

Is The Constitutional County Movement The Newest Threat To Democracy?

June 2024

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Key Takeaways

- The U.S. is witnessing a growing movement attempting a power grab at the county level of government.
- This movement first focused on sheriffs claiming they had the right to decide which federal, state, and municipal laws to enforce based on their own interpretation of the Constitution.
- This movement has spread to local government, with county commissions making similar claims about their right to decide what laws, particularly gun laws, can be enforced within their counties.
- Based on in-depth data collection across 668 counties in nine battleground states, Public
 Wise determined that around a quarter of the counties we investigated now adhere to this
 movement, articulating a particularly concerning version of the idea that the county
 commission's legislative positions overrule state and federal laws, subverting the
 established legal hierarchy inherent to our democratic system.
- The push to allocate more powers to the county level of government one of our least democratically accountable levels of elected government – threatens to further aggravate the problems of disproportionate rural representation already embedded in the DNA of the U.S. electoral system.





RIGHTWING CAPTURE OF COUNTIES – THE SHERIFF REVOLT SPREADS TO COUNTY COMMISSIONS

While many <u>election deniers</u> lost their elections in 2022, elected officials who deny the reality of the 2020 Presidential election and support anti-democratic measures that limit access to the ballot box are still in power at every level of government in the United States. When media outlets cover this issue, they tend to focus on high-level positions, but just as concerning is the number of these officials in power at the local level. Many of these officials are responsible for administering elections. At Public Wise, we've taken on the task of <u>finding and documenting the presence of election deniers</u> in local election administration positions across nine states which have been decisive in U.S. Presidential elections in the last 15 years.

But election administration is not the only way local elected officials could accelerate the erosion of our democratic norms. For several years now, the U.S. has witnessed a growing movement of county-level law enforcement officials who reject decisions made through the democratic process at the federal, state, and local levels by declaring sheriffs as the final arbiter of the laws of the land, even as they face some of the lowest democratic accountability of any elected positions.

This movement is represented primarily by the <u>Constitutional Sheriffs and Peace Officers</u>
<u>Association</u> (CSPOA). Founded by former Graham County Arizona sheriff Richard Mack
following President Obama's election, the movement is based on a pseudo-legal belief that the
Constitution endows county sheriffs with powers above and beyond that of state or federal
lawmakers or judges. It asserts that sheriffs can and should refuse to enforce laws they believe
unconstitutional.

The actual legality of their argument is <u>complicated</u>. While Article 6 of the Constitution clearly states that local governments may not override federal laws, the disputed validity of the movement's claims centers on a 1997 Supreme Court case, <u>Printz v. United States</u>, in which Sheriffs Jay Printz and Richard Mack were the petitioners in the case. The court ruled that federal officials could not force county-level law enforcement to conduct federal background checks on handgun sales, as had been mandated in the Brady Handgun Violence Prevention Act. More broadly, it established a legal precedent that Congress does not have the power to compel county law enforcement officers to carry out federal mandates on its behalf. According to Mack, this ruling showed that "the federal government could not tell him what to do; that they were not <u>his boss</u>."

So while Printz v. United States never directly empowered sheriffs to interpret the constitutionality of laws, Mack adopted this broader interpretation as he spread the gospel of his movement. Unsurprisingly, the movement's "constitutional" focus tends to be limited to issues



of particular concern to the right wing of the U.S. political spectrum, like gun rights, COVID mandates, undocumented immigration, and, most recently, supposed fraudulent voting. Moreover, while Printz v. United States focused on the limited power of federal governments, Constitutional Sheriffs have frequently expressed that they are further empowered to reject the enforcement of state-, county-, and city-level legislation and executive orders.

This attempted shift to place more power in the hands of sheriffs would mean our governance systems become even less representative. After all, local races, like those of sheriffs, suffer from notoriously <u>low turnout rates</u>, and candidates often run unopposed, with <u>incumbency</u> advantages even more pronounced than for more high-profile seats. Media coverage of sheriffs' races tends to be sparse.

Despite such low accountability to the electorate, sheriffs adhering to the CSPOA have been able to redirect tens of thousands of dollars of county funds towards the organization, through \$2500 "lifetime membership" fees directly from county coffers and Constitutional Sheriff trainings for county police officers who are granted training credits from work if they attend.

The movement until now has mostly limited itself to the purview of gun laws, but recently it has increasingly waded into other legislative issues, such as opposing COVID mandates and the protection of federally-designated endangered species. While these more niche areas of lawmaking may not set off alarm bells for much of the public, the spread of the idea itself – that sheriffs and counties have special lawmaking powers – creates a concerning precedent. What if county sheriffs decided that they no longer needed to enforce federal provisions related to civil rights, or key federal voting rights laws?

Most worrisome is that the movement has increasingly taken on an explicitly anti-democratic turn, building worrying ties with right-wing election denier groups: While Oath Keeper-affiliated groups in Arizona engaged in voter intimidation efforts by surveilling and harassing early voters who made use of ballot drop boxes, these same groups invited Yavapai County Sheriff David Rhodes and Richard Mack to come speak at their meetings, and Pinal County Sheriff Mark Lamb called for increased patrol at ballot boxes to report purported suspicious activity to the right-wing election denier group True the Vote.

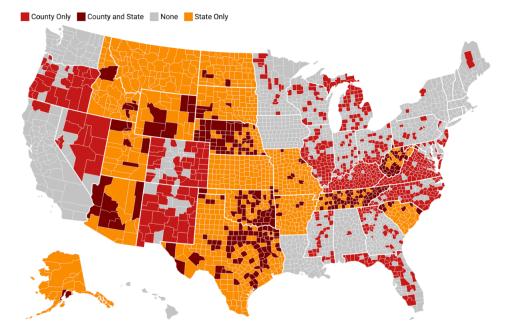
In recent years, this push for county sheriff legislative supremacy has begun a new evolution, spreading to other positions of county-level government. While still particularly focused on gun control efforts, a growing number of county commissions across the country are declaring themselves "Constitutional Counties" or "Second Amendment Sanctuaries."



Tolerance of this kind of soft-vigilantist politics may be opening the floodgates for other forms of extremist takeover of government at the county level – four Virginia counties have passed resolutions to formally recognize and cooperate with right-wing militias. In Michigan, the Holton Township not only passed a Second Amendment Sanctuary resolution, but included an addendum establishing an official militia that any citizen in the township may join. As the investigatory research institute Political Research Associates puts it, the goal of these kinds of resolutions is to transform county governments into "guerillas when Democrats are in control, and as pro-state paramilitaries when MAGA Republicans are in charge."

The lack of attention paid to this movement is concerning when considering its potential size and proliferation. While there is no official number of counties that have allied themselves to this movement, Second Amendment sanctuary advocates have claimed that as many as a third of the nation's 3,143 counties and county equivalents have passed Second Amendment sanctuary declarations. Unfortunately for those hoping to understand this phenomenon at a deeper level, until now, only activists from the pro-Constitutional County movement have attempted to quantify its spread.

Second Amendment Sanctuaries According to Pro-Sanctuary Advocate Group



Source: TacticalGear.com

These numbers have not been confirmed by outsiders to the movement, as it has gone relatively under-investigated by researchers and scholars, and mostly covered in journalistic anecdotes.

Public Wise's report is the first to provide objective estimates of the spread of this movement across U.S. counties. We take into consideration subtle differences in the language of resolutions to understand exactly to what degree the Constitutional County movement may be a harbinger of further erosion of democratic norms in the United States.



FROM SHERIFFS TO COUNTIES - THE SPREAD OF AN IDEOLOGY

How has a sheriff's movement to rebel against state and federal government now spread into other positions of county government?

In fact, the origins of a "counties' rights" movement go much deeper than the founding of the CSPOA. The specific county commission-focused iteration of the movement is just a few years old, and the Constitutional Sheriffs movement has been around for just over a decade. Yet the roots of this broader tradition extend far back into American history. It is clearly tied into American vigilantism – a political tradition originating in the realities of US frontier expansion and particularly marked by episodes of extreme racial and anti-immigrant violence.

This iteration of the movement merits deeper investigation, both its history and its current status. To do so, we at Public Wise looked at a handful of politically crucial states, taking a detailed view of the actual language used in the passage of resolutions declaring counties to be "Constitutional" or "Second Amendment sanctuaries." We find that in our nine focus states, almost half the counties have passed generic pro-gun rights resolutions, establishing their position counter to federal- or state-level gun regulation. About a quarter have passed more extreme Constitutional County resolutions that explicitly place the power to enforce or disregard state and federal law in the hands of the county commissions. Especially as the latter category of counties grows, this movement represents a spreading local-level risk to American democracy.

In the sections that follow, we walk through the history of the movement, our analysis, and our findings. We also discuss how this movement might tie into, and in turn be fed by, a broader erosion of democratic functioning in the U.S. in general, inextricably linked to highly disproportionate representation given to rural voters in certain states in violation of the principle of "one person, one vote."



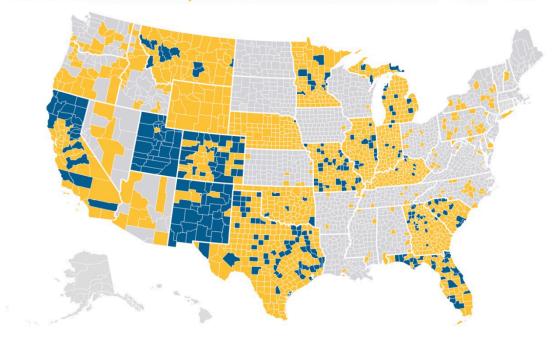
COUNTY RIGHTS: THE LATEST ITERATION OF AMERICAN VIGILANTIST TRADITION

The Constitutional Counties movement is grounded in a longer and very American right-wing history of vigilantism and opposition to federal government. This broader movement has resurfaced at different times in response to specific policies that activate and mobilize its base.

For instance, when the 2013 Sandy Hook elementary school massacre raised fears of gun control legislation, the CSPOA mobilized more than 400 sheriffs and 19 state sheriffs' associations to sign a public petition stating that the U.S. Constitution required them to oppose and not enforce President Barack Obama's hypothetical gun-control proposals.

Hundreds of U.S. sheriffs imagine the U.S. Constitution gives them powers they don't actually have

More than 400 sheriffs and 19 state sheriffs' associations were listed as supporters of the idea that the U.S. Constitution required them to oppose President Barack Obama's gun-control proposals in the wake of the 2012 Sandy Hook Elementary School shooting in Newtown, Connecticut. There is no such constitutional provision. Of more than 3,000 counties in the U.S., about half saw either their county sheriff or their state's sheriffs' association – or both – listed.



Alaska and Connecticut don't have sheriffs. Hawaii and Rhode Island have appointed sheriffs whose jobs are different from those of sheriffs in other states.

Map: The Conversation, CC-BY-ND • Source: Holman and Farris, from Constitutional Sheriffs and Peace Officers Association data • Created with Datawrapper



While the group has faded into inaction several times since then, they recently reemerged during the debate around Covid-19 mitigation measures. Sheriffs from Michigan to North Carolina to Arizona, coordinated through CSPOA networks, issued declarations that they would refuse to enforce their governor's mask mandates or stay-at-home orders.

Through the last three years, the movement has become increasingly linked to election denialism around the 2020 election results, with CSPOA teaming up with True the Vote and calling on "local <u>law enforcement agencies</u> to work together to pursue investigations to determine the veracity of the '2000 Mules' information." '2000 Mules' is a reference to the title of Dinesh D'Souza's documentary, which purports to find proof of fraud in the 2020 election lost by former President Donald Trump, which the CSPOA says presents, "very compelling physical evidence."

One local Constitutional Sheriff in Michigan, Dar Leaf, was placed under state investigation for his involvement in seizing a <u>vote tabulator</u> as part of an investigation into 2020 election fraud, but was <u>never charged</u>, though some of his collaborators were. Leaf is currently <u>refusing a subpoena</u> ordering the release of materials he collected in his investigation.



THE RISE OF THE CONSTITUTIONAL COUNTY

The newest iteration of this vigilantist ideology has moved away from sheriffs to focusing on county commissions. Interestingly, this group actually adopted the language first espoused by a U.S. campaign from the opposite side of the political spectrum: sanctuary cities. "Sanctuary cities," since they first appeared in the 1980s, was an unofficial term to designate jurisdictions that resolved to limit cooperation with federal immigration authorities in efforts to find and remove unauthorized immigrants in the United States.

The right-wing adaptation of this term for the Second Amendment Sanctuary movement would seem at first to merely "flip the script" on liberals. After all, both immigrant sanctuaries and gun sanctuaries are forms of local resistance to the enforcement of laws passed by a higher government body, and both forms of sanctuaries seek to resist the law by simply refusing to enforce them, rather than affirmatively passing contrary legislation. On the legalistic side of this debate, many legal scholars have pointed out that the 10th Amendment Constitutional protections of states or other sub-jurisdictions from federal oversight (such as in regards to immigration enforcement) do not have a legal parallel in counties refusing state oversight, whether from gun control or any other polities.

In any case, since 2019, hundreds of county commissions across the United States have voted to establish "Constitutional Counties" or "Second Amendment sanctuaries," ordering law enforcement not to undertake gun control orders from the federal or state government that county-level officials have deemed unconstitutional. A typical example of the kind of language used in these declarations can be found in the 2019 resolution passed by <u>Tazewell county</u>, <u>Virginia</u>:

The Board hereby expresses its intent to adopt the following measures... 3) Provisions to eliminate funding for any enforcement of regulations which would unconstitutionally infringe upon rights of Tazewell County's law-abiding citizens to keep and bear arms, in accordance with the full breadth of the Second Amendment.

While these resolutions are often developed in coordination with law enforcement like local prosecuting attorneys and the sheriffs, in several cases these have even been independent initiatives by commissions without the knowledge of – or even in opposition to – local sheriffs.



HOW MANY COUNTIES ARE CONSTITUTIONAL COUNTIES?

In order to conduct our own analysis to assess how widespread the Constitutional County movement might actually be, Public Wise collected data on each county in nine battleground states in the U.S.: Arizona, Florida, Georgia, Michigan, Nevada, North Carolina, Ohio, Pennsylvania and Wisconsin. We searched online – in national and local media outlets, as well as the minutes of county commissions when available – to classify all 668 counties into four possible categories.

While Second Amendment Sanctuary/Constitutional County advocates are motivated to count any kind of resolution on this topic as a victory, we were interested in parsing out the different types of statements that have been released.

We were particularly interested in how such statements relate to the delineation of powers of government and different levels of office, since this is especially important for the functioning of democracy. While many counties have passed pro-gun rights resolutions in recent years, only some of these include language that imply the rights of county-level governments to overrule state and federal laws or determine the constitutionality of a given law.

Classification of Counties

We broke up counties' statuses into four distinct types of support or lack of support for the movement. A county was classified as **no gun rights resolution proposed** if we could find no evidence that any kind of gun rights proposal was ever formally brought forth and voted on by the board. Counties where there was evidence of a community effort to bring forth a resolution (such as an online petition) but where we could not find any record of the proposal being discussed or seen by the commission were included in this category.

We classified counties as **gun rights proposal failed** if a gun rights proposal was brought forth to the board and was discussed or voted on but did not pass. This also includes cases where a resolution was passed that explicitly only affirms support for the Constitution in general without a special focus on gun rights, the Second Amendment, or a state-level gun rights Constitutional clause, which was a response taken by some commissions.

Counties that passed a resolution that was limited to voicing support or affirming loyalty for the Second Amendment or gun rights, or urging higher-level elected officials to not pass gun control legislation, but that did not explicitly attempt to legislate concrete action, such as declaring that local law enforcement are not allowed to enforce gun laws, are classified as **gun rights resolution passed.**



We include in this category counties where local media reported that some kind of pro-gun rights resolution had been passed but where we could not access the specific language used.

To be considered a **Constitutional County** according to our classification scheme, the resolution must rise to the level of either demanding that local law enforcement not enforce gun laws for example, by saying that no funding or resources would be devoted to gun control enforcement, or declaring that they allow county-level law enforcement their own discretion in deciding what gun control legislation is constitutional and/or whether to enforce it. This is regardless of whether the resolution explicitly uses the specific label of "Constitutional County" or "Second Amendment Sanctuary."

Results

In 46% of the 668 counties across the nine battleground states we researched, we found no evidence of a Constitutional County vote taking place; in 7% of counties, we found that a Second Amendment sanctuary or Constitutional County proposal had been discussed before the county commission board but no gun rights resolution had been passed; and in 25% of counties, a gun rights resolution had been passed but did not include a provision implying the county's legislative or judicial powers beyond those of state and federal legislators.

We classified 23% of counties studied as "Constitutional Counties." In these counties, commissions had passed a resolution which contained an implication that they could reject the enforcement of state and/or federal gun legislation, either by denying funds to enforce these laws, or permitting local law enforcement to decide for itself whether or not to enforce.

It is worth noting that there was significant variation across states we studied. Florida had the highest percentage of "Constitutional Counties," with nearly half of its 67 counties having passed a qualifying resolution, whereas just 7% of Pennsylvania counties had. While two-thirds of Wisconsin counties had never debated a gun rights proposal, this was only true for one-fifth of North Carolina counties. North Carolina had the highest percentage of counties (75%) which had passed some kind of pro-gun rights resolution, with 44% of those being "Constitutional County" resolutions.*



Percentage of Counties Classified Into Each Gun Rights Resolution Status By State*

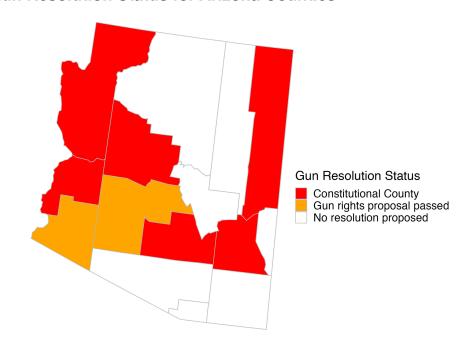
State	% Constitutional County	% Resolution Passed	% Failed	% No proposal
Arizona	38	15	0	47
Florida	49	18	4	28
Georgia	17	15	4	64
Michigan	36	30	10	24
Nevada	24	41	0	35
North Carolina	33	42	6	19
Ohio	10	27	13	50
Pennsylvania	7	25	6	61
Wisconsin	10	15	8	67
Total	23	25	7	46

^{*} Percentages may not add up to exactly 100.0% due to rounding error

While our findings estimate a lower percentage than the third claimed by the Constitutional County movement, it is worrying that nearly a quarter of counties we studied fall into the strictest category of Constitutional/Second Amendment sanctuary counties, especially considering that this essentially means these resolutions elevate the rights of law enforcement over all other branches of government (notably, the judiciary) and elected offices (such as at the state or federal level). If we count the resolutions that merely state some kind of political support for gun rights however, we find that in fact just short of half of counties in our nine included states can be considered to have passed a supportive resolution for gun rights, while a slight majority fell into the categories of having either never discussed a resolution, or failed to pass a resolution.

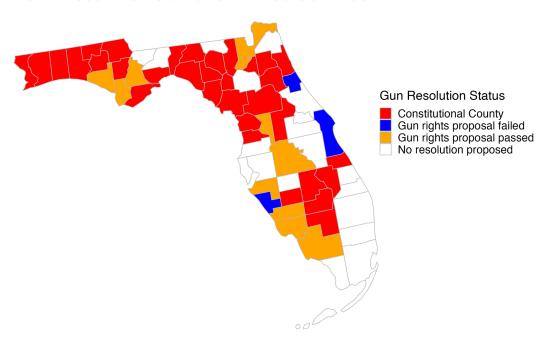


Gun Resolution Status for Arizona Counties



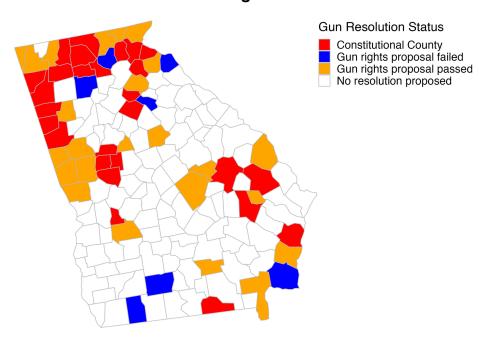
Data and Mapping by Public Wise, Data compiled as of November 2023

Gun Resolution Status for Florida Counties



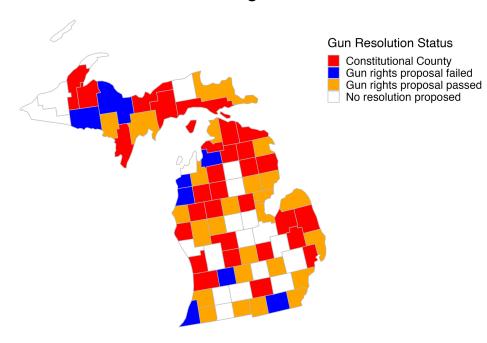


Gun Resolution Status for Georgia Counties



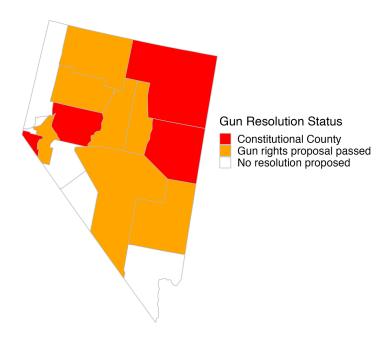
Data and Mapping by Public Wise; Data compiled as of November 2023

Gun Resolution Status for Michigan Counties



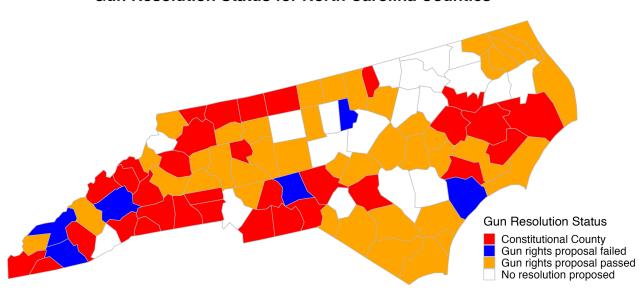


Gun Resolution Status for Nevada Counties



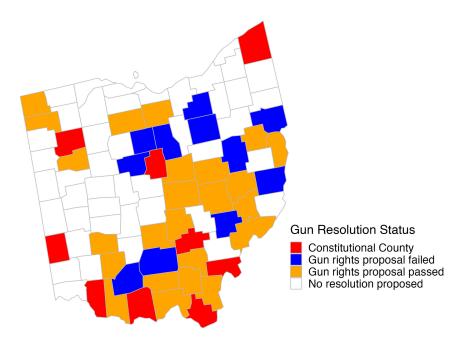
Data and Mapping by Public Wise, Data compiled as of November 2023

Gun Resolution Status for North Carolina Counties



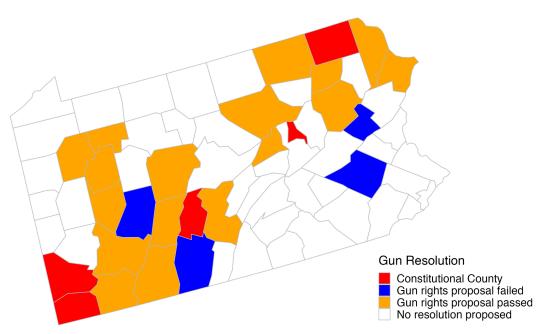


Gun Resolution Status for Ohio Counties



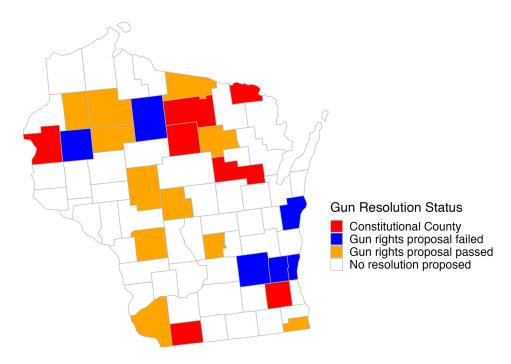
Data and Mapping by Public Wise, Data compiled as of March 2024

Gun Resolution Status for Pennsylvania Counties





Gun Resolution Status for Wisconsin Counties





"STATES' RIGHTS" ON STEROIDS

The emergence of right-wing calls for county supremacy is not happening in a vacuum. It is best understood in the context of how power is shared within our nested federal and state systems of governance and in an <u>electoral system that creates disproportionate rural influence over our political and judicial system</u>.

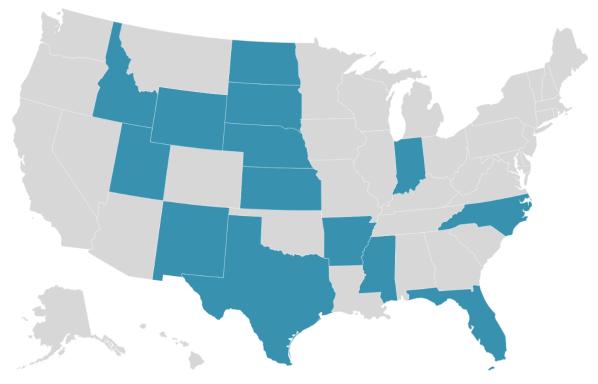
In 1932, Supreme Court Justice Louis Brandeis labeled the 50 U.S. states "laboratories of democracy," where new policies could be incubated, tested, and spread to other states. Indeed, the American federal system gives state authorities control over many aspects of electoral administration, the core machinery of our democracy. In classic defenses of a federalist system, decentralization of institutions is argued to be a safety valve against tyranny.

Of course, states' rights as a clarion call is famously associated with the anti-democratic cause of upholding slavery in the United States, but less well-known is the more recent history of state-level authority in efforts to erode U.S. democracy. Political scientist Jacob Grumbach argues in <u>Laboratories Against Democracy</u> that state-level policymakers increasingly use their authority over electoral administration – such as drawing districts and setting policies that shape how easy it is to vote – to shape the outcomes of national politics. "As the parties polarize," he says, "gridlock in Congress becomes more likely, and policy action moves down to the state level, with profound consequences."

Perhaps the most profound consequences are the democratic backsliding that Grumbach and many others have identified, particularly in Republican-dominated states. Since 2010, lawmakers in many Republican-dominated states have begun a concerted effort to introduce new voting restrictions. States where partisans control the redistricting process have seen a distinctive rise in gerrymandering, which strongly favors Republicans, who control the drafting-of-187 congressional districts compared to Democrats' 75.



States That Enacted Restrictive Voting Laws in 2023



Source: Brennan Center analysis of publicly available data as of December 31, 2023.

Map from Brennan Center Voting Laws Roundup: 2023 in Review

Beyond the electoral college and the system which results in "wasted votes" of voters concentrated densely into urban areas, the asymmetric rise in gerrymandering carried out in Republican-dominated states exacerbates even further the rural bias already built into the system (and, in turn, the bias towards the GOP embedded in our electoral systems).

But there are additional reasons to be concerned about the harmful effects of moving various types of policy down to the state and county level. Voters pay much less attention to state and local elections than ones at the federal level, with low turnout rates, little in the way of campaigning or debate, and an <u>older, less representative electorate</u>. American voters are asked to decide a <u>uniquely high</u> number of official positions (hence the old insult about someone not even qualified to be elected dogcatcher), such that many positions receive no media attention whatsoever.

Thus, local elections tend to feature many more unprepared, unqualified, and politically extreme candidates whose preferences can diverge from public opinion with little accountability.



While the last decade has seen the devolution of power to the state level, with troubling consequences for the health of American democracy, the rise of the Constitutional Sheriffs and Constitutional Counties movement perhaps foretells an even more extreme step in the anti-democratic localization and ruralization of national policy influence in the United States. With county commissions battling against states for power over the enforcement of laws at the local level, this movement threatens to become the next frontier in the spiral away from democratic norms towards hyper-local authoritarianism.



Conclusion

While the media coverage of Constitutional Counties has tended to focus on it as merely another iteration in the long American debate over gun control, our research points to the risks to democracy posed by the particularities of this movement. The push to allocate more powers to the county level of government – one of our least democratically accountable levels of elected government – threatens to further aggravate the problems of disproportionate rural representation already embedded in the DNA of the U.S. electoral system.

As US democratic norms face a slow erosion, most attention has focused on the big, eyeball-grabbing national stories like the January 6 invasion of the Capitol, even as further investigation of that event revealed how much of the attempted overturn of the election was based in highly local-level efforts coordinated across the country. The push for "nullification and violence" as a new American norm may in fact be just as prevalent and impactful as it occurs at mass scale across local levels of government. Unfortunately, this development comes at a time when our locally-focused media institutions are more fragile than ever.

However, our research also offers some reasons for cautious optimism: the end of this process is not a foregone conclusion. First of all, depending on how it is defined, Second Amendment or Constitutional Counties can be considered less widespread than their proponents claim. In particular, more than half of counties that passed a resolution did not include any enforcement mechanisms that go against state or federal laws, which is the aspect of this trend that is especially problematic in regards to the risks to American democracy. Many of these resolutions merely professed support for gun rights or the Second Amendment – perhaps not a favorable political development in the minds of those who support gun control, but less alarming in terms of consensus around the basic rules of our constitutional democracy.

Encouragingly, we have seen many instances of sheriffs opposing the more questionably legal kinds of resolutions proposing to give them powers over and above judges and legislators. And many efforts to recruit sheriffs into the broader Constitutional Sheriffs movement have recently fallen short. For example, a <u>September 2023 effort</u> to bring together sheriffs from across Western North Carolina only turned out one local North Carolina sheriff.

While in many cases, these Constitutional County declarations are released in coordination with the local sheriff, or at least with the sheriff's blessing, there are growing instances where there is a disconnect. In Michigan, where <u>Tuscola County</u> commissioners voted in March 2021 to declare their Second Amendment sanctuary status, it appeared that it was at odds with the local sheriff, who <u>said</u>:



"I believe they have forgotten what we elected officials swore to in front of Judge Gierhart on the steps of the courthouse just a couple of weeks ago. The line, 'I will support the Constitution of the United States and the Constitution of the state of Michigan has meaning.

They are not just words to get through a ceremony. I support the Second Amendment and all the parts of the Constitution... I would rather the board of commissioners put out a resolution condemning the assault on the Capitol and asking for Americans to work together."

Similarly, while these pushes for bringing more control to law enforcement and counties have come overwhelmingly from the GOP, it would be inaccurate to characterize this movement as encompassing the whole of the Republican party establishment and supporters – in fact, this movement and the broader anti-democracy push constitutes a faultline in the GOP, as can be seen in debates among party elite and in many public opinion polls where <u>GOP opinion is split on views around democracy</u>, oftentimes in rough halves. The GOP can be less accurately characterized as the party opposed to democracy than a party at war with itself over this issue.

The Second Amendment county movement represents the latest front in the ever-heightening conflict over democratic norms in the U.S. When most eyes remain on the highest levels of government for increasing signs of democratic erosion, we may miss a crucial battle being fought right now in our county-level governments.





The Public Wise Research & Education Fund conducts nonprofit, nonpartisan polling and research to fill the gaps in voter and voting rights research to complement ongoing studies being conducted by others in the field. We also work with Public Wise's partner organizations to advise on research best practices and ensure organizers are using evidence based messaging when they are working in their communities.

To learn more about Public Wise, please visit <u>www.publicwise.org</u>, or reach out to info@publicwise.org.

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