

Tennessee's 112th General Assembly reconvened on January 11th and adjourned on April 28th having passed major pieces of legislation reforming sentencing practices, education funding, and campaign finance and ethics.

This session, ThinkTN monitored nearly 90 bills that could potentially impact our policy priorities of **strengthening democracy** and **supporting working families**. Of those, 22 bills passed, 22 failed, and four were sent to summer study. Highlights include new laws that further secure Tennessee's election system and help improve the incomes of Tennessee's working families.

KEY UPDATES

- Starting in 2024, all Tennessee counties will be required to use voting machines that provide a **voter-verified paper audit trail (VVPAT)** and perform **election audits**.
- Changes to election laws include **prohibiting ranked choice voting**, **new residency requirements for U.S. congressional candidates**, and **allowing judicial candidates to personally solicit and accept campaign donations**.
- New maps** for state Senate and House and U.S. congressional districts are in place for this year's elections.
- A new law creates a **judicial redistricting process** to be completed by the 2030 judicial election cycle.
- Two new laws help increase the incomes of working families and cushion the blow of future recessions: the removal of the **subminimum wage** and the establishment of a **voluntary workshare program**.

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STRENGTHENING DEMOCRACY

In addition to gubernatorial and federal midterm elections, 2022 is also the year for the once-a-decade legislative redistricting process and every-eight-year Tennessee judicial elections. Accordingly, legislators discussed bills addressing each of these opportunities for impacting civic engagement and demonstrating good governance.

TENNESSEE ELECTIONS

Voter-Verified Paper Audit Trails (VVPAT)

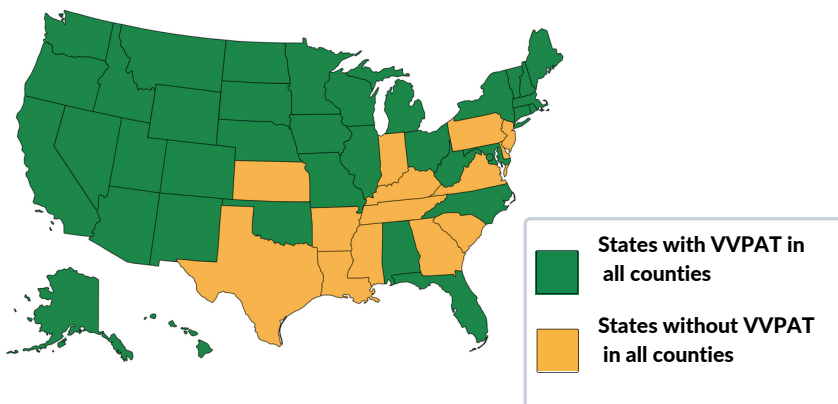
VVPATs have been an **election security best practice** for years, particularly following the designation of the nation's election infrastructure as "critical infrastructure" prompted by cyberattacks on election offices in some states in 2016.⁽ⁱ⁾ Yet nearly two-thirds of Tennessee counties use voting machines that do not provide a VVPAT.

[ThinkTN has previously advocated for](#) Tennessee to join most other states in using voting machines that provide a VVPAT for all votes. Our [post-2020 election analysis](#) showed that while our election system performed well, this remained an area for improvement. One of the report's four recommendations called on the state to provide financial support to allow all counties to purchase voting machines that produce a VVPAT.

Tennessee is one of the only states still using voting machines without VVPAT.

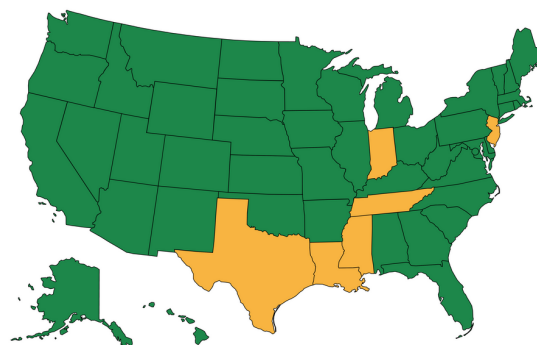
VVPAT Availability in 2016

While **80% of Americans** voted on machines that produced a VVPAT, **fewer than one in ten Tennessee voters** -- in just seven counties -- did the same.



VVPAT Availability in 2020

Though more Tennesseans -- **in 28 counties** -- voted with VVPATs, Tennessee remained **one of just six states** still mostly without them.



Source: Verified Voting

SB 2558/HB 2331, which passed unanimously, ensures all Tennessee counties will use voting machines that produce a VVPAT by January 1, 2024, though counties may apply for a two-year extension. While past efforts on VVPAT have seen Democratic-sponsored legislation fail to get out of committee, this year's bill was initiated by Republicans, had the backing of the Secretary of State's office, and eventually included bipartisan sponsorship.

Why are VVPATs Needed?

Following the 2000 election, many states transitioned to electronic machines where voters select candidates on a computer touch screen.(ii)

While this simplified the process of casting and counting votes, results are stored directly on the machine's memory or a memory cartridge without a paper record to confirm accuracy and support election audits.



A VVPAT is a "paper trail" accompanying an electronic tally of votes. This comes in multiple formats:

- A **hand-marked paper ballot**.
- A **printed ballot** from a voting machine called a Ballot Marking Device.
- A **printed receipt** accompanying a Direct Recording Electronic voting machine.

VVPATs allow voters to review a paper copy of their ballot to ensure it reads as they intended.

This paper "back-up" can be counted by hand and matched with the electronically tallied vote to verify vote counts.

Enhanced Election Audits

Election audits are a common **election integrity best practice** to ensure votes were counted accurately.(iii) In Tennessee, the only counties required by state law to perform election audits have been those using machines providing a VVPAT.



SB 2675/HB 2585, which passed unanimously, institutes an election audit system for all counties in Tennessee.

Beginning in 2024:

- The secretary of state will randomly select three counties after an August election and six counties after a November election to **conduct an election audit of the Secretary's choosing** (a performance, traditional, or risk-limiting audit).
- After the November election, **all other counties will conduct a performance audit** to review the procedures used to conduct the election. The **Division of Elections will conduct these audits for a randomly selected** six counties.
- The **existing requirement for counties with VVPAT remains** for those not randomly selected by the secretary of state. With the passage of SB 2558/HB 2331, this **will eventually apply to all counties**.

What are Election Audits?

Election audits provide extra assurance that certified election results have been counted accurately.(iv)

Audits either review overall election procedures or recount votes to verify results. Importantly, audits recounting votes are conducted in the window **between election day and when election results are certified** so that a wider recount may be conducted if necessary.




There are multiple types of election audits:


- A **performance audit** reviews the procedures followed to conduct an election.
- A **traditional audit** involves election officials hand-counting randomly chosen ballots.
- A **risk-limiting audit** is a review of a random sample of ballots that allow statistical significance so that results can be applied to elections as a whole.


Secretary of State Legislative Priorities

In January, at a House Local Government Committee meeting, the secretary of state and coordinator of elections shared their voting priorities for the session. In addition to enhancing election audits (**SB 2675/HB 2585**), priorities included **prohibiting ranked choice voting, requiring legislative approval before entering into a consent decree impacting election laws, and prohibiting non-citizen voting** -- all of which passed and have been signed into law.

 **Prohibiting Ranked Choice Voting: [SB 1820/HB 1868](#)** (S: 26-4-1; H: 74-19-1), which passed mostly on party lines, adds clear language prohibiting a county election commission from using ranked choice or instant runoff in a statewide or local election.

Memphis voters have repeatedly voted in favor of using ranked choice voting -- where voters rank candidates rather than choosing only one -- in local elections, but the state has argued the process isn't allowed by state law, and the issue has been tied up in court.(v)

 **Requiring Legislative Approval to Enter Into a Consent Decree: [SB 2487/HB 2483](#)** (S: 27-6; H: 69-21) requires officials to first consult with the Senate and House speakers before entering into a consent decree -- a court-enforced settlement agreement -- to change election laws or rules. It also gives the legislature standing to file suit against election officials for their failure to do so.

 **Prohibiting Non-Citizen Voting: [SB 2245/HB 2128](#)** (S: 25-6; H: 92-0/83-10) prohibits local governments from granting non-citizens voting rights. Although currently, voters must be a citizen of the United States to be eligible to register to vote, the bill also expressly states that non-U.S. citizens shall not vote in federal, state, or local elections.

The bill makes additional changes to election procedures, including expanding the sources election officials may use to verify registered voters' addresses to include "commercially available data."

Commercially Available Data

SB 2245/HB 2128 now allows election officials to use "commercially available data, such as data from credit agencies" to verify the address on a voter's registration record. Like most other states, Tennessee had previously limited the sources election officials may use to specific government databases.(vi)

Commercially available databases are not as accurate as those of government agencies -- only California includes similar language in state law -- which could mistakenly initiate the process to remove voters from the registration rolls.

An additional provision of this bill would have required recording the reason why a voter with a disability needed assistance casting a ballot at a polling place. A similar provision was eliminated from last year's Texas omnibus voting bill for concerns of violating medical privacy and deterring participation.(vii)

Though included in the version of the bill initially passed in the House and through Senate committees, the provision was amended out on the Senate Floor.

Bills Passed in Only One Chamber

Bills related to polling place procedures and student voting nearly became law, but they only gained enough support in one chamber.

Implementing a "Tennessee Student Voter Act"

SB 2064/HB 2489 sought to reform a number of voting policies impacting student voters, including: require high schools to inform students about voter-registration eligibility upon turning 18, allow student IDs issued by state schools to count as Voter IDs, and allow first-time voters to vote absentee in their first election if they hadn't registered to vote in person.

The bill passed out of the Senate State and Local Government Committee unanimously and made it to the Senate Floor after being amended to simply allow high schools to inform 18-year-old students that they may be eligible to register to vote. But it failed in House Local Government Committee.

Credentialling Press to Access Polling Places

SB 1822/HB 1914 sought to define the people allowed to enter polling places during elections and to allow counties to create a press credentialling process.

Though the bill's sponsor stated this provision was necessary to address individuals with social media and YouTube accounts attempting to gain press status, the broad language could have resulted in inconsistent interpretation and application across the state.

The bill passed in the House (70-20-1) and unanimously through Senate State and Local Government Committee but was not sent to the Senate Floor for a final vote.


Designating a Restroom for Campaign Workers and Volunteers

SB 2504/HB 2842 passed the full Senate unanimously and passed out of the House Elections and Campaign Finance Subcommittee before failing on a voice vote in the full House Local Government Committee.

The bill sought to address what bill sponsors called an uneven implementation of current state law by allowing campaign volunteers to use polling place restrooms if they covered up or removed their campaign signs.

New Residency Requirements for Congressional Candidates

Candidates for U.S. House and Senate seats were previously required to be Tennessee residents, with no time-period associated to the length of residency.


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SB 2616/HB 2764 (S: 31-1; H: 86-0-1/70-18-1) passed after the House and Senate aligned on the new law taking effect immediately. Initially, the two chambers disagreed on whether the new requirement should go into effect before (Senate) or after (House) this November's election.

The bill adds a three-year period to the residency requirement for candidates to qualify for U.S. Senate and House seats. The residency requirement now matches those for state legislators.

Though the bill was sent to the governor to sign on April 1st, he returned it unsigned on April 13th. As a result, the new law does not affect this year's congressional candidates as it went into effect past the candidate-filing deadline of April 7th.

New Requirements and Procedures for Judicial Candidates


Two new laws impact judicial candidates, though one has not yet been sent to the governor for signature.

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Judicial Campaign Solicitation: SB 2010/HB 1708 (S: 24-5-2; H: 76-16-3) authorizes judicial candidates to personally solicit and accept campaign donations. Previously, like in most other states where judges are elected, a judicial campaign committee served as an intermediary, and judicial candidates could not personally solicit or accept donations.(viii)

Judicial Ethics Committee Advisory Opinion

Tennessee's Judicial Ethics Committee issued an Advisory Opinion on the new law cautioning judicial candidates that though now permitted by law, **other sections of the Code of Judicial Conduct could still be impacted** by the personal solicitation or acceptance of campaign contributions.(ix)


Specifically, the committee highlighted requirements to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary" and to "avoid impropriety and the appearance of impropriety."

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Disqualification of Candidates Not in Good Standing: SB 2478/HB 2538 (S: 25-3-3/26-4-1; H: 92-1/89-3) requires judicial candidates to be in good standing with the board of professional responsibility and disqualifies a candidate who has been publicly censured or suspended within the previous ten years.

The House and Senate again initially disagreed on whether to have the law take effect immediately (House) or after the judicial elections currently in progress (Senate). The final version passed does not go into effect until October 1, 2022, so it does not apply to the current judicial candidates. The bill has not yet been sent to the governor for signature.

GOOD GOVERNANCE

Redistricting

 In January, legislators began the session by swiftly passing -- mostly on party lines -- new district maps for state Senate ([SB 0780/HB 1037](#)), House ([SB 0779/HB 1035](#)), and U.S. congressional ([SB 0781/HB 1034](#)) seats.(x)

Redistricting Process Background

In 2021, ThinkTN shared a [three-part series on the redistricting process](#), including recommendations to encourage more public engagement and increase transparency. In January, after the bills passed both chambers, we [reflected on those recommendations and process outcomes](#).

While legislators made marginal improvements to transparency and engagement, most other states went further, for example, by more proactively seeking public input in their redistricting process. ThinkTN will release a final brief later this year comparing our state's process with those in other states.

Redistricting Outcomes

The new district maps reflect changes in population over the past decade, with population growth in Middle Tennessee, and losses in West and East Tennessee. The majority party has the power to draw districts, as a result, all three maps soundly protect and strengthen the Republican supermajority.

- The new **U.S. congressional** map split Davidson County into three districts when it had previously been contained in one district.
- The **House** map split the maximum allowed 30 counties, left six districts the same, created eight new districts, and initially paired 15 incumbents.(xi)
- The **Senate** map split nine counties, added an additional majority-minority district (so there are four total), and paired no incumbents.



The House and Senate maps have been challenged in court, and both cases are ongoing.

The legal challenges claim the:

- **House map** splits more counties than is necessary, and the
- **Senate map's** failure to consecutively number the districts within Davidson County violates the state's constitution. (xii)

In April, a three-judge panel appointed by the state Supreme Court to hear constitutional claims against the state -- including redistricting challenges -- initially **blocked the Senate map** from going into effect and gave the Senate 15 days to address the numbering issue.(xiii) A week later, the state Supreme Court overturned the decision and **allowed the Senate map to stand**, citing the quickly approaching candidate-filing deadline.(xiv)

While the lower court's injunction was overruled, the case is still expected to head to trial.

Judicial Independence

Continuing a [trend from last year](#), legislators discussed two bills that would diminish judicial independence by inserting the legislative branch into the judicial branch.



Attorney General Nominating Process: [Senate Joint Resolution 1](#), which failed on a voice vote in the House Civil Justice Subcommittee, sought to change the state's attorney general nomination process. Unlike most other states where voters elect the attorney general, Tennessee's is appointed by the state's Supreme Court.

Having already passed both chambers in the previous legislative session and the Senate last year, the resolution would have added a constitutional amendment to this November's ballot requiring legislative confirmation of the Supreme Court's candidate.



Judicial Redistricting: [SB 2011/HB 1832](#) (S: 25-5-1; H: 92-0) establishes a judicial redistricting process, which passed on party lines in the Senate and unanimously in the House on a consent calendar. The bill has not yet been sent to the governor for signature.

The bill recreates an advisory task force first established in 2018 to study weighted caseload data and solicit public input to determine whether judicial districts should be redrawn.(xv) The task force will issue a report to the legislature by January 1, 2027.

It also adds two additional requirements:

- The **legislature is tasked with reapportioning judicial districts.**
- Failure to do so will lead to the **comptroller reducing funding by 10%** in judicial districts they deem to have a disproportionately high number of judges.

The initial version of the bill, passed through House committees, saw this process occurring **every ten years**, reflecting the legislative redistricting process following the decennial census. The bill was amended in the Senate to happen **only one time** -- before the next judicial elections in 2030 -- to avoid conflicts with the judicial terms proscribed in the state's constitution.

While Tennessee's judicial district map was last drawn in 1984, subsequent changes -- to reflect variations in population and caseloads in individual districts -- have been made through legislation on an ad hoc basis.

With this new law, the legislative and executive branches have increased their power to shape the judicial branch by allocating or reducing funding to districts.



FAMILY ECONOMIC SECURITY

Coming off the heels of the Covid-19 pandemic and recession, the legislature also discussed bills impacting family economic security. This section highlights a few bills that addressed families' debt and income, with two succeeding, one failing, and one sent to summer study.

Eliminating Juvenile Fines and Fees

SB 2172/HB 2307, a bipartisan bill, sought to eliminate fines and fees assessed to parents or guardians of Tennessee juveniles involved in the justice system.

Eliminating these court costs would support families that are struggling financially as well as help to reduce crime by reducing rates of reoffense in communities across our state.

With support from Republican and Democratic legislators and groups from across the political spectrum, legislators acknowledged a need to address this issue but agreed more work was needed on the bill's language.

The House Civil Justice Committee sent the bill to summer study, committing to a further review.

Removing the Subminimum Wage

SB 2042/HB 2078, a bipartisan bill known as the "Tennessee Integrated and Meaningful Employment Act," passed unanimously in the House and 27-3 in the Senate.

Tennessee is now one of only 11 states to ban this subminimum wage.(xvi) With this bill, employers are required to pay employees whose productivity may be impaired by age, physical or mental deficiency or injury, no less than the federal minimum wage.

Removing subminimum wages that depress incomes of working Tennesseans with disabilities will allow more individuals and working families to make ends meet.

Establishing a Voluntary Workshare Program

SB 0958/HB 1274, which passed unanimously, but has not yet been sent to the governor, establishes a voluntary workshare program for Tennessee businesses.

Through the program, businesses submit a plan for approval to identify workers that will have their hours reduced and receive partial unemployment insurance payments to make up a portion of their lost wages. Employers can choose to reduce hours rather than laying off workers.

In allowing workers to retain access to health, retirement, and other fringe benefits, workshare programs help mitigate the impacts of joblessness, reduce unemployment during economic downturns, and lower unemployment insurance costs to taxpayers.

Extending COVID-19-Related Paid Family Leave

SB 2672/HB 2723 sought to provide five days of paid leave to state employees whose children either tested positive for Covid-19 or whose daycares or schools were closed because of Covid-19.

The Senate sponsor stated that the Department of Human Services was on board with the change as it gives the agency the power to set the parameters of the policy.

Though the bill passed the Senate (25-6), it failed on the House Floor (44-38-4).

Notes and References

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- (viii) Weiss, Debra Cassens. (April 11, 2022). ABA Journal. New Law Allows This State's Judges to Personally Solicit Campaign Donations; Ethics Opinion Adds Wrinkle. See <https://www.abajournal.com/web/article/new-law-allows-this-states-judges-to-personally-solicit-campaign-donations-ethics-opinion-adds-wrinkle>.
- (ix) Tennessee Judicial Ethics Committee. (March 29, 2022). Advisory Opinion 22-01. See https://www.tncourts.gov/sites/default/files/docs/advisory_opinion_22-01.pdf.
- (x) SB 0780/HB 1037 (S: 26-5; H: 71-26), SB 0779/HB 1037 (26-5; H: 71-26), and SB 0779/HB 1035 (S: 23-6; H: 70-27).
- (xi) The initial version of the House map paired 15 incumbents in seven districts. Six Republicans were paired in three districts, with one member in each pairing having already announced their retirement. Nine Democrats were paired in four districts, with one district pairing three incumbents in Davidson County. On the House Floor, the map was amended to unpair incumbents in Davidson County, leaving one paired incumbent instead of three, one of whom was retiring.
- (xii) Sutton, Caroline. (February 23, 2022). News Channel 5 Nashville. Lawsuit Filed Against Tennessee Republicans, Calling New State House, Senate Maps 'Unconstitutional.' See <https://www.newschannel5.com/news/lawsuit-filed-against-tennessee-republicans-calling-new-state-house-senate-maps-unconstitutional>.
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