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Republicans Did Something Most People Don't Like, So They're Changing the Rules

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When Nikki Haley, the former South Carolina governor and United Nations ambassador, announced her campaign for the Republican presidential nomination in February, she remarked that the Republican Party had “lost the popular vote in seven out of the last eight presidential elections.” That, she said, “has to change.”

Her fellow Republicans appear to disagree. Across the country, Republican officeholders and activists have abandoned any pretense of trying to win a majority of voters. Last week, for example, Cleta Mitchell — a top Republican lawyer, strategist and fund-raiser — told donors to the Republican National Committee that conservatives had to limit voting on college campuses and tighten rules for voter registration and mail-in ballots. Only then, she said, could Republicans level the playing field for the 2024 presidential election. “The left has manipulated the electoral systems to favor one side — theirs,” she said in her presentation. “Our constitutional Republic’s survival is at stake.”

The Republican Party’s hostility to popular government is most apparent on issues where the majority stands sharply opposed to conservative orthodoxy. Rather than try to persuade voters or compromise on legislation, much of the Republican Party has made a conscious decision to insulate itself as much as possible from voters and popular discontent.

None of this is new, of course. The first major wave of Republican voter restrictions landed in 2011 after the previous year’s Tea Party-driven election. The Supreme Court unraveled a key section of the Voting Rights Act two years later in *Shelby County v. Holder*. And it’s been more than 10 years since Republicans in Wisconsin gerrymandered themselves into an almost impenetrable legislative majority.

There’s still room for innovation, however, and in the past year Republicans have opened new fronts in the war for minority rule. One element in these campaigns, an aggressive battle to limit the reach of the referendum process, stands out in particular. Wherever possible, Republicans hope to raise the threshold for winning a ballot initiative from a majority to a supermajority or — where such a threshold already exists — add other hurdles to passage. It’s an abrupt change from earlier decades, when Republicans used referendums to build support and enthusiasm among their voters on both social and economic issues.

The initiative and referendum processes were envisioned at the start of the 20th century to circumvent an unrepresentative and recalcitrant legislature. And in the year since the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health*, voters have used both to do exactly that. As my newsroom colleagues Kate Zernike and Michael Wines noted on Sunday, “Voters pushed back decisively after the Supreme Court overturned *Roe v. Wade* last year, approving ballot measures that established or upheld abortion rights in all six states where they appeared.”

In the face of public opposition to their unpopular views on abortion, Republicans had three choices: make the case to voters that tough abortion restrictions were worthwhile; compromise and bend to public opinion; or change the rules so that their opponents could not protect abortion rights against the will of a legislature that wants to ban the procedure.

You know where this is going.

Ahead of an effort to enshrine abortion rights into the state Constitution with a ballot measure that would go to voters in a November general election, Ohio Republicans are advancing a ballot measure that would raise the threshold for passing such a measure to 60 percent. If they get their way, the measure could go to voters in an August special election (previously, Ohio Republicans had opposed August special elections). This new rule requiring a supermajority would take only a simple majority to pass.

In the wake of successful ballot initiatives to adopt the Medicaid expansion and legalize recreational marijuana, which passed in 2020 and 2022, Missouri Republicans also want to create a new supermajority requirement for ballot measures. One proposal would require 60 percent of the vote; the other two would require a two-thirds vote. Another related proposal would require any ballot initiative to receive a majority of the vote in half of Missouri's 34 State Senate districts, most of which are sparsely populated. It would create, in essence, an electoral college for ballot initiatives.

Republicans in Florida want to raise their state's threshold for amending the Constitution through ballot initiative from 60 percent of the vote to nearly 67 percent. And after voters in Arkansas rejected a ballot measure to put new restrictions on future ballot measures, Republicans under Gov. Sarah Huckabee Sanders simply passed the changes into law, using the legislature to do what they could not accomplish with the ballot measure.

There is a point to make here about supermajority thresholds for lawmaking, whether it's in or outside the legislature. The common defense of the supermajority threshold is that it is a tool to build or encourage consensus. But as Alexander Hamilton observed of the Articles of Confederation — which demanded consensus, even unanimity, for the Confederation Congress to take action — “To give a minority a negative upon the majority (which is always the case where more than a majority is requisite to a decision) is, in its tendency, to subject the sense of the greater number to the lesser.” In other words, a supermajority requirement is more akin to a minority veto than it is a technique for the promotion of consensus.

There are times and circumstances where demanding a supermajority makes sense. But the Republican opponents of majority rule for ballot initiatives aren't thinking about the best way to structure direct lawmaking by the public. They are thinking about the best way to keep voters from stopping their efforts to ban abortion (or legalize marijuana or give health insurance to working people), as if all power belongs to them and not, say, the people.

As a unit of governance, the state legislature is both unusually powerful, with broad discretion over large areas of public policy, and unusually open to partisan and ideological capture through luck, timing and open manipulation of the rules. Part of the political story of the past decade (and farther back still) is how the Republican Party and the conservative movement have used these facts to their advantage.

With gerrymandering, Republicans in several otherwise competitive states have built a nearly impenetrable wall around their legislative majorities. Through restrictions on the vote, they can keep as many of their opponents from the ballot box as is feasible. With fanciful doctrines like the so-called independent state legislature theory, they could have a pretext for amassing even more power to shape elections — even if the Supreme Court rejects the theory in its strongest form. And if all of this isn't enough to tilt the playing field, Republicans can, as we see, change the rules of referendums and initiatives to limit direct policymaking by the voters.

One of the many self-justifying myths about the counter-majoritarian features of the American political system is that they exist to curtail or prevent the “tyranny of the majority.” Americans today might want to remember something the framers never forgot: Much worse than the tyranny of the many is the tyranny of the few.

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