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

Robert Atkins
Co-chair, Board of Directors
Patricia Bauman
Co-chair, Board of Directors
DEMOCRACY CAN’T WAIT

In 2021, the Brennan Center’s work moved voting rights to the center of public debate. In 2022, that’s where we’re going to keep it.

A year ago, I wrote in these pages that 2022 was a great test for the future of American democracy. That fight has continued, with many stakes for our nation.

The 2022 election was a civic triumph. Despite the pandemic, it had the highest voter turnout since 2008. 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, also driven by that Big Lie, therefore, it is true that per- mitted voters of color with uncanny precision.

At the same time, we had reason to hope that a sea- son of reform would follow. The Freedom to Vote: John Lewis Act – the most important voting rights and democracy reform in a half-century — drew heavily on the Center’s research and respected — generated side attention. We rou- tinely briefed dozens of reporters. Our attorneys worked with lawmakers and staff as they honed com- plex provisions.

For the first time in decades, voting rights de- mized political conversation. Support became a Demo- cratic Party priority. The measure was widely popu- lar: The fight of allablather 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, Sen. Joe Manchin of West Virginia and Sen. 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 grows from defeat. Voting rights legislation failed in 1957 and 1959 passing for 2025. We will fight voter suppression and gerrymandering. All state constitutions but one explicitly protected the right to vote, and we will pursue remedies in state courts.

The Brennan Center will work with embattled elec- tors to restore voting rights to all formerly incarcer- ated citizens. We published the first national proposal to make voter registration automatic, developed in 2007, is now more than a quarter century. We aim to craft the reforms that will fuel other suppressions and gerrymandering. All state constitutions but one explicitly protected the right to vote, and we will pursue remedies in state courts.

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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 lasting 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 goad to positive change. We believe that facts can catch the conscience of the nation.

I have led this organization for the past 35 years. I have never been prouder of its people, and never been more convinced of the urgency of our work. The country we live in is at stake. At a time of worldwide conflict between democracy and authoritarianism, we are committed to doing our part.

Michael Waldman
President

The Brennan Center for Justice
VOTING RIGHTS REFORM NOW

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
- Require voting rights to formerly incarcerated people
- Ban removal of election officials for partisan reasons

70% of voters favor these types of reforms.*

“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

70% of voters favor these types of reforms.
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.
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.

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

On January 6, 2021, as a mob breached the Capitol, America held its breath. Guns were drawn. Police officers 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.

The rest of 2021 proved that the January 6th insurrection was, rather, the tip of the spear — part of a burgeon of antidemocratic efforts in court until a new person takes office. Other lawmakers have tried to go further, introducing bills that would give them the power to reject election results altogether. None of those bills have passed, but their sheer audacity is a marker for the ambitions of the “stop the steal” movement.

Top mistake: the antidemocratic lawmakers peddling the Big Lie will take as much power as we allow them. They are building a pseudo-scholarly basis for their power grab, dubbed the “independent state legislature theory.” It claims the Constitution gives state legislatures the exclusive power to make election rules and even decide results — with no role for state constitutions, courts, governors, or other officials. This ahistorical theory is built on a misunderstanding of the Constitution’s Elections Clause, which James Madison himself described as constitutional upside-down land.

The Brennan Center was and remains intensely engaged in the battle against election sabotage. Brennan Center president Michael Waldman and attorney Eliza Sweren-Becker have published the most comprehensive legal article to date about the history and meaning of the Elections Clause. Most importantly, we continue to believe the best way to prevent election sabotage is to enact strong national legal effort to defend the Constitution’s Elections Clause, marshaling scholarship, legal arguments, and communications plans. Recognizing the danger of the independent state legislature theory, Brennan Center president Michael Waldman and attorney Eliza Sweren-Becker have published the most comprehensive legal article to date about the history and meaning of the Elections Clause. Make no mistake: the antidemocratic lawmakers peddling the Big Lie will take as much power as we allow them.

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 — resulting in her power to defend the state’s election laws in court until a new person takes office.

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 decided by fraud. That misconception fuels and justifies the election sabotage movement that has gained a foothold in state legislatures. No longer satisfied with voter suppression laws, antidemocratic lawmakers are bidding for power over election administration itself.

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The Brennan Center for Justice

Brennan Center for Justice
Restricting the Vote

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

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.

Montana
H.B. 176 eliminates the state’s opt-out practice of Election Day voter registration.

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

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

Eliza Sweren-Becker
Counsel, Democracy
We will f*****g take you out ...
Watch your f*****g back!

PROTECTING 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 unaddressed 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.

While anonymous threats and public intimidation chase honest people out of office—in Pennsylvania, for example, nearly one-third of election officials left their jobs in the months after the 2020 election—election deniers are working to take their places. 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 offices 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 Elections and Government Program.

On top of all that, state legislatures 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 blanket to a disabled voter who cannot leave her car to enter 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—and 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.

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 congressio
nal election, even before Massachusetts
Governor Elbridge Gerry became the unwilling name
sake 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 drawing of legislative districts.

The 2020–2021 redistricting process, however,
has been unusual — a tale of two countries.

In parts of the country, fair maps took shape, often
due to redistricting reforms championed by the Bren
nan Center. In a few key states, split party control pre
vented egregiously unfair redistricting. In other parts
of the country, single party control produced
largely removed. This is the first redistricting cycle
since 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.

In Texas, Democrats have installed independent redistricting commis
sions, and we will continue to push in 2022 for more
states to adopt them. Federal legislation to bar ger
rymandering came closer to passage during the
past year than it had been in generations. The public
is ready for fair and competitive electoral maps, and
the Brennan Center will provide the expertise to make
that goal a reality.

Fair Districts

Two states where voters are gaining ground.

FAIR DISTRICTS

In Ohio, Brennan Center litigators, led by Alicia Bannon,
director of the Brennan Center’s Judiciary
Program, and our partners, scored an
important victory against gerrymandering. The
state supreme court struck down a map that
discriminated against Black and Muslim voters and
would have given Republicans a three-fifths
majority. The map violated a state constitutional
amendment banning partisan gerrymandering.

In Michigan, the Brennan Center helped draft the
2018 citizen-run ballot measure to create
Michigan’s independent redistricting commission. In the current cycle, it
produced one of the most unbalanced and
competitive election maps in the country. It’s a big change from Michigan’s
partisan redistricting in the 2010 maps
produced a heavily gerrymandered map.

The Brennan Center worked tirelessly throughout 2021 to combat parti
san and racial gerrymandering in state courts (see “Fair Districts,” below), and our research provided evidence for those seeking to enforce their rights.

Senator Chuck Grassley made countless media appearances and written across traditional and social media to explain the scale of the gerrymandering problem and the need for fair maps. Many states have installed independent redistricting commis
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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 overrode 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 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 the overlaps (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.
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.
How We Worked: Case Study

Tracking Voter Suppression

We monitored the nationwide assault on voting rights, garnering widespread press and legislative attention.

O

f the thousands of media hits and millions of web visits the Brennan Center garnered in 2020, one particular Brennan Center project drove more attention than any other: our Voting Laws Roundups.

This project launched in 2011 as an annual survey of legislation and laws pertaining to voting at the state level. Often, these roundups focused on good democratic foundations. The Brennan Center’s Voting Laws Roundup. was a project designed to shine a light on these terrible bills, the roundups created a fascination with the spread of these restrictive bills as we went to work on the first Voting Laws Roundup of the year, published just before the January 6th riots in Washington, DC. Twenty-six states had already introduced 300 restrictive voting bills — three times the number introduced during the same period in 2020. The bills were an unmistakable response to the unfounded and baseless lies about fraud that followed the 2020 election.

Throughout 2022, each report brought more cause for alarm. By the end of the year, state legislators had introduced more than 440 bills with provisions that made it more difficult to vote. More worrisome, some were successful. By the end of the year, 39 states had passed 34 restrictive voting laws. These laws made mail voting and early voting more difficult, imposed harsh voter ID requirements, and made faulty voter registration harder for Texas voters with language barriers or disabilities to get help when casting their ballots, restrict election workers’ ability to stop harassment by partisan poll watchers, criminalizes election officials for doing their jobs, and bars 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 Amendm
d 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 could face fines of up to $10,000 and as many as two years in jail. A judge in February blocked the validity of the worst bill that became law: Texas’ 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, restrict election workers’ ability to stop harassment by partisan poll watchers, criminalizes election officials for doing their jobs, and bans voting procedures — like drive-through voting — adopted to make voting easier during the pandemic.

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

Reporters and editors jumped on every installm
ent to the problem and call on Congress to pass federal legislation to stop this voter suppression in its tracks.

Our numbers documenting this assault on the vote were cited by the biggest newspapers and wire services in the country, from the New York Times to the Associated Press. Brennan Center experts hit the talk show circuit, with Michael Waldman joining Morning Joe in July to discuss this burgeoning anti-democratic movement. The reports were also cited in global outlets including The Guardian.

The widespread press coverage of these anti-voter bills resulted in controversy and outrage. By shining a light on these terrible bills, the roundups created a public relations nightmare for the legislators who introduced them. For instance, legislative language that would have rolled back Sunday voting.

Cause for Alarm

Brennan Center teams were alerted to the disturbing spread of these restrictive bills as we went to work on the first Voting Laws Roundup of the year, published just before the January 6th riots in Washington, DC. Twenty-six states had already introduced 300 restrictive voting bills — three times the number introduced during the same period in 2020. The bills were an unmistakable response to the unfounded and baseless lies about fraud that followed the 2020 election.

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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. was a project designed to shine a light on these terrible bills, the roundups created a fascination with the spread of these restrictive bills as we went to work on the first Voting Laws Roundup of the year, published just before the January 6th riots in Washington, DC. Twenty-six states had already introduced 300 restrictive voting bills — three times the number introduced during the same period in 2020. The bills were an unmistakable response to the unfounded and baseless lies about fraud that followed the 2020 election.

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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 onto President Biden’s January 2022 speech pushing for the Freedom to Vote: John Lewis Act. “Last year alone, 20 states did not propose 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 Brennan Center

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.
EXPERT TESTIMONY

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

HOW WE WORKED: ADVOCACY

FEB 24
Mike German
On the rise of white supremacist and far-right domestic terrorism

MARCH 24
Michael Waldman
In support of the For the People Act

MAY 18
Faiza Patel
Advocating for strengthening DHS’s civil rights and liberties safeguards

JUNE 11
Kevin Morris
In support of the John Lewis Voting Rights Advancement Act

JUNE 24
Michael Waldman
In support of the John Lewis Voting Rights Advancement Act

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

OCT 6
Wendy Weiser
In support of the John Lewis Voting Rights Advancement Act

OCT 7
Gowri Ramachandran
On the risk posed by sham election reviews

EXPERT TESTIMONY

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GETTING THE WORD OUT
2021 by the numbers

S O C I A L

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

A D V O C A C Y

30-35% direct messages sent by our supporters to Senate offices asking for voting rights reform

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

AUDIENCE = INFLUENCE
Growth since 2017

2017 Baseline

Website Users 1.1M
Press Hits 22K
Newsletter Subscribers (1/1 Jan 2021 - 6/30 21) Events 25
Social Platforms 136K

2021 Totals

4.5M Website Users +309%
65K Press Hits +151%
185K Newsletter Subscribers +2,800%
45 Events +80%
274K Social Followers +101%

October 2019
New Website Launch

FOR17 FOR18 FOR19 FOR20 FOR21

*2019 compared to 2021

45 direct messages sent by our supporters to Senate offices asking for voting rights reform

FY2017 FY2018 FY2019 FY2020 FY2021
HOW WE WORKED: COMMUNICATIONS

The Brennan Center appeared on national news programs 280 times. That’s up more than 367% since last year.

Director of the Justice Program, Lauren-Brooke Eisen, appears on Fox 5 NY News on July 15, 2021, to discuss New York State’s bail reform laws.

Lauren Norden, senior director of the Elections and Government Program, joins Sunday Today on NBC to discuss how Trump’s “Big Lie” has triggered a fight over how elections work and who runs them.

Elizabeth Howard, senior counsel for the Elections and Government Program, appears on MSNBC’s Ayman on May 10, 2021, to discuss the sham audit of the 2020 election results in Maricopa County, Arizona. Elizabeth served as an official observer of the so-called audit for Arizona’s secretary of state.

Lawrence Norden, senior director of the Elections and Government Program, joins the Brennan Center’s Weekly News Briefing to discuss the redistricting cycle.

Michael Li, senior counsel in the Democracy Program, appears on MSNBC’s The Sunday Show on October 10, 2021, to discuss how the Texas Legislature’s extreme gerrymandering robs communities of color of political power.

Elizabeth Goitein, co-director of the Liberty and National Security Program, joins CBS News’ Red & Blue on September 27, 2021, to discuss privacy rights and the January 6th insurrection organizers.

Wendy Weiser, vice president of the Democracy Program, talks on March 13, 2021, on MSNBC’s Velshi about the wave of voter suppression bills around the country.

On April 6, 2021, Democracy Program Senior Counsel Yurij Rudensky appears on Zerlina on NBC’s Peacock ahead of the release of the 2020 Census results to discuss what to expect in the 2021–2022 redistricting cycle.

Elizabeth Howard, senior counsel for the Elections and Government Program, appears on MSNBC’s Ayman on May 10, 2021, to discuss the sham audit of the 2020 election results in Maricopa County, Arizona. Elizabeth served as an official observer of the so-called audit for Arizona’s secretary of state.

Theodore R. Johnson, director of the Fellows Program, joins Prime with Charles Blow on the Black News Channel on June 2, 2021, to discuss the threat voter suppression poses to democracy.

Michael Li, senior counsel in the Democracy Program, appears on MSNBC’s The Sunday Show on October 10, 2021, to discuss how the Texas Legislature’s extreme gerrymandering robs communities of color of political power.

Elizabeth Goitein, co-director of the Liberty and National Security Program, joins CBS News’ Red & Blue on September 27, 2021, to discuss privacy rights and the January 6th insurrection organizers.

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EVENTS

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
The coeditor of and contributors to Four Hundred Souls: A Community History of African America, 1619–2019, discussed their book with the Brennan Center’s Theodore R. Johnson. From left, clockwise: Donna Brazile, former acting chair, Democratic National Committee; Laurence Ralph, professor of anthropology, Princeton University; moderator Theodore R. Johnson, director, Fellows Program, Brennan Center, and Keisha N. Blain, associate professor of history, University of Pittsburgh.

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. Rodríguez 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 Castelanos, former strategist, Romney/Ryan and Bush-Cheney presidential campaigns.

The People’s Constitution: 200 Years, 27 Amendments, and the Promise of a More Perfect Union
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.
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 Shackelford, author, The Dissent Channel: American Diplomacy in a Dishonest Age; and Spencer Ackerman, author, Reign of Terror: How the D/2 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 Erin Rubin, Dean, School of Law and Fellow, Brennan Center; Tim Z. Fair, William & Mary Law School, and Supreme Court, USIA Law and founder 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: Reconstructing 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.
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.

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

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

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

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.

VOTING RIGHTS LEADERS IN CONGRESS HAD A SPECIAL MESSAGE FOR OUR VIEWERS.
Brennan Center staff are developing research and creating new policy solutions — all aimed at building a more perfect union.
This year marks the 20th anniversary of the Department of Homeland Security’s (DHS) 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 under estimated civil rights and civil liberties. The department’s targeting of people based on religion, ethnicity, and national origin is as wrong as it is ineffective. Discriminatory assumptions have a terrible cost, both to the individuals who suffer their consequences and to our nation’s goal of liberty and justice for all. Moreover, as DHS has explicitly recognized, profiling is not an effective law enforcement or screening tool because it wrongly assumes that characteristics like a person’s race or religion is also a concern. The department’s anti-discrimination policies contain substantial loopholes that allow agents and algorithms to functionally rely on these characteristics to make judgments. 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 tasked with protecting privacy and civil rights and 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 use methods that violate Americans’ civil liberties and rights and undertake programs without measuring whether they make us safer. One subject your research centers on is DHS’s massive and growing capability to collect information on Americans. What is the danger of a large-scale data harvesting and analysis? Privacy and freedom of speech and association are the cornerstones for Americans to fully participate in our democracy. The government should not under mine these constitutional rights unless it suspects violations of the law. DHS accumulates vast databases of information about millions of innocent Americans without their consent and draws inferences from this data in ways that can lead to adverse consequences for individuals. Its risk assessment algorithms flag people for search and interrogation, but those selected have very limited ability to contest the determinations or to even know that they have been flagged or why. DHS’s targeting of people based on religion, ethnicity, and national origin is as wrong as it is ineffective. Discriminatory assumptions have a terrible cost, both to the individuals who suffer their consequences and to our nation’s goal of liberty and justice for all. Moreover, as DHS has explicitly recognized, profiling is not an effective law enforcement or screening tool because it wrongly assumes that characteristics like a person’s race or ethnicity are predictive of the likelihood that they will engage in misconduct. Both of these principles hold true for national security as well.

REFORMING DHS
The Department of Homeland Security’s decisions should be based on evidence, not biases.

Faiza Patel
Co-Director, Liberty and National Security

One subject your research centers on is DHS’s massive and growing capability to collect information on Americans. What is the danger of a large-scale data harvesting and analysis? Privacy and freedom of speech and association are the cornerstones for Americans to fully participate in our democracy. The government should not undermine these constitutional rights unless it suspects violations of the law. DHS accumulates vast databases of information about millions of innocent Americans without their consent and draws inferences from this data in ways that can lead to adverse consequences for individuals.

DHS’s targeting of people based on religion, ethnicity, and national origin is as wrong as it is ineffective. Discriminatory assumptions have a terrible cost, both to the individuals who suffer their consequences and to our nation’s goal of liberty and justice for all. Moreover, as DHS has explicitly recognized, profiling is not an effective law enforcement or screening tool because it wrongly assumes that characteristics like a person’s race or ethnicity are predictive of the likelihood that they will engage in misconduct. Both of these principles hold true for national security as well.
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 extraordinarily high. In 2021, there were more than 2.2 million people in federal and public prisons and 10.3 million admissions to money to local government — often minor traffic, civil, or criminal violations — as opposed to those that affect public safety the most, such as homicide. This promotes predatory enforcement that singles out certain individuals to subsidize mass enforcement. 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 pressured to decide which laws to enforce and how people should be punished based on the financial needs of their agency rather than public safety. 

Debt stemming from justice system involvement is financially rewarding crimes, and too much toward serious crimes that truly threaten public safety. How can reformers purge the system of these perverse incentives while also protecting public safety? One point we make in the report is that many incentize enforcement of every colorable offense, especially when budgets are tight. Police, prosecutors, sheriffs, and courts are pressured 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 communities, further exacerbating existing social inequality and disadvantage. And, like many other aspects of the U.S. criminal justice system, these practices, along with all their adverse costs and consequences, have a disproportionate impact on people of color.

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The central incentive is simple. Money coming through the system means more money for the locality, agency, or contracted private firm. People subject to criminal enforcement are increasingly asked to reimburse the enforcement machinery that punishes them, often at every stage of the criminal process. Payments are extracted via traffic citations, criminal fines for minor offenses, court surcharges, supervision fees, and property seized for alleged links to criminal activity — now all routine features of American criminal punishment. There is a growing perception that the primary role of the criminal justice system is bill collection. Unsurprisingly, these incentives are strongest when enforcement agencies are allowed to retain all or some of these proceeds — an all-too-common arrangement.

This promotes predatory enforcement that singles out 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 pressured 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 communities, further exacerbating existing social inequality and disadvantage. And, like many other aspects of the U.S. criminal justice system, these practices, along with all their adverse costs and consequences, have a disproportionate impact on people of color.

Your big project this year is on perverse incentives within the criminal legal system. What do you mean by perverse incentives? How do they distort the system and produce bad results? Money plays an outsized role in American criminal justice policy. Our report examines the fiscal and economic incentives that shape how law enforcement officials enforce laws; they are likely to play second fiddle to the growing market for correctional and detention beds to deal with overcrowding. The latter has become the financial lifeblood to many underfunded localities, but it results in the apalling trade of imprisoned people across federal, state, or county lines.

We also discuss more diffuse financial motivations that we call performance metrics that we believe incentivize enforcement with better career opportunities and perks. For police, more stops, citations, and arrests can lead to better shift locations and hours. Prosecutors are incentivized to rack up ever-greater indictments, trials, convictions, and sentence lengths. Direct rewards for these prosecutors and police can include everything from internal promotions to outsize earnings, and increased financial instability.

What makes your research on user-funded justice so important? By removing some of the arbitrary, fiscally driven goals that are put upon police, courts, and other justice system actors, we can create spaces to deal with more serious crimes that truly threaten public safety. 

For a long time, the criminal justice system has been viewed as nothing more than a “war on drugs.” It’s time for policymakers to attempt to “balance” the books.

The challenge is that these financial motivations — and their budgetary perils — 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 favor enforcement dominated by self-interest, not public safety. Public welfare and safety should be the focus of law enforcement agen-

Has your research identified an incentive that warps the system more than the others? Perhaps the most insidious incentive structure is what we broadly call “user-funded” justice. Money coming through the system means more money for the locality, agency, or contracted private firm. People subject to criminal enforcement are increasingly asked to reimburse the enforcement machinery that punishes them, often at every stage of the criminal process. Payments are extracted via traffic citations, criminal fines for minor offenses, court surcharges, supervision fees, and property seized for alleged links to criminal activity — now all routine features of American criminal punishment.

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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.

What makes Bruen different from previous Supreme Court cases, particularly the landmark decision in District of Columbia v. Heller in 2008? Heller, a bare majority of the justices struck down Washington, DC’s ban on handguns in the home. The law at issue was an outlier because only two major cities in the country, DC and Chicago, had such a ban. Heller was a landmark case, constitutionalizing a vast policy area—the regulation of weapons. That said, the law at issue was an outlier because only two major cities in the country, DC and Chicago, had such a ban.

The law challenged in Bruen, in contrast, affects a lot more people than the handgun ban at issue in Heller. New York is one of eight heavily populated states requiring that people seeking to carry a concealed handgun for self-defense have to show that they have what the law calls “proper cause”—basically a greater need for self-protection than others in the same community. A judge determined that the plaintiffs in Bruen did not satisfy that standard. They both received concealed-carry licenses, but 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 for hunting, target shooting, 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.

T he Supreme Court term, the justices will rule on one of the most important gun cases in the court’s history. The case addresses whether gun owners have a constitutional right to carry their arms outside their homes and, if so, whether restrictive concealed-carry licensing laws violate the Second Amendment. Law professor and Brennan Center for Justice fellow Eric Ruben argues that the Supreme Court could uphold New York’s law, but after oral arguments many court watchers think that is unlikely. The Court could also strike down the challenged aspect of the law, the proper cause requirement, which would keep in license but remove most of its teeth. Another possibility is a middle-ground ruling. For example, at oral argument, the plaintiffs’ attorney said that his clients had no intention of going into New York City with their handguns. The justices could use that concession to limit their ruling to nonurban places.

What are some possible outcomes of this case? The Supreme Court could uphold New York’s law, but after oral arguments many court watchers think that is unlikely. The Court could also strike down the challenged aspect of the law, the proper cause requirement, which would keep in license but remove most of its teeth. Another possibility is a middle-ground ruling. For example, at oral argument, the plaintiffs’ attorney said that his clients had no intention of going into New York City with their handguns. The justices could use that concession to limit their ruling to nonurban places.

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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 while traveling, hunting, going 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.

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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.
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 $100 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

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

BRENNAN LEGACY CIRCLE

For more information about how to contribute to these funds or join the Brennan Legacy Circle, please contact Paulette Hodge at hodgep@brennan.law.nyu.edu or (646) 925-8750.

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 Fair Representation in Redistricting Program.

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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.*

$2,000,000+ Fund for America Fund

Lakeshore Foundation

$1,000,000 – $1,999,999

Arnold Ventures

Jacqueline C. and John D. MacArthur Foundation

Robert Wood Johnson Foundation

Craig Newmark Philanthropies

The Bernard and Anne Spitzer Charitable Trust

Anonymous (5)

$500,000 – $999,999

The Chicago Community Trust

(formerly Christian A. Johnson Endowment Fund)

The George Gund Foundation

Horizon Charitable Foundation

The JPB Foundation

Latham & Watkins LLP

Saks Fifth Avenue Charitable Trust

Anonymous (5)

$250,000 – $499,999

The Battery Foundation

The Bauman Foundation

The Arthur M. and Maria Fink Family Foundation

Behringer Foundation

Carnegie Corporation of New York

Century NBCUniversal Foundation

Cybrtrn Corporation

Marti Fasteau and Arnie M. Fredricks Charitable Fund

The William and Flora Hewlett Foundation

The Joyce Foundation

The Kaplan Foundation

The Klairmont Family Foundation

The Mc:Faul Family Foundation

NEO Philanthropy

The John and Wendy New Foundation

Scott Spirit Giving

Somaliland Foundation

Anonymous (3)

$100,000 – $249,999

Amazon

Brennan Family Foundation

Banc of America

Susan Bader and Arthur and Charlene Bader Family Foundation

Change Happens Foundation

Carlton-Crabb Fund and Bray: Jordan Democracy Fund

Ray and Edgar Dolby Fund

Fair Representation in Redistricting FRC – A Foundation of Philanthropic Funds

First River Foundation

Lisa and Douglas Goldman Fund

Goodhead Foundation

Hanging Somaliland Foundation

Heideman Foundation

Lever League Foundation

Lumina Foundation

John D. and Catherine T. MacArthur Foundation

Nancy and Wolfram Marks Family Foundation

Michelle Mercer and Bruce Golden Morton Gilmour Foundation

Open Society Foundations

The Overbrook Foundation

$50,000 – $99,999

A.G. Foundation

The JPB Foundation

Levi and Artisha Bhatti

Booth Foundation

Cassell Foundation

The Doris and Carlos Chávez Foundation

The Cooper-Siegel Foundation

Creesol, Savarese & Moore LLP

Creed Foundation

The Diamonstein-Spielvogel Foundation

The Donald and Carole Chace Foundation

The Cooper-Siegel Family Foundation

Cornerstone Foundation

Crossfit, Savarese & Moore LLP

Credo Charitable Fund

The WhyNot Initiative

The 2020 Census Project

The Tow Foundation

The Schooner Foundation

The Rice Family Foundation

The Arthur M. Blank Family Foundation

The Bauman Foundation

The Battery Foundation

The Bauman Foundation

The Bernard and Anne Spitzer Charitable Trust

Anonymous (11)

$25,000 – $49,999

The Arthur M. and Maria Fink Family Foundation

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Behringer Foundation

Carnegie Corporation of New York

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Lisa and Douglas Goldman Fund

Goodhead Foundation

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