DEMOCRACY CAN’T WAIT

ANNUAL REPORT 2021
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“We must meet the challenge rather than wish it were not before us.”

Justice William J. Brennan Jr.
Democracy. Justice. Equality. The rule of law. These fundamental American values face grave threats, and in 2021, the Brennan Center for Justice at NYU School of Law fought back. In a year marked by waves of state laws intended to suppress the votes of Black, Latino, Asian, and Native American citizens, the organization was a vital watchdog — documenting, exposing, and explaining these attacks. Our research sparked massive news coverage. Lawmakers, journalists, and activists relied on our work. Our attorneys won victories for an accurate census count and to overturn gerrymandering in Ohio. Our reporting helped spur the first arrest of a perpetrator for intimidation of an election official. The Brennan Center has been building toward this moment since it was founded just over a quarter century ago. From a small startup inspired by Supreme Court Justice William J. Brennan Jr.’s devotion to core democratic freedoms, the Brennan Center has become one of the nation’s leading legal and policy institutions. With an annual budget of $41 million last year, and a staff of 150 attorneys, scholars, researchers, and writers, the organization has also built critical reserves to ensure our continued work.

As historian and author Robert Caro recently noted, the Center is “a resource for liberals that was vitally necessary: a think tank that they can go to for the facts, the information, that they can rely on, for those facts and information have been assembled with an uncompromising intellectual honesty and rigor. Michael Waldman and the Center’s staff have done something quite extraordinary: They have built, in just a few years, an institution that is here to stay.”

Today, the organization has honed a distinct model, combining elements of a think tank, a legal advocacy group, and a communications hub. Reforms we have championed for decades became the centerpiece of the biggest push for voting rights in half a century, galvanizing a coalition of breadth, diversity, and depth. The Freedom to Vote: John Lewis Act came within two votes of transformative change in early 2022. The fight will continue. We are also steadfast in our efforts to build a just legal system and to strengthen the rule of law. Our Punitive Excess series combined expert commentary with storytelling to show the human suffering caused by mass incarceration. Lawmakers and activists called on our experts to help craft strategies that would restore the balance between liberty and national security. Twenty years after 9/11, this struggle, too, continues.

Our supporters and partners make all this work possible, and we are grateful for your steadfast commitment. We thank you for championing our efforts, recognizing that it is both the work of today and a long-term commitment. Protecting our democracy and fighting for equal justice are a constant struggle. The Brennan Center will never give up. Your enduring belief in us is what will ensure lasting change.

Robert Atkins
Co-chair, Board of Directors
Patricia Bauman
Co-chair, Board of Directors
A year ago, I wrote in these pages that we were in a great fight for the future of American democracy. That fight has continued, with many stakes for our nation.

The 2020 election was a civic triumph. Despite the pandemic, it had the highest voter turnout since 1960. The response? Donald Trump’s Big Lie of a stolen election. The January 6th insurrection. And a wave of new laws to restrict the vote in states across the country, mostly driven by that Big Lie, and also driven by that Big Lie, that factored voters of color with uncanny precision.

At the same time, we had reason to hope that a sea change in public debate. It wasn’t always easy. (“Nobody cares,” a senior House leader told me a few years ago.) But in 2021, the measure became a key congressional prior- ity (dubbed H.R. 1 and S. 1). Speaker Nancy Pelosi and Majority Leader Charles Schumer led the drive for enactment. President Joe Biden declared: “We are facing the most significant test of our democracy since the Civil War. We cannot let those in Congress pass on the right to vote, and we will fight voter suppression and gerrymandering. All federal courts will not act, we must act to ensure free and fair elections. We will also use our growing media, social, and digital capacity in the service of Abraham Lincoln’s maxim: “With public sentiment, nothing can fail.”

President Biden and Senate Majority Leader Chuck Schumer (D-N.Y.) and House Speaker Nancy Pelosi (D-Calif.) in a meeting on Capitol Hill in 2021. (Drew Angerer/Getty Images)

For the first time in decades, voting rights demoralized ed political conversation. Support became a Demo- cratic Party priority. The measure was widely popu- lar: The fight of all shuffled Senate support for the filibuster which has been killing civil rights legislation for well over a century. When the measure went to the Senate floor, it commanded majority support, and 48 senators moved to bring it to a final vote. But two Democrats, Joe Manchin of West Virginia and Kyrsten Sinema of Arizona, would not change the filibuster rules so it could pass. It was a tremendously frustrating moment.

Now, we build. We know that reform often comes from defeat. Voting rights legislation failed in 1957 and 1964 before passing in 1965. For the year ahead, we will focus on the immediate challenges that flow from the effort to sabotage American elections. If Con- gress cannot act because of the Senate, and if fed- eral courts will not act, we must act to ensure free and fair elections.

The Brennan Center will work with established elec- toral officials, legal, technological, law enforcement, and communications assistance. We will fight voter suppression and gerrymandering. All state constitutions but one explicitly protect the right to vote, and we will pursue remedies in state courts. We will continue to document and publicize the attacks on our democracy.

This is an inflection point for other Brennan-Center work as well. Rising crime, for the first time in decades, threatens to derail criminal justice reform, a racial justice imperative of our time. Twenty years after 9/11, terrorist threats continue to fuel excessive execu- tive power. The supremacy of radical conservatives on the U.S. Supreme Court will force us to map new strategies for legal and constitutional change. In all these areas, we aim to craft the next genera- tion of innovative reforms, new thinking, and public arguments. The Freedom to Vote Act died on ideas first developed by the Brennan Center more than a decade ago. We aim to craft the reforms that will fuel movements for change in the coming decades.

That’s the core of our strategy and the core of the Brennan-Center model, honed over a quarter century. We believe we can win majority support for our views. That is the only way that leading positive change has been achieved throughout our history. To do this, we build broad and diverse coalitions. We combine rigor- ous research with an appeal to the patriotic values that serve as a goal and go to positive change. We believe that facts can catch the conscience of the nation. I have led this organization for the past 15 years. I have never been prouder of its people, and never been more committed of the urgency of our work. The Brennan-Center model, honed over a quarter century, of worldwide conflict between democracy and authoritarianism, is our committed to doing our part.
Congress has the power to protect our democracy.

- Set national standards to guarantee vote by mail and early voting
- Establish automatic voter registration in every state
- Ban partisan gerrymandering
- Require disclosure of “dark money” in campaigns
- Restore the strength of the Voting Rights Act
- Start a small donor matching fund system for House races
- Restore voting rights to formerly incarcerated people
- Ban removal of election officials for partisan reasons

70% of voters favor these types of reforms.*

*Data for Progress

“There is a moral obligation to act, and Congress also has an obligation to voters — especially voters of color — to stand up for these rights.”

Wendy Weiser
Vice President, Democracy

*Data for Progress
DEMOCRACY UNDER ATTACK

2021 began with an insurrection at the U.S. Capitol — followed by a stream of attacks on the people and laws that ensure fair and secure elections. Here’s how we worked to defeat those threats, and what we’re doing next.
475 instances of potential voter fraud were identified by the Associated Press — 0.15 percent of the 311,257-vote margin of victory in those states.

Joe Biden won the 2020 election — but one-third of Americans still don’t believe it. Here are the facts:

25.5 MILLION votes were cast in the six swing states that determined the winner of the 2020 election.
ELECTORAL SABOTAGE

Using the Big Lie as a pretext, partisans are working to undermine future elections.

On January 6, 2021, as a mob breached the Capital, America held its breath. Guns were fired and people were attacked. People died. For the first time in U.S. history, the transfer of power was not peaceful. Twelve hours later, when order was restored and Joseph R. Biden was finally declared the president-elect, we all exhaled. The insurrection had been defeated.

Or so we thought.

The rest of 2021 proved that the January 6th insurrection was not an isolated band of dead-enders bent on overturning President Biden’s victory. They were, rather, the tip of the spear — part of a burgeoning movement set on flatly portraying our system of voting as broken so that antidemocratic legislators might transform our elections into an exercise of raw partisan power.

Following President Biden’s victory, officials in Arizona, Michigan, Pennsylvania, Texas, and Wisconsin launched phony audits to cast doubt on the election. It worked. Although the 2020 election was widely recognized as the most secure in U.S. history, 80 percent of Republican voters still believe it was made rigged. That misperception fuels and justifies the election sabotage movement that has gained a foothold in state legislatures. No longer sat- isfied with voter suppression laws, antidemocratic lawmakers are bidding for power over election admin- istration itself.

In Georgia, for example, after Secretary of State Brad Raffensperger refused Trump’s illegal demand to “find 11,780 votes,” the legislature removed the secretary as chair of the state’s elections commission. Arizona similarly punished its secretary of state — recinding her power to defend the state’s election laws in court until a new person takes office.

Other legislatures have tried to go further, introduc- ing bills that would give them the power to reject elec- tion results altogether. None of those bills have passed, and they are constitutionally suspect (to say the least), but their sheer audacity is a marker for the ambitions of the “stop the steal” movement.

Make no mistake: the antidemocratic lawmakers peddling the Big Lie will take as much power as we allow them. They are building a pseudo-scholarly basis to “find 11,780 votes,” the legislature removed the secretary’s power to defend the state’s election laws in court until a new person takes office.

Expect a major constitutional fight in coming years. No court has adopted this theory, but no matter. Brennan Center lawyers, along with the American Bar Association, are pursuing litigation to strike down those that have passed, including a bill in Ohio and bills in Missouri and Wisconsin that would go further. People are building a national legal effort to defend the Constitution’s Elections Clause, which James Madison intended as a broad grant of congressional power to make election rules and even decide results — with no role for state constitutions, courts, governors, or other officials. This absolutist theory is built on a misunderstanding of the Constitution’s Elections Clause, which James Madison intended to “find 11,780 votes,” the legislature removed the secretary as chair of the state’s elections commission. Arizona similarly punished its secretary of state — recinding her power to defend the state’s election laws in court until a new person takes office.

In Congress and in statehouses across the country, we pushed back against legislative attacks on free and fair elections, helping to defeat some of the worst bills. Brennan Center lawyers are pursuing litigation to strike down those that have passed, including a lawsuit led by Sean Morales-Doyle, acting director of the Voting Rights Program, to block parts of Texas S.B. 1 — a law that takes democracy back decades under President Trump’s phony allegations of voter fraud. Through the January 6th attack, to the election sabo- tage movement infecting state legislatures right now. The Brennan Center was and remains intensely engaged in the battle against election sabotage. Ari- zona state senator and former secretary of state Katherine Harris, senior counsel for our Democracy Program, to more than 200 fraudulant election review ordered by the legis- lature in 2021. Howard was on the ground at Leland Whitehead, Michigan, Pennsylvania, Texas, and Wisconsin launched phony audits to cast doubt on the election. It worked. Although the 2020 election was widely recognized as the most secure in U.S. history, 80 percent of Republican voters still believe it was made rigged. That misperception fuels and justifies the election sabotage movement that has gained a foothold in state legislatures. No longer sat- isfied with voter suppression laws, antidemocratic lawmakers are bidding for power over election admin- istration itself.

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RESTRICTING THE VOTE

Last year, legislators in 19 states passed 34 laws that make it harder to vote.

“More and more, the right to vote is dependent on what state someone happens to live in.”

Eliza Sweren-Becker
Counsel, Democracy

ARIZONA
S.B. 1485 dismantles the state’s Permanent Early Voting List, making it harder to vote by mail.

IOWA
S.F. 413 prohibits county auditors from setting up more than one mail ballot drop box per county.

TEXAS
S.B. 1 makes it a crime for election officials to encourage people to apply to vote by mail.

GEORGIA
S.B. 202 bans people from providing food and drink to voters waiting in line to cast their ballot.

MONTANA
H.B. 176 eliminates the state’s practice of Election Day voter registration.
ELECTION OFFICIALS

Violent threats and partisan lawmakers are driving people out of public service.

Protecting election officials is a key organizational priority for the Brennan Center. Half of election officials in America are concerned about their colleagues’ safety, and one in four worry about being assaulted on the job, according to a survey commissioned by the Brennan Center. Since the 2020 election, public servants have seen their property vandalized, and some have had to send their families away to safety. The danger that the Big Lie poses to our democracy is widely reported, but the unprecedented and underappreciated menace it has brought to local officials is also deeply concerning. Without doubt the Big Lie inspired these threats. Former president Donald Trump and his surrogates verbally assailed by name many of the targeted officials just before the threats commenced.

We will f*****g take you out ...

Follow the 2020 election and false accusations by Trump officials, several election officials received threatening voicemail.

We will f*****g take you out ...

Watch your f*****g back!

at least 30 candidates running for secretary of state and 8 running for attorney general have publicly backed the Big Lie, as have candidates for local election officials in swing states like Pennsylvania and Michigan. “We are witnessing an attempt to undermine our elections from within,” says Lawrence Norden, senior director of the Election and Government Program.

On top of all that, state legislators spent 2021 threatening election officials with legal penalties for simply doing their jobs. In the last year, six states have enacted laws creating new crimes, increasing existing criminal penalties, or creating new civil penalties for legitimate election official actions or minor mistakes. More states have considered, but not yet passed, such laws.

What sorts of behavior would trigger these penalties? An Alabama poll worker can be punished for bringing a loaded weapon to the polling place. In Arizona, an election official who alters a deadline, even in response to an emergency such as a global pandemic, can be charged with a felony. A Texas election official who encourages a voter to apply to vote by mail could face a felony charge. Elections are not self-executing. We need people to staff polling places, manage volunteers, and implement the laws that govern our elections. The Brennan Center is defending officials in court against threatening state laws. Our squad of former election officials—including former secretary of state of West Virginia Natalie Tennant and former top Virginia election official Elizabeth Howard—spent much of 2020 on the ground with public servants around the country. We have organized regular roundtables with key election officials, providing legal, policy, and communications help. Working with Microsoft and other business partners, we brought election officials together for tabletop exercises to map out challenges and plan responses. Our studies draw national attention to the threat. We continue to advocate for federal legislation to limit punitive actions that state legislatures can take against election administrators and to provide legal representation when they are threatened.

DEMOCRACY UNDER ATTACK

PROTECTING ELECTION ADMINISTRATORS

In 2021, following a Brennan Center recommendation, the Department of Justice launched a task force to investigate and prosecute those who threaten election officials. That effort has already produced results. Earlier this year, the DOJ announced two arrests: those of a Nevada man who had threatened the lives of an election worker and her children, and a Texas man whose internet post had threatened local officials and their families. According to election officials under threat, the Brennan Center’s persistent focus on this issue has been critical to the positive steps being taken.
edistricting is an inherently a politically fraught process. In the very first congressional election, even before Massachusetts Governor Elbridge Gerry became the unwilling namesake of the practice, Patrick Henry gerrymandered a district to try to keep James Madison from winning a seat in Virginia. Americans have always argued over the sake of the practice, even before the U.S. Supreme Court gutted the Voting Rights Act, ending the Justice Department’s ability to block racially gerrymandered maps before they take effect. Without competition, state lawmakers face little accountability from voters. Donald Trump won 55 percent of the state’s seats to Democrats in a state where Democrats represent just 53 percent of registered voters.

The 2020 Census confirmed that all of the U.S. population growth was in the South and Southwest, and nearly all of it among communities of color. Hispanic populations surged, as did Asian populations. Fair maps would reflect the reality of a changing America. Instead, the redistricting that unfolded choked off the voices of these emerging communities and denied them representation.

Those claims. And racial gerrymandering can be addressed only through protracted lawsuits, during which federal elections can sometimes pass before a judge rules. Technological progress has also contributed to intensified gerrymandering in certain states, multiplying its power. Modern computers can propose thousands of hypothetical legislative maps in a matter of minutes, and the granularity of data now used to compare voters would have baffled the minds of 20th-century gerrymancers. Legislators can now play with map lines with surgical precision, maximizing their party’s congressional share and minimizing competition in our elections.

The results paralyze democracy. In Texas, Democrats will have to win 58 percent of the vote to carry more than 37 percent of the state’s seats. In other words, Texas could turn a dark shade of blue and Republicans would still have a two-to-one seat advantage. New York’s gerrymandered maps will deliver 85 percent of registered voters. Without competition, state lawmakers face little accountability from voters. Donald Trump won 55 percent of the state’s seats to Democrats in a state where Democrats represent just 53 percent of registered voters.

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One important reason: legal guardrails have been largely removed. This is the first redistricting cycle that goal a reality.

The Brennan Center will provide the expertise to make that goal a reality.
The founders recognized the vast powers of the presidency and foresaw the possibility of abuse. That’s why they rejected Alexander Hamilton’s proposal for lifetime presidential tenure and included a mechanism for impeachment. They hoped for presidents like their model, the incorruptible George Washington, but they feared a president like Donald Trump.

The Trump presidency was a stress test for the checks and balances the founders created. Although the system survived, Trump exposed several flaws that need repair.

For example, Trump abused presidential emergency powers, designed for quick action in a national crisis, by declaring an “emergency” when Congress would not fund his border wall with Mexico. Congress overturned that— the first time it has ever overridden an emergency declaration— but he parried with a veto, making clear the need for legislative action. The Brennan Center has recommended legislative reforms to strengthen safeguards against abuse of emergency powers, and lawmakers from both parties have introduced bills including these safeguards.

PODA would time-limit emergency declarations unless Congress votes to extend them — one of the Brennan Center’s key recommendations. There are currently several long-running national emergencies, some extending back decades. The bill would also incorporate another Brennan Center recommendation by requiring the president to provide Congress with documents that offer more information about the executive branch’s interpretation and use of emergency powers.

“PODA would also ensure that the president is not above the law,” says Elizabeth Goitein, director of the Liberty and National Security Program. Investigations of the president or his associates put the Department of Justice in a hard spot. In such situations, the attorney general must gather evidence toward the potential prosecution of his or her own boss (who, by the way, has the power to fire the attorney general). PODA would require the attorney general to report communications with the White House to the inspector general, who would report abuses of presidential power to Congress. The law would also strengthen Congress’s subpoena power to prevent executive stonewalling. PODA would stop presidents from pardoning themselves (federal law is currently ambiguous on whether that outlandish step could be taken). It would suspend the statute of limitations on crimes committed by a president or vice president so they can’t use their term to run out the clock. And it would protect whistleblowers who identify censorship of scientific research, ensure that future presidents cannot personally profit from their position, and finally bring transparency to the oft-controversial clemency process. These reforms are all long overdue.

The House of Representatives passed PODA on December 9, 2021. In 2022, we will continue to press the Senate for passage, as President Biden stands ready to sign into law this crucial curb on abuses of presidential power.

“The Protecting Our Democracy Act would also ensure that the president is not above the law.”

Elizabeth Goitein
Co-Director, Liberty and National Security
HOW WE WORKED

In 2021, states enacted dozens of laws aimed at restricting voting rights. Hundreds more were proposed. The Brennan Center fought back with cutting-edge research, powerful digital platforms, and media outreach.
We monitored the nationwide assault on voting rights, garnering widespread press and legislative attention. The scope and volume of these bills presented a frightening new challenge, threatening the nation’s democratic foundations. The Brennan Center’s Voting Laws Roundup. In response to former President Trump’s unfounded and dangerous claims about the election, from coverage of lawsuits fighting the spread of both the legislation and eventually the word out to the media, members of Congress, and the public.

We tracked and monitored each bill as we went to work on the first Voting Laws Roundup of the year published just three weeks after the January 6th riots in Washington, DC. Twenty-eight states had already introduced 440 bills with provisions that made it more difficult to vote. More worrisome, many were successful. By the end of the year, 53 states had passed 34 restrictive voting laws. These laws made mail voting and early voting more difficult, imposed harsh voter ID requirements, and made voter purges more likely. Arguably the worst bill that became law was Texas’s S.B. 1. This sweeping voter suppression law makes it harder for Texas voters with language barriers or disabilities to get help when casting their ballots, restricts election workers’ ability to stop harassment by partisans, criminalizes election officials for doing their jobs, and bans voting procedures—like drive-through voting—adopted to make voting easier during the pandemic.

After the bill became law, the Brennan Center filed a lawsuit against Texas in federal court for violating the U.S. Constitution, the Voting Rights Act, and the Americans with Disabilities Act. We filed another lawsuit seeking to protect the First Amendment rights of Texas election officials, including our client, an election administrator in Houston. Under S.B. 1, she could be prosecuted for encouraging voters to apply to vote by mail. If convicted, an election official would face fines of up to $10,000 and six months to two years in jail. A judge in February blocked the law, saying it violated the Voting Rights Act and the public’s right to vote as guaranteed by the U.S. Constitution, the Voting Rights Act, and the Americans with Disabilities Act. We filed another lawsuit against Texas in federal court for violating the Voting Rights Act, the Americans with Disabilities Act, and the Voting Rights Act.

Cause for Alarm

As the evidence of this unprecedented threat to our democracy became clearer with each report, we got the word out to the media, members of Congress, and the public.

Breaking the News

As the evidence of this unprecedented threat to our democracy became clearer with each report, we got the word out to the media, members of Congress, and the public.

Reporters and editors jumped on every install ment with major stories on our findings getting play on top television news programs, editorial and opinion pages, and radio and podcast outlets. In between releases, the press—both national and local—reported on our numbers to underline the extent of the problem, from coverage of lawsuits fighting Georgia’s voter suppression law to stories about President Biden’s voting rights agenda.

The trackers were mentioned more than 265 times on television news shows, with networks including CNN, C-SPAN, and MSNBC. Stories about the bill spread in global outlets including The Guardian, The New York Times, Morning Joe, and the Brennan Center for Justice.

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HOW WE WORKED: CASE STUDY

targeting “souls to the polls” voting drives in Black and Latino communities, were dropped from the bills after popular backlash ensued. The roundups found a big audience in our nation’s capital, too, providing members of Congress with the hard facts and numbers around this legislative push in the states to restrict the vote. Representatives and senators, including Senate Majority Leader Chuck Schumer, highlighted these numbers in congressional hearings, on the floor, and during legislative markup sessions on federal voting rights legislation.

The roundups’ numbers even made it into President Biden’s January 2022 speech pushing for the Freedom to Vote: John Lewis Act. “Last year alone, 20 states not proposed but enacted 34 laws attacking voting rights,” the president told the nation. “There were nearly 400 additional bills Republican members of state legislatures tried to pass.”

The Roundups: The Brennan Center is continuing its legislative tracking in 2022, and we expect to publish updated roundups quarterly. The work has expanded to include a rising new threat — election sabotage bills that would allow partisan actors to interfere with election processes, remove nonpartisan election officials, or reject election results entirely.

These developments are made worse by gerrymandering, dark money, and disinformation — a combination that threatens self-government and meaningful representation in our multiracial democracy. The rise of this anti-democratic movement is a central fact for our work and our nation, and The Brennan Center will fight back with all the tools in our arsenal — crafting transformative solutions, fighting in court, advancing critical legislation, and shaping opinion by taking our message directly to our growing press and public audiences.

183 national news broadcasts featured our Voting Laws Roundups.
## Expert Testimony

Our staff appeared before Congress to advocate for our positions on voting rights, criminal justice, and constitutional protections.

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<td>AUG 16</td>
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<td>In support of the John Lewis Voting Rights Advancement Act</td>
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<td>OCT 7</td>
<td>Gowri Ramachandran</td>
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<td>OCT 7</td>
<td>Gowri Ramachandran</td>
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</tr>
</tbody>
</table>

## How We Worked: Advocacy

- **MAY 18**: Faiza Patel advocating for strengthening DHS’s civil rights and liberties safeguards.
- **JULY 27**: Lauren-Brooke Eisen on the unjust burden of court-imposed fees and fines.
- **AUG 16**: Wendy Weiser in support of the John Lewis Voting Rights Advancement Act.
- **JULY 28**: Gowri Ramachandran on the dangers of disinformation and election subversion.
**GETTING THE WORD OUT**

2021 by the numbers

- **48%** increase in *New York Times* mentions*
- **41%** increase in *Washington Post* mentions

**SOCIAL**

- **35,000,000** impressions across social channels
- **215,000** mentions of the Brennan Center from 87,000 external accounts

**ADVOCACY**

- **30-35%** approximate email open rate
- **9K** direct messages sent by our supporters to Senate offices asking for voting rights reform

**AUDIENCE = INFLUENCE**

Growth since 2017

<table>
<thead>
<tr>
<th>2017 Baseline</th>
<th>2021 Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Website Users</td>
<td>1.1M</td>
</tr>
<tr>
<td>Press Hits</td>
<td>22K</td>
</tr>
<tr>
<td>Newsletter Subscribers</td>
<td>113K</td>
</tr>
<tr>
<td>Events</td>
<td>25</td>
</tr>
<tr>
<td>Social Platforms</td>
<td>136K</td>
</tr>
</tbody>
</table>

*2019 compared to 2021
The Brennan Center appeared on national news programs 280 times. That’s up more than 367% since last year.
45 Brennan Center LIVE events, and audiences that topped 50,000 for the year, made our virtual stage the place to be in 2021.
Four Hundred Souls: A Conversation with Keisha N. Blain, Donna Brazile, and Laurence Ralph


From left, Rep. Adam Schiff (D-CA) and Brennan Center President Michael Waldman discussed Schiff's book, Midnight in Washington: How We Almost Lost Our Democracy and Still Could.

Immigration Reform: Presidential Power and the Road Ahead

Clockwise from left, Brennan Center board member and NYU School of Law professor Adam B. Cox and Cristina M. Rodriguez of Yale Law School discussed the debate about presidential power over immigration policy and their book, The President and Immigration Law. The program was moderated by Cecilia Muñoz, below, former director of the White House Domestic Policy Council under President Obama.

The People’s Constitution

From left, counter clockwise, Brennan Center Fellow Wilfred Codrington and Vice President of Programs John Kowal discussed their book, The People’s Constitution: 200 Years, 27 Amendments, and the Promise of a More Perfect Union. Ari Berman, senior reporter at Mother Jones, moderated.

Justice on the Brink: Twelve Months That Transformed the Supreme Court


The Midterms: What to Expect Next November and Beyond

Democratic and Republican political strategists provided early insight on what will matter most in the 2022 midterms. From left, clockwise: Shailagh Murray, former senior advisor to President Barack Obama, moderator Bakari Sellers, CNN political analyst; Stephanie Cutter, former senior advisor to President Obama, and Alex Castellanos, former strategist, Romney Ryan and Bush-Cheney presidential campaigns.

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What Will It Take to Keep Us (and Our Freedoms) Safe?

Twenty years after 9/11, panelists discussed the most pressing threats we face and how the U.S. government can protect our security without eroding our freedom. From left, clockwise: Jane Harman, president emerita, Wilson Center, and author, Insanity Defense: Why Our Failure to Confront Hard National Security Problems Makes Us Less Safe; Faiza Patel, co-director, Brennan Center Liberty and National Security Program; moderator John Avlon, senior political analyst, CNN; Elizabeth Shakelford, author, The Dissent Channel: American Diplomacy in a Dishonest Age; and Spencer Ackerman, author, Reign of Terror: How the 9/11 Era Destabilized America and Produced Trump.

When the Stars Begin to Fall

In conversation with political commentator Karen Finney, Theodore R. Johnson, director of Brennan Center’s Fellows Program, discussed his book, When the Stars Begin to Fall: Overcoming Racism and Renewing the Promise of America.

Guns vs. Speech: Does the 2nd Amendment Threaten the 1st?

Can speech be free when armed counter protesters mix with unarmed protesters? A panel of experts gathered to discuss what this looming conflict may mean in the Supreme Court. From left, clockwise: Mary Anne Franks, author of The Cult of the Constitution: Our Deadly Devotion to Guns and Free Speech; Daniel A. H. Miller, co-author of The Positive Second Amendment: Rights, Regulation, and the Future of Heller; moderator Eric Rubin, Duke Law School and Fellow, Brennan Center; Tim Z. Coss, William & Mary Law School; and Supreme Court justice of The Violent Conspiracy, a leading legal blog.

Institutional Reform to Protect Democracy

Panelists discussed the Protecting Our Democracy Act, a landmark reform aimed at preventing future presidential abuses. From left, clockwise: Bob Bauer, former White House counsel and co-author of After Trump: Reconstrucitng the Presidency; Preet Bharara, former United States attorney for the Southern District of New York and co-chair of the National Task Force on Rule of Law & Democracy; and Christine Todd Whitman, former governor of New Jersey, former administrator of the Environmental Protection Agency, and co-chair of the National Task Force on Rule of Law & Democracy.

CRISIS: Harrowing Presidential Transitions from Lincoln to Biden


EVENTS

Brennan Center for Justice
Ford Foundation President Darren Walker received the Legacy Award in recognition of his lifelong commitment to justice.

More Than a Vote CEO Addisu Demissie and WNBA All-Star Renee Montgomery accepted the Legacy Award on behalf of their coalition of athletes and artists.

Honorees Kenneth I. Chenault (top right) and Kenneth C. Frazier (bottom) discussed their remarkable campaign to mobilize business leaders against voter suppression.

Brennan Center Board members Kimberley D. Harris (left) and Christine A. Varney hosted the evening program.

A VIRTUAL CELEBRATION
We held the annual Brennan Legacy Awards on November 16 — a one-night-only virtual event celebrating our 25th anniversary and honoring leading voices from the fight for democracy and justice.

Sen. Alex Padilla (D-CA)

Rep. Lauren Underwood (D-IL)

Rep. John Sarbanes (D-MD)
Brennan Center staff are developing research and creating new policy solutions — all aimed at building a more perfect union.
The Department of Homeland Security’s decisions should be based on evidence, not biases.

This year marks the 20th anniversary of the Department of Homeland Security’s creation. How effective has the department been at keeping Americans safe while respecting their civil rights and liberties? DHS, which was created in response to the 9/11 attacks, contributes to counterterrorism efforts primarily by sharing intelligence with state and local officials, has also seriously underestimated the department’s efforts to counter violent extremism as a racial profiling program targeting Middle Easterners, Black people, Latinos, and other minorities. As the Biden administration has recognized, the department’s tactics. State-based law enforcement and by vetting for national security issues from this data in ways that can lead to adverse consequences for individuals.

One subject your research centers on is DHS’s massive and growing capability to collect information on Americans. What is the danger of having a scale of data harvesting and analysis? Privacy and freedom of speech and association are not necessarily predictive of the likelihood that they will become a racial profiling program targeting Middle Easterners, Black people, Latinos, and other minorities. As the Biden administration has recognized, the department’s tactics. State-based law enforcement and by vetting for national security issues from this data in ways that can lead to adverse consequences for individuals.

That is also a concern. The department’s anti-terrorism programs are not only costly but also fail to measure whether they make us safer. The multitude of breaches of government databases containing personal information caution against the ever-increasing consolidation of information. The agency must also create a system to make sure that the information is used in a way that respects the constitutional rights of the individual.

There is no silver bullet for fixing DHS. Three broad categories of changes are essential. Leadership needs to prioritize respect for constitutional norms and take concrete steps to empower the DHS offices that are dedicated to protecting privacy and civil liberties. The agency must also create a system to make sure programs are effective. And finally, leadership must implement stronger policies against profiling and Targeting of First Amendment–protected activities. Without these changes, the department will continue to fail to meet the legal requirements for profiling and Targeting of First Amendment–protected activities. Without these changes, the department will continue to fail to meet the legal requirements for profiling and Targeting of First Amendment–protected activities.
A forthcoming Brennan Center report analyzes the perverse incentives that distort criminal justice.

The challenge is that these financial motivations — and their budgetary effects — have become persistent and self-perpetuating. As local governments and law enforcement agencies grow increasingly dependent on these sources of revenue, any cost-benefit analysis will lean enforcement dominated by self-interest, not public safety. Public welfare and safety should be the focus of law enforcement agencies, but they are likely to play second fiddle to the dollar signs many enforcement actions currently represent.

What role does confronting these perverse incentives play in the fight to end mass incarceration? Even though nearly all 50 states, many counties, and the federal government have focused political efforts on reducing the footprint and long-term impacts of imprisonment, incarceration levels remain extraordinary high. There are nearly 1.3 million people in federal prisons and federal and rural federal prisons and 30.3 million admissions to local jails every year. Missouri, one of the states with the most stubbornly high incarceration rates, has nearly 1.3 million people who are subject to criminal justice system involvement in any given year. The system means more money for the locality, agency, or contracted private firm. People subject to criminal justice system involvement are increasingly asked to reimburse the government ledger, and they often go ignored.

Unwinding mass incarceration requires not only harsher sentencing policies but also the creation of rules, practices, and incentives to motivate and encourage this growth. Our report sheds light on the infrastructure that encourages increased criminal enforcement by offering financial and economic benefits to law enforcement officials, agencies, and governments. These structures functionally shape how criminal justice practitioners behave, challenging the assumption that the public sector actors are free of financial motivation. Unwinding mass incarceration requires unearthing these economic incentive structures. If we don't, then revenue-driven enforcement will remain the order of the day.

Has your research identified an incentive that warps the system more than the others? Punishing an individual who commits a financial crime, such as federal judgeships or partnerships in large private practices. People subject to criminal justice system involvement in any given year. The system means more money for the locality, agency, or contracted private firm. People subject to criminal justice system involvement are increasingly asked to reimburse the government ledger, and they often go ignored.

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What do you mean by perverse incentives? What role does confronting these perverse incentives play in the fight to end mass incarceration? Even though nearly all 50 states, many counties, and the federal government have focused political efforts on reducing the footprint and long-term impacts of imprisonment, incarceration levels remain extraordinary high. There are nearly 1.3 million people in federal prisons and federal and rural federal prisons and 30.3 million admissions to local jails every year. Missouri, one of the states with the most stubbornly high incarceration rates, has nearly 1.3 million people who are subject to criminal justice system involvement in any given year. The system means more money for the locality, agency, or contracted private firm. People subject to criminal justice system involvement are increasingly asked to reimburse the government ledger, and they often go ignored.

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This promotes predatory enforcement that singles in certain individuals to subsidize mass enforcement and mass incarceration. As we saw in Ferguson, Missouri, this incentive structure can drive the enforcement of every colorable offense, especially when budgets are tight. Police, prosecutors, sheriffs, and courts are pressed to decide which laws to enforce and how people should be punished based on the financial needs of their agency rather than public safety. This burden falls too often on the poorest, most disenfranchised communities. Even during the exact same social inequity and disadvantage. And like many other aspects of the U.S. criminal-legal system, these practices, along with all their adverse costs and consequences, have a disproportionate impact on people of color.

Debt stemming from justice system involvement is financially rewarding crimes, and too much toward serious crimes that truly threaten public safety. This promotes predatory enforcement that singles in certain individuals to subsidize mass enforcement and mass incarceration. As we saw in Ferguson, Missouri, this incentive structure can drive the enforcement of every colorable offense, especially when budgets are tight. Police, prosecutors, sheriffs, and courts are pressed to decide which laws to enforce and how people should be punished based on the financial needs of their agency rather than public safety. This burden falls too often on the poorest, most disenfranchised communities. Even during the exact same social inequity and disadvantage. And like many other aspects of the U.S. criminal-legal system, these practices, along with all their adverse costs and consequences, have a disproportionate impact on people of color.

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A RIGHT TO CONCEAL AND CARRY?

An upcoming Supreme Court case could vastly expand the number of Americans carrying concealed weapons.

UP NEXT

What makes Bruen different from previous Supreme Court cases, particularly the landmark decision in District of Columbia v. Heller in 2008? Heller involves a federal ban on handgun possession in the home, whereas the New York law at issue in Bruen restricts carrying concealed handguns in public. The plaintiffs in Bruen, Eric Ruben and his wife, argued that carrying concealed handguns is a right protected by the Second Amendment.

A lot of talk in Second Amendment circles currently revolves around one Supreme Court case: New York State Rifle and Pistol Association v. Bruen. Tell us about this case. Bruen involves a New York State law limiting who can carry a concealed handgun in public. For more than a century, New Yorkers wanting a license to carry a concealed handgun in public had to demonstrate that they have what the law calls “proper cause” — basically a greater need for self-protection than others. One narrative circulating is that the plaintiffs in Bruen did not satisfy that standard. They were restricted in terms of where they could carry their handguns. For example, one plaintiff was issued a license to carry a concealed handgun while traveling to and from work, and both plaintiffs’ licenses permitted them to carry concealed handguns for hunting, target practice, and in certain areas not frequented by the general public.

Along with the National Rifle Association’s New York affiliate, the plaintiffs sued, contending that the limitations placed on their licenses violate the Second Amendment. They argue that the Second Amendment protects their right to carry a handgun virtually wherever and whenever the need for self-defense might arise.

How can federal, state, or local policymakers balance the right to bear arms with public safety concerns? If the Supreme Court rules that proper-cause laws are unconstitutional, residents of these eight states can expect to interact with people armed with a deadly weapon.

Eric Ruben Fellow Brennan Center for Justice

“"If the Supreme Court rules that proper-cause laws are unconstitutional, residents of these eight states can expect to interact with people armed with a deadly weapon."
FINANCIALS
Our diverse and growing base of supporters — 25,000 strong — stepped up with extraordinary generosity in our fiscal year that began in July 2020.

The year spanned an election threatened by the pandemic and unprecedented efforts to overturn the results. In response, our supporters contributed funds totaling more than ever before in our 25+ year history.

We are deeply grateful to this community.

The Brennan Center is grateful for the pro bono support provided by the law firm community (see page 59); the monetary value of those services is not included in this chart.

These revenues include the full amount of multi-year awards, including $11 million in funds meant to be used in upcoming years. This brings actual revenues available for use in Fiscal Year 2021 to just over $38 million.
SPECIAL FUNDS

The Brennan Center’s urgent work garnered special support to ensure a solid, sustainable future for our organization. We now have three initiatives designed to keep us strong for decades to come.

BRENNAN LEGACY FUND
For the first time in our 25+ year history, we have meaningful reserves that ensure our organizational strength and longer-term sustainability. Special support in 2020 and 2021 enabled us to grow our Brennan Legacy Fund, which operates as a quasi-endowment, to $102 million. This fund is meant to remain intact to ensure our longevity; we must still raise most of our operating budget every year to remain solvent into the future. But it provides an important safety net in case of emergencies, such as a severe economic downturn that significantly cuts our annual fundraising or sudden unbudgeted expenses.

BRENNAN FUTURE FUND
This $25,000,000 time-limited fund is intended to spur bold new thinking to advance democracy and justice in America.

INEZ MILHOLLAND ENDOWMENT FOR DEMOCRACY
Inez Milholland (1886–1916) was a leader for women’s suffrage, an ardent fighter for equality, and a graduate of NYU Law. The investment income from this $2,500,000 dedicated fund supports the Brennan Center’s work on Fair Representation in Redistricting.

OUR SUPPORTERS
The Brennan Center’s work is made possible through the generous financial support of more than 25,000 individuals and families, charitable foundations, law firms, and businesses. We are pleased to recognize the following leaders for their partnership in 2021.*

*Funding levels represent annualized giving.

FINANCIALS

BRENNAN LEGACY CIRCLE
We are also pleased that a growing cohort of leaders have included the Brennan Center for Justice in their estate planning as members of our Brennan Legacy Circle. For more information about how to continue funds to or join the Brennan Legacy Circle, please contact Paulottie Hodges at hodgesp@brennan.law.nyu.edu or (646) 925-8750.

**SPECIAL FUNDS**

**BRENNAN LEGACY FUND**

- For decades to come, we have meaningful reserves that ensure our organizational strength and longer-term sustainability.

**BRENNAN FUTURE FUND**

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- The Brennan Center is grateful for the support of our Fundraising Team and all who have contributed to our fundraising efforts.**
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The Booth-Abramski Foundation

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Foundation

Anonymous (6)

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Todd and Barbara Bluedorn

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Wachtell, Lipton, Rosen & Katz

$25,000 – $49,999

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Leaves of Grass Fund

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John L. Hammond

The Marshall and Veronique Parke Family

Del’s Kids Family Fund of Oregon

Morgan Lewis

The Clermont Foundation

Tom and Andi Bernstein

The Winkler Family Foundation (TX)

Adam R. Bronfman Family Foundation

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Citizen Physicians

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The Auschwitz-support Fund

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Brose Hie Hill Foundation

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Phil and Barbara Kornblatt

The Jacob L. and Lillian Holtzmann Foundation

Annette M. and David G. Jussaume

Chris and Martina Jones

The Huckleberry Fund at

The Spingold Foundation, Inc.

The Spingold Foundation, Inc.

Del’s Kids Family Fund of Oregon

Serra Falk Goldman

Sara King Goldman

David and Sylvia Goodman

Jeffrey B. Gordon, MS, MPH

Shea and David Groves

Agnieszka Gwizdowicz

Lisa Guadagnoli and Christopher Sales

Thomas Goff and Rachel Gates

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Albion Hermann

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The Brennan Center’s staff has done something quite extraordinary: they have built, in just a few years, an institution, a vital institution that is here to stay.

Robert A. Caro
Historian and Pulitzer Prize-winning author of The Power Broker