



Renew American Democracy from the Top Down and the Bottom Up

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Renewing the promise of American democracy is an urgent challenge. Too many citizens face needless difficulties exercising their fundamental right to vote. In too many places, those in power have manipulated district lines to shield themselves from any meaningful electoral competition. And on too many occasions, officeholders show more regard for big-money interests than for their own constituents. These imperfections have become all the more glaring as norm-breaking opportunists have stoked partisan divisions and sought to delegitimize our electoral institutions—institutions already strained in 2020 by a raging pandemic. We have thus far muddled through, thanks in large part to the resilience of the American people. But we deserve far better, and our long-term democratic survival requires us to act.

Meaningful democratic reform does not come easy. At the federal level, the President has limited authority to alter the electoral system unilaterally. Based on recent experience, we probably should be thankful for that. Transformative change will require legislation or, more ambitiously still, constitutional amendments. No single reform will be a panacea, and Congress already has an array of worthwhile proposals on its radar.¹ High on the priority list should be measures to facilitate voting. This includes making automatic and same-day voter registration the national norm, giving citizens in every state ample absentee and early voting options, and ensuring that no one has an hours' long wait to cast a ballot on

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¹ See For the People Act of 2019, H.R. 1, 116th Cong. (2019).

election day.² It also includes restoring the voting rights of formerly incarcerated citizens immediately upon their release from custody.³ Ending gerrymandering is likewise imperative. We should ensure that electoral districts are drawn pursuant to neutral criteria, with primary responsibility ideally assigned to independent, nonpartisan actors.⁴ Reforms like these should be the bare minimum for any self-respecting democracy.

If such legislation is not yet attainable, what can federal and state actors do today to strengthen our democracy and perhaps pave the way for future reform? As outlined below, the President and other officials can play important convening, agenda-setting, and norm-building roles. State-level actors can do much the same, while also pushing forward with pro-democracy reforms wherever feasible, whether through legislation, direct democracy, or state-court litigation.

Making our Democracy's Health a National Priority

It is vital for our national leaders to champion democratic values and institutions. An initial step is to facilitate dialogue about the challenges our system faces and potential ways forward. Presidents have previously convened commissions to study and recommend action on election-related issues and other matters, and this is an apt moment to do so again.⁵ Specifically, the President should form a high-level bipartisan Commission on Renewing American Democracy tasked with identifying ways to foster broad-based democratic participation and diminish extreme partisan polarization. The Commission should include an array of voices from government, academia, the non-profit community, and the business sector, and it should consider and propose a range of public and private reforms. Policy interventions that have already gained some traction at the state and local levels, such as ranked-choice voting or the public financing of campaigns through matching funds or vouchers, deserve a close look, as do lesser known ideas, such as citizen assemblies.⁶ The Commission should also look beyond our electoral institutions and consider how to address underlying economic, social, and cultural conditions that feed political disenchantment and partisan antipathies. Ideally, the Commission would be a model for the sort of thoughtful, respectful, solutions-oriented discourse that characterizes democracy at its best.

Federal officials should also establish a second task force or commission with a more specific charge: recommending measures to bolster our nation's system of election

² See *Same-Day and Universal Voting Registration*, Empowered Voters Recommendation 2, AM. ACAD. OF ARTS & SCI. (Sept. 1, 2020); *Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options*, NAT'L CONF. OF ST. LEGS. (Sept. 24, 2020); *State Laws Governing Early Voting*, NAT'L CONF. OF ST. LEGS. (Oct. 22, 2020); Hannah Klain et al., *Report: Waiting to Vote*, BRENNAN CTR. FOR JUST. (June 3, 2020).

³ See Chris Uggen et al., *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, SENT'G PROJECT (Oct. 30, 2020).

⁴ See *Independent Redistricting Commissions*, CAMPAIGN LEGAL CTR. (2020).

⁵ See *Presidential Commission on Election Administration*, BIPARTISAN POL'Y CTR. (last updated Nov. 28, 2020).

⁶ See *Ranked Choice Voting 101*, FAIRVOTE (last updated Nov. 26, 2020); Juhem Navarro-Rivera & Emmanuel Caicedo, *Public Financing for Electoral Campaigns*, DEMOS (June 28, 2017); *Matching Funds Program*, N.Y.C. CAMPAIGN FIN. BOARD (last visited Nov. 30, 2020); *Democracy Voucher Program*, SEATTLE ETHICS AND ELECTIONS COMM'N (last visited Nov. 30, 2020); *Citizen Assemblies*, HEALTHY DEMOCRACY (last visited Nov. 30, 2020).

administration, drawing on the experience of the 2020 election cycle. Pandemic-related disruptions to the voting process and disputes about how to handle them suggest that additional laws and protocols are needed to safeguard voting rights and ensure smooth operations in emergency circumstances. The cynical attempts of some actors to sow doubts about the integrity of the election and to weaponize legal technicalities to challenge the results may similarly call for a response. It might be wise, for example, to adopt clearer and more uniform rules regarding the pre-election processing of absentee ballots and the post-election certification of results, and to address some of the ambiguities and gaps in the Electoral Count Act.⁷ In the wake of the 2000 election, bipartisan action was taken to correct some of the system's most blatant technical flaws.⁸ Similar reflection and action is warranted this time around.

Beyond these big-picture agenda-setting initiatives, at least some concrete executive actions are possible. Thoughtful reformers have suggested, for example, that the President should, among other things, instruct federal agencies to offer voter registration services pursuant to the National Voter Registration Act, direct cybersecurity experts to set national standards for the nation's elections infrastructure, and establish more stringent campaign-finance disclosure requirements for federal contractors.⁹ These may seem like modest steps, but each one serves to reinforce the system's democratic foundations, and incremental changes can add up.

Revitalizing Democracy from the Ground Up

Especially given the prospect of continued federal legislative gridlock, a state-level focus on democratic reform is more important than ever. A growing number of states are already acting to expand voting rights, curb gerrymandering, and counter campaign finance abuses.¹⁰ These states should redouble their efforts and pursue a friendly race to the top. In some states, referenda and ballot initiative mechanisms provide an additional avenue for the enactment of democracy-enhancing policies.¹¹

Success in these states may help to build momentum for change in states where the political climate is not currently conducive to reform. For example, the experiences of states that are securely expanding access to the franchise can offer a stark counterpoint to the false narrative that election integrity requires restrictive voting rules. In some instances, state-court litigation may also be a promising way forward for those seeking to push back

⁷ See Richard H. Pildes, *How to Accommodate a Massive Surge in Absentee Voting*, U. CHI. L. REV. ONLINE (June 26, 2020); *After the Voting Ends: The Steps to Complete an Election*, NAT'L CONF. OF ST. LEGS. (Oct. 28, 2020); CONG. RES. SERV., COUNTING ELECTORAL VOTES: AN OVERVIEW OF PROCEDURES AT THE JOINT SESSION (2016).

⁸ See Help America Vote Act of 2002, H.R. 3295, 107th Cong. (2002).

⁹ See Martha Kinsella et al., *Executive Actions to Restore Integrity and Accountability in Government*, BRENNAN CTR. FOR JUST. (Oct. 6, 2020).

¹⁰ See *Voting Laws Roundup of 2020*, BRENNAN CTR. FOR JUST. (Feb. 4, 2020); *Who Draws the Lines?*, LOYOLA LAW SCH. (last visited Nov. 30, 2020); *Campaign Finance Legislation | 2015 Onward*, NAT'L CONF. OF ST. LEGS. (June 6, 2020).

¹¹ See *Forms of Direct Democracy in the American States*, BALLOTEDIA (last updated Nov. 7, 2020).

against democratically dubious practices.¹² State constitutions have an array of provisions that safeguard the right to vote and embrace core principles of popular sovereignty and political equality.

Beyond legal and policy interventions, state and local leaders should strive to build a vibrant democratic culture in their communities. In collaboration with local civic groups and grassroots organizers, they should seek to elevate political discourse, promote inclusion, and defuse tensions. To be clear, this is not a call to abandon deeply held principles, paper over real disagreements, or accept false equivalencies. Instead, the idea is simply to offer an alternative to the us-versus-them, zero-sum mindset that leads people to disenfranchise their fellow citizens, gerrymander their political opponents into oblivion, and refuse to acknowledge the legitimacy of election results. For our democracy to thrive, institutional improvements are crucial, but we also need to be able to live with each other.

¹² See Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 MICH. L. REV. (forthcoming 2021).