportive parents and doctors. They are also prohibiting transgender and nonbinary people from updating their identity documents like birth certificates, driver’s licenses, and ID cards. They are passing policies requiring governments, schools, and teachers to only recognize sex assigned at birth or inaccurate pronouns.

- **Enshrine inequality.** They want to enshrine legal inequality so that LGBTQ people and their families will be poorer, less secure, and face more obstacles. This includes repealing or fighting nondiscrimination protections so that LGBTQ can be fired or not hired, refused housing, denied service in public places, even denied medical care, and more.
- **Erect systemic and structural barriers to make change harder.** By rolling back voting rights, doubling down on gerrymandering, insulating lawmakers from accountability, and much more, these opponents have made it even harder than ever before for individuals to make change, or to elect leaders that reflect the values held by the majority of Americans, including support for LGBTQ people.
- **Silence supporters.** Anti-LGBTQ opponents also want to silence, sue, fine and penalize parents, teachers, doctors, companies and others who are LGBTQ allies.

In all these efforts, opponents are using increasingly dangerous and inflammatory rhetoric to vilify LGBTQ people. Anti-LGBTQ activists paint LGBTQ people as predators and foment violence against them. The resurgence of the “groomer” narrative—that LGBTQ people are explicitly sexualizing and abusing children—is particularly troubling and dangerous. These harmful narratives seek to push LGBTQ people to the corners of society and have them fear for their lives.

It is a mistake to see 2023 as a moment of progress with a few setbacks. In reality, it is clear this is a war against LGBTQ people in America and their very right and ability to openly exist.

This report, the third in the “Under Fire” series, focuses on efforts to erect system and structural barriers to make change harder. All the reports in this series will be available [here](#), including the overview report released in February 2023.

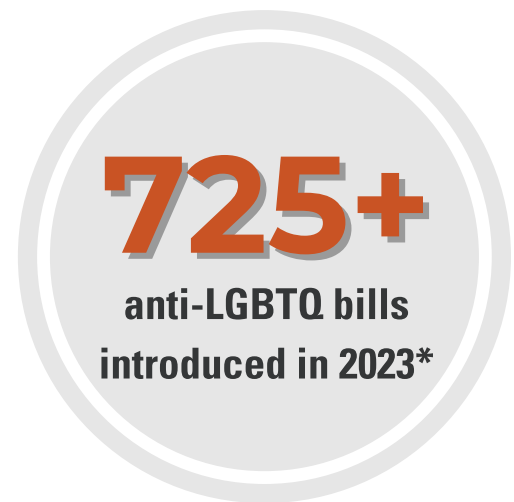
OPPONENTS' GOAL: ERECTING SYSTEMIC AND STRUCTURAL BARRIERS TO MAKE CHANGE HARDER

A majority of Americans today [support LGBTQ equality](#). Yet, the past two years have seen historic levels of anti-LGBTQ legislation considered—and passed—across the country. This disconnect between the American public and state lawmakers can be explained, at least in part, by systemic and structural barriers to democracy, which make change harder and leave lawmakers both out of touch with their constituents and immune from accountability. The struggle for equality is deeply connected to ongoing struggles for the right to vote and for a free and fair election system in the United States. In fact, the past four years have seen a striking increase in efforts to undermine the integrity and strength of both our democracy and LGBTQ rights.

Opponents are working to change the rules and control our systems of government so that the cards are permanently stacked against those who would disagree with their vision for the country. After [decades of gaming the system to their advantage](#), these strategically placed actors have the power to effectively neutralize any sense of democratic opposition or pushback, or other routes through which LGBTQ people and their allies have historically made change.

Because opponents of equality know that the public is opposed to their efforts to roll back protections for LGBTQ

people and to erase them from public life, they have put in place barriers to a well-functioning democracy, which makes it harder for individuals to make change, or to elect leaders who reflect their values. As a result, despite broad public support for LGBTQ people, in many parts of the country, voters stand little chance of seeing their lawmakers pass laws to support LGBTQ people and their families and are left with fewer and fewer options to hold their lawmakers accountable when they instead enact increasingly harmful laws.



* As of June 1, 2023.

Source: Bill tracking by Movement Advancement Project (MAP).

HOW THE STRENGTH OF STATE DEMOCRACIES IS CONNECTED TO LGBTQ EQUALITY

Without a strong democracy, it is increasingly difficult for the LGBTQ community, as well as other historically underrepresented groups, to gain further progress and to defend against escalating attacks on their rights. When comparing the data of MAP's two primary projects, the [LGBTQ Equality Maps](#) and the [Democracy Maps](#) which track state laws and policies across the country, this connection becomes even more evident. The distribution of states into various levels of progress on the [Equality Maps](#) and [Democracy Maps](#) show the similar patterns for both the

struggle for equality and for the right to vote, as shown in Figure 1 on the next page.

Figure 2 on the following page shows the correlation between the Equality Tally and the Democracy Tally, both of which are scores designed to allow for comparisons across states. For example:

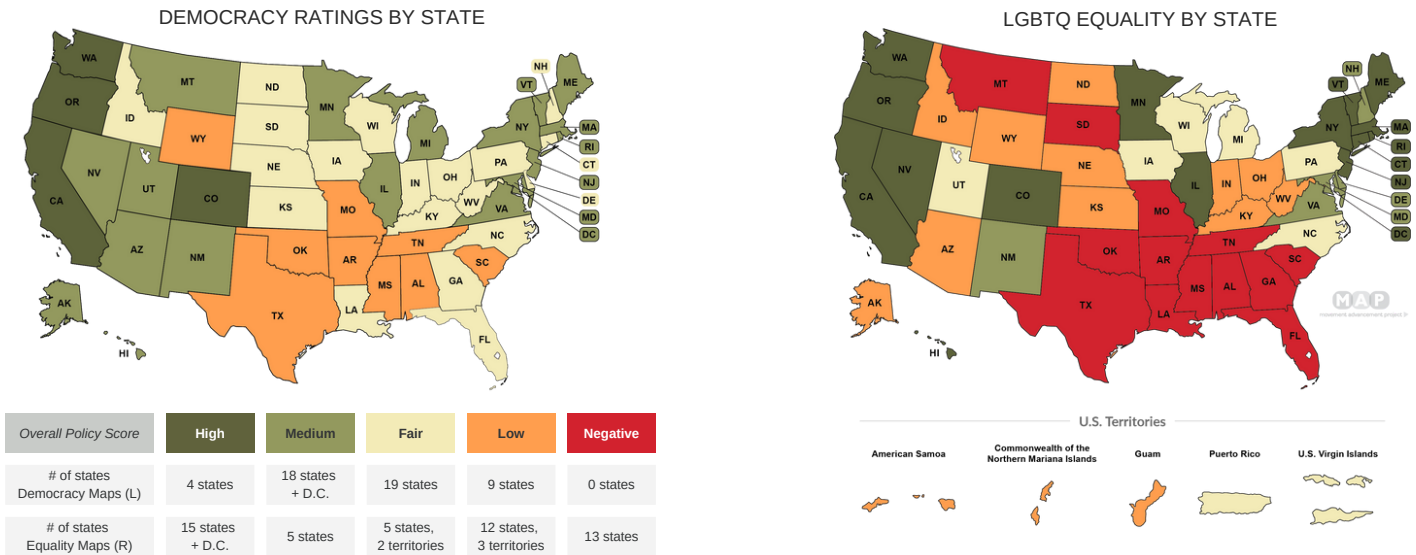
- **States with higher Democracy Tally scores tend to also have higher LGBTQ Tally scores.** In other words, states with stronger democracy laws and protections also tend to have more LGBTQ-inclusive laws and

protections.

- **Six states rank in the bottom 10 on both the Democracy and Equality Maps:** Alabama, Arkansas, Mississippi, Oklahoma, South Carolina, and Tennessee currently rank in the bottom 10 in both of MAP's tally rubrics. Alabama and Arkansas are the second and third worst states in both tallies. This again illustrates the close connections between protections of the democratic process and LGBTQ equality.

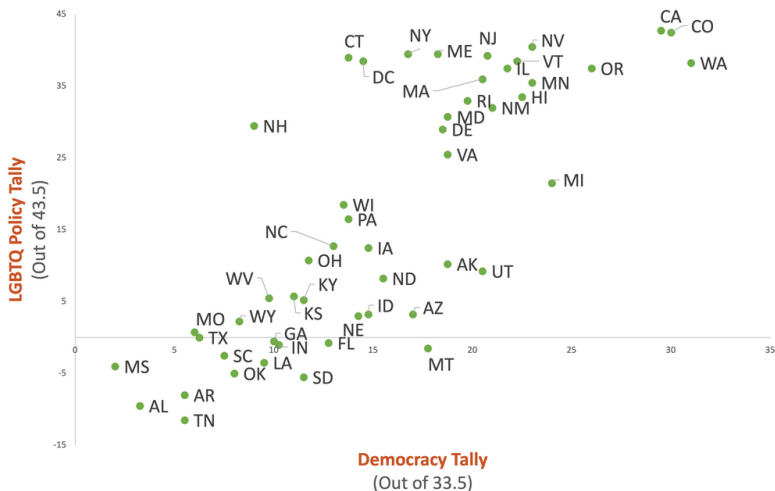
- **Five states rank in the top 10 on both the Democracy Maps and Equality Maps:** California, Colorado, Nevada, Vermont and Washington. California and Colorado both rank in the top three in both the Democracy and Equality tallies. This underscores both the connection between democracy and equality, but also how even states with strong protections still have progress to be made.

Figure 1. National Democracy and LGBTQ Policy Tallies



Source: MAP's [Democracy Maps](#) (L) and [Equality Maps](#) (R), as of June 7, 2023.

Figure 2. Comparison of State LGBTQ Tally & Democracy Tally



Source: MAP Research (www.mapresearch.org). Scores as of June 1, 2023.

LGBTQ people across the country continue to work tirelessly for visibility, respect, recognition and even basic protections. Similarly, the struggle for the right to vote has continued since the inception of our country, and today many people still fight to ensure that every eligible citizen can cast their ballot and have their votes counted. When our democracy is strong, LGBTQ people and their allies can more effectively advocate for and implement the change in their communities that benefit everyone.

OPPONENTS' TACTICS: HOW THEY ARE ACCOMPLISHING THEIR GOALS

Election and voting systems are becoming less democratic across the states. When this happens, historically underrepresented groups like the LGBTQ community are increasingly disenfranchised through barriers to the ballot box and gerrymandered political maps that make it more difficult to elect lawmakers who reflect the values of these communities.

In addition to restricting the ability to vote and insulating lawmakers from accountability, opponents have also succeeded in stacking the court system with partisan activists to prevent the judiciary from exercising its traditional function of providing checks and balances against the executive and legislative branches of government. And if this partisan takeover of the judiciary isn't enough on its own, opponents have also moved to block off avenues to direct democracy where concerned citizens would ideally be able to shape policy directly through ballot measures and referenda. Finally, and illustrating how these assaults on our democracy are spreading across virtually every front, opponents are increasingly attempting to silence duly elected legislators who simply disagree publicly with these anti-democratic tactics and goals.

Taken together, these multifaceted attacks make it extremely difficult for LGBTQ people and their allies to advocate for and implement protections for their community as well as defend themselves against increasingly harmful and extreme policies.

TACTIC #1: RESTRICTING THE ABILITY TO VOTE

As part of the broader attacks on democracy discussed in this report, opponents have increasingly used false narratives of election fraud to enact a wide range of new laws restricting or making it more difficult to vote, such as limiting vote by mail options, banning ballot drop boxes, and requiring stricter voter ID measures. These restrictions

GOAL: MAKING CHANGE HARDER

Tactic #1: Restricting the Ability to Vote

Tactic #2: Using Partisan Gerrymandering to Make It Harder to Hold Lawmakers Accountable

Tactic #3: Removing Checks and Balances by Reshaping the Judiciary

Tactic #4: Making it More Difficult to Shape Policy Through Direct Democracy

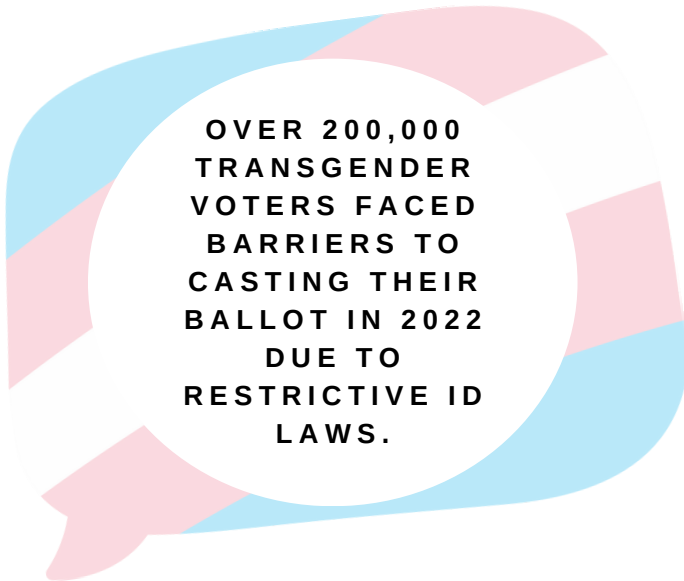
Tactic #5: Silencing Lawmakers who Disagree with Their Tactics and Goals



represent a [significant barrier to participation](#) in our elections for many people across the country. In 2021, at least [34 restrictive voting laws](#) were passed in 19 states.

In 2022, the trend continued, with [11 restrictive laws](#) enacted across eight states. Among these restrictions are strict voter ID measures for in-person voting (now in place in [11 states](#)), bans on ballot drop boxes (now banned in [11 states](#)) and laws allowing state legislatures to interfere in election administration (now passed in [nine states](#)).

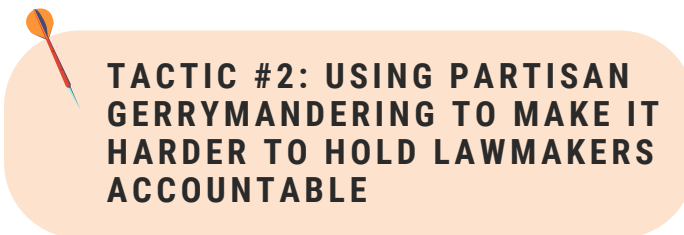
This alarming trend has continued into the 2023 legislative sessions. As of May 2023, at least [380 bills](#) in 47 states have been introduced that would restrict voter access. Demonstrating this trend, the first election-related law enacted this year was a [voter ID](#) bill in Ohio which implements some of the strictest ID requirements in the country, requiring voters to present a photo ID at the polls, providing no option for alternatives if a voter does not have the required ID. This type of strict ID requirement can also particularly impact members of the LGBTQ community — specifically transgender voters. A recent [Williams Institute](#)



Source: [Williams Institute report](#) (September 2022).

[report](#) found that over 200,000 transgender voters faced barriers to casting their ballot due to restrictive ID laws.

Overall, the recent move towards increasing restrictions on voting represents one tactic in opponent's playbooks that works to make it more difficult for voters to have their voices heard in support of the LGBTQ community.



Another factor impacting the health of democracy in the states is the prevalence of partisan gerrymandering. Gerrymandering refers to the use of the redistricting process by partisan actors to design legislative maps that favor a particular political party or candidate.

This manipulation of legislative maps has led to a landscape where elected officials often choose their voters, rather than voters choosing their lawmakers as intended in our democratic system. This makes it more difficult for voters to hold their elected officials accountable when lawmakers are in safe, non-competitive districts where it is unlikely they will be ousted from their positions even if they support broadly unpopular policies.

There is also a correlation between the [independence of state redistricting processes](#) and state LGBTQ policies. As of this writing, out of the bottom 10 states in our Equality Tally, every state except South Dakota uses a redistricting system where the legislatures draw legislative maps themselves without protections against partisan gerrymandering.

The harms of partisan gerrymandering—and the disconnect gerrymandering causes between voters' values and laws enacted—can be even more clearly seen in states with split [partisan control](#) of the branches of government. Gerrymandering occurs at the district level, allowing state legislators to choose their voters, but gerrymandering cannot reshape state lines. As a result, statewide elected offices (such as governors) are less impacted by partisan gerrymandering and therefore more likely to reflect the actual values of the state's voters. This leads to, for example, states with Republican-controlled legislatures but with Democratic governors, as currently seen in Arizona, Kansas, Kentucky, Louisiana, North Carolina, Pennsylvania, and Wisconsin—six of which are states whose [legislatures draw their own district maps](#).

For example, in Kansas, the state's Republican-dominated legislature introduced at least 4 anti-LGBTQ bills in 2021, doubling to at least 8 in 2022, and then nearly tripling to at least 21 in 2023. Each of those years, Kansas' Democratic Governor Laura Kelly has vetoed at least one of these anti-LGBTQ bills, consistent with [polling](#) showing that the majority of Americans nationwide—including a majority of Kansans specifically—support LGBTQ-inclusive laws. In 2023 alone, Governor Kelly has vetoed at least six anti-LGBTQ bills, ranging from a would-be ban on best-practice medical care for transgender youth to a ban on transgender children playing school sports, a broad effort to define "sex" throughout state law to exclude and allow for discrimination against transgender people, and more. Unfortunately, the Republican legislature—a legislature that is allowed [to draw its own district lines](#) and choose its own voters—successfully overrode four of those six vetoes this year, demonstrating how a gerrymandered legislature can undermine the will of voters statewide.

In fact, as of this writing, governors in six of those seven states have vetoed harmful anti-LGBTQ legislation since 2021, illustrating the broader pattern that gerrymandering

allows for and encourages harmful legislation that does not reflect the will of the voters. And as in the example of Kansas, many of those vetoes in other states were also overturned by the legislature, further showing the harms from partisan gerrymandering to LGBTQ equality.

When opponents of LGBTQ equality in state legislatures are insulated from accountability through partisan gerrymandered legislative maps, they are free to push through harmful and broadly unpopular policies targeting LGBTQ people without repercussion, leading to decreasing levels of equality in many states.



TACTIC #3: REMOVING CHECKS AND BALANCES BY RESHAPING THE JUDICIARY

In addition to attacking traditional levers of democracy through voting restrictions and gerrymandering, coordinated efforts over decades by anti-equality advocates have reshaped the federal judiciary into an instrument of partisan activism, rather than an independent check against legislatures and executives as intended in our system of government.

Beginning in the 1980s, abortion opponents began to organize to advocate for the appointment of judges, especially younger judges who would have lifetime appointments, who would vote to overturn *Roe v. Wade* and other reproductive rights decisions. This led to an environment today where the appointment of judges at the federal level is essentially solely determined by partisan control of the Presidency and Senate.

The effort by opponents to reshape the judiciary has been frighteningly successful—most notably on the U.S. Supreme Court, which now arguably has the most conservative majority in almost 100 years. The conservative takeover of the U.S. Supreme Court culminated in the overturning of *Roe v. Wade* last year, despite 50 years of precedent and numerous statements by justices on the court during their confirmation hearings claiming to respect said precedent.

Activist judges at lower levels of the federal courts also have an outsized impact on decisions that eventually impact all Americans. Through venue shopping, where

litigators deliberately file cases in conservative federal court districts, partisan activist judges issue decisions which eventually make their way to the equally conservative U.S. Supreme Court. In a recent example, a federal judge in the Northern District of Texas issued a decision banning a medication used for abortions. The judge, appointed by President Trump, formerly worked for a conservative Christian activist group involved in efforts to ban abortion. Such a sweeping order has the potential to block the availability of these medications for all people in the United States, and if the case reaches the U.S. Supreme Court for a final decision, the same conservative majority that overturned *Roe* awaits.

In addition to decisions stripping away reproductive rights, the new conservative majority on the U.S. Supreme Court may soon set its sights on precedents that protect LGBTQ equality; in the opinion overturning *Roe v. Wade*, Justice Thomas called for revisiting landmark decisions such as *Lawrence v. Texas* (invalidating sodomy laws) and *Obergefell v. Hodges* (legalizing marriage equality). Where LGBTQ people could once partly rely on the judiciary to act as a check against opponents' tactics, the reshaping of the courts by partisan activists has now led to a landscape where yet another avenue for advancing equality has been closed off.



TACTIC #4: MAKING IT MORE DIFFICULT TO SHAPE POLICY THROUGH DIRECT DEMOCRACY

When elected officials are unwilling to support policies that reflect the popular will of voters, some states have systems in place that allow voters to attempt to change policy directly through ballot initiatives, as shown in Figure 3 on the next page. While direct democracy has sometimes been used to limit or restrict equality, in an environment where voting is restricted, legislators are insulated from accountability, and the judiciary is increasingly partisan, ballot initiatives can represent an important tool for change on issues ranging from marriage equality to expanding health insurance coverage, protecting access to abortion, and passing pro-voter policies like automatic voter registration, independent redistricting commissions, and open primaries.

For example, in [Kansas](#) and [Kentucky](#), deeply conservative states, voters last year rejected proposals to restrict abortion rights, and voters in [Montana](#) also rejected a similar effort. And in Michigan, where the ballot initiative process was also used to pass a number of pro-voter policies (see spotlight on next page), [voters last year approved](#) a state constitutional right to abortion. As of this writing, [efforts are underway in ten states](#) to put initiatives on the ballot to protect reproductive rights. But opponents are not taking these defeats lightly.

Similar to the conservative movement's efforts to reshape the judiciary in response to the legalization of abortion decades ago, recent successes in protecting reproductive rights through direct democracy have led opponents to set their sights on the ballot initiative process.

These politicians and lobbyists are attempting to restrict direct democracy by making it more difficult for initiatives to pass or even reach the ballot in the first place. In Ohio, where voters will weigh in on an [initiative](#) to protect abortion rights this November, Republican legislators have devised a plan to [place a separate initiative](#) on the ballot to raise the threshold for passage of all future initiatives to 60%. They are also attempting to put this initiative up for a vote in an August special election, where turnout is likely to be much lower, and if approved, the newly raised threshold

CITIZEN-LED BALLOT INITIATIVES TO PROTECT REPRODUCTIVE RIGHTS ARE UNDERWAY IN 10 STATES

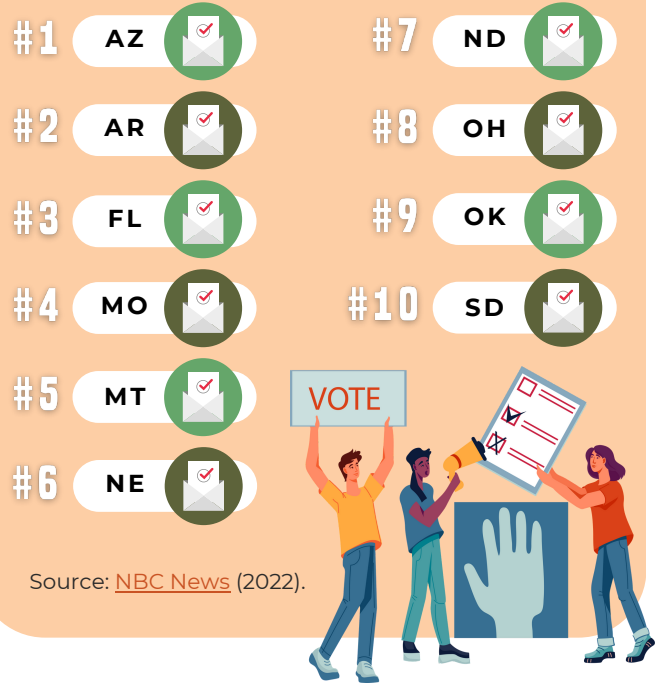
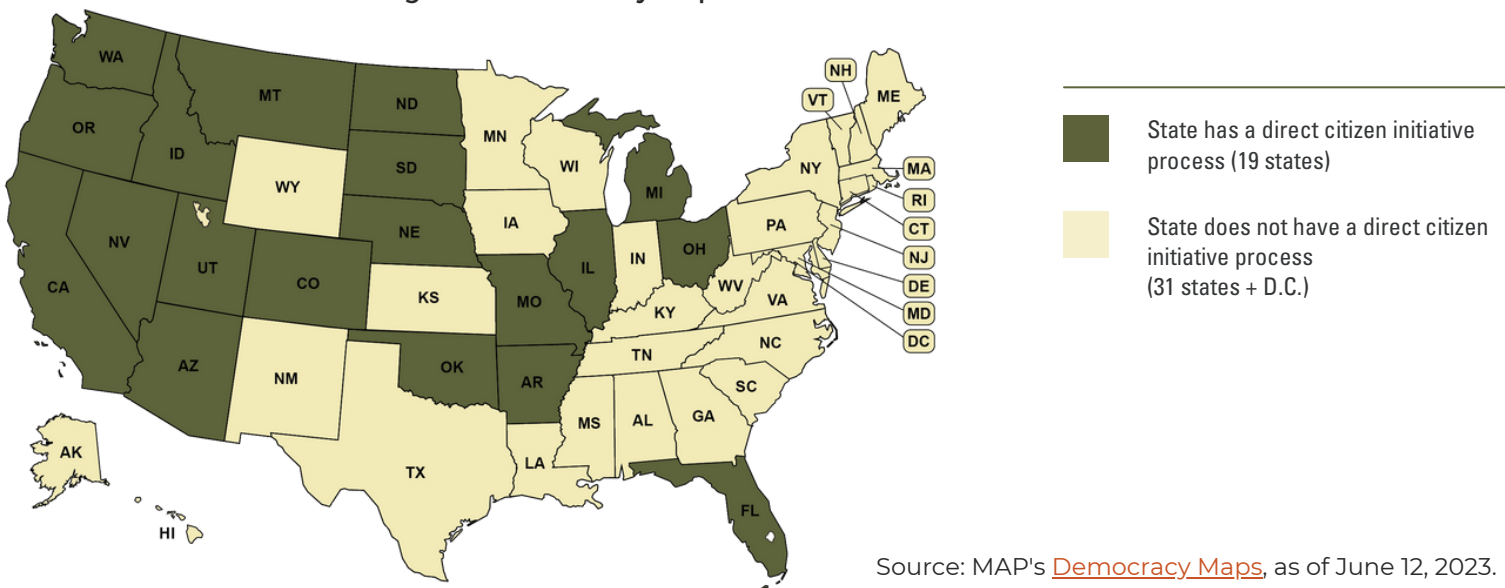


Figure 3. Democracy Map: Direct Citizen Initiative States



SUCCESS OF DIRECT DEMOCRACY IN MICHIGAN

While many states have recently moved to restrict voting options and insulate lawmakers from accountability, other states like Michigan have provided a model for what positive democratic change can look like. In 2022, Michigan voters approved an amendment to the state constitution which implemented several pro-democracy policies in the state. Notably, these were provisions that had failed to gain traction in the state legislature, which had been at least partially controlled by Republicans for almost 40 years prior to the 2022 midterm elections.

The 2022 measure enacted nine days of traditional [in-person early voting](#), codified the use of accessible [ballot drop boxes](#), and incorporated requirements to ensure post-election audits and the vote canvassing process are conducted in a nonpartisan manner. The passage of the 2022 measure also built on the success of [Proposal 3](#) passed in 2018 in Michigan, which implemented [same-day voter registration](#), as well as [no-excuse absentee voting](#) and [automatic voter registration](#). That same year, voters in Michigan also passed [Proposal 2](#), which reformed the state's redistricting process by transferring the power to draw legislative maps from lawmakers to an independent redistricting commission. Largely as a result of these reforms enacted through direct democracy, [Michigan](#) is now the fifth highest ranked state on our Democracy Tally (as of June 1, 2023).

By ensuring that all eligible voters can vote and by eliminating gerrymandering, voters in Michigan have been able to elect lawmakers who better reflect their priorities. For example, in the past few months, the state has passed explicit nondiscrimination protections for LGBTQ people in employment, housing, and public accommodations as well as a package of gun safety reforms and repealed right to work laws. The state legislature is currently considering legislation to ban the harmful practice of conversion "therapy." These recent successes illustrate a path forward for other states to implement positive changes across different policy areas, including to advance LGBTQ equality, even if a state's legislature is unwilling to do so.

for passage of future initiatives would apply to the abortion measure set to be voted on in November. Such brazenly partisan and cynical attempts to restrict direct democracy show that opponents will utilize any tactic at their disposal in order to achieve their goals.



TACTIC #5: SILENCING LAWMAKERS WHO DISAGREE WITH THEIR TACTICS AND GOALS

As outlined throughout this report, opponents have devised and implemented myriad tactics to block and undermine equality. But erecting these barriers and enacting harmful policies is seemingly not enough. Opponents have now begun punishing those who dare disagree with their goals and tactics.

This disturbing trend became more evident earlier this year, when Republican legislators in Tennessee [expelled](#) two duly elected Democratic members, who also happen to both be Black, after they supported a youth protest to advocate for gun safety laws following a school shooting. In Montana, the first openly transgender woman elected in the state, Zooey Zephyr, was [barred from participating](#) in or attending the rest of the state's legislative session after she spoke out against a proposed ban on prescribed medical care for transgender youth. As a result, she will not be able to represent her constituents beyond casting a vote unless she is reelected in 2024. Similarly, in Nebraska, a legislator who dared to speak out against a similar bill banning medical care for transgender children is [now under investigation](#) for a supposed conflict of interest simply because she has a transgender child.

By limiting the ability of democratically elected lawmakers to do their jobs, these tactics are designed to silence opposition and stand in the way of lawmakers implementing laws that are supported (or opposed) by their constituents. They strike a blow at the heart of American representative democracy. It is apparently not enough for opponents to put up barriers that effectively prevent change in our system—they must also silence and disenfranchise those who dare to dissent.



From L to R: Rep. Zooey Zephyr (D-Missoula, MT), Rep. Justin Jones (D-Nashville, TN), Rep. Justin Pearson (D-Memphis, TN). Images via Tommy Martino (AP); Kevin Wurm (Reuters)

WHAT'S NEXT?

In addition to attacks on the democratic process, states across the country continue to advance legislation that makes it unsafe and even illegal for LGBTQ to be themselves and be supported at school, threatens those who support LGBTQ youth, removes LGBTQ content from bookshelves and libraries, and makes LGBTQ visibility and drag illegal.

These efforts are just one part of a multi-prong war on LGBTQ people, as summarized in our kickoff report, [*Under Fire: The War on LGBTQ People in the U.S.*](#)

The [majority of Americans](#) support LGBTQ people and rights. At this moment, it is critical that we see beyond individual bills or even categories of bills and understand the broader scope of what is occurring; there is a coordinated, organized effort to erase LGBTQ people from public life and to make it impossible for LGBTQ people to live their lives. These bills, and the rhetoric fueling them, are incredibly harmful to LGBTQ people and their families.

We at MAP will continue to track these efforts on our LGBTQ Equality Maps and through the ongoing *Under Fire* series, all of which will be available [here](#).



Learn more about the targeted, coordinated campaign against LGBTQ people in the U.S. in our report series:

UNDER FIRE: THE WAR ON LGBTQ PEOPLE IN AMERICA

Access all of our reports here:

www.mapresearch.org/under-fire-report