

Equity for the People

S.1/H.R.1 and the Fight for an Inclusive Democracy

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Introduction

Today, we are at an inflection point. The 2020 election produced the largest number of voters in U.S. history, and the highest turnout in over a century.¹ At the same time, it produced one of the largest-scale attempts to disenfranchise Americans, especially voters of color, in at least half a century.² On January 6, 2021, insurrectionists violently stormed the United States Capitol, leading to five deaths. This attempted coup was driven by the racially tinged Big Lie of widespread voter fraud, intended to cast doubt on the validity of many votes cast by voters of color in order to falsely allege the presidential election was stolen. While the claim is baseless, it continues to be used as a justification for the introduction of restrictive state-level voting laws in unprecedented numbers — 389 restrictive bills in 48 states as of May 2021 — many of which target voters of color.³

That assault on democratic participation comes at a time of dramatic demographic change and social and political transformation. The United States is diversifying and increasingly recognizing diversity as a social good. Americans are more politically engaged than ever, and the newest eligible voters, dubbed Generation Z, are 48 percent nonwhite, making them the most diverse generation the nation has ever seen.⁴ These young Americans are coming of age in a time where power looks different: for the first time ever, the vice presidency is held by a woman, and a woman of color. For every generation after this, power has a new status quo.

But the attacks on Congress, voting rights, and the 2020 election are a reminder that while the future is coming, our history continues to shape our present. Even while Vice President Kamala Harris represents the possibility of a more inclusive American leadership, she was born into an America where, in many places, she could not vote. The Voting Rights Act, which finally guaranteed the right to vote to people of color, did not become law until 1965, the year after she was born. One-third of Americans alive today were alive during Jim Crow.⁵

The United States' history of exclusion shapes many of the challenges we face today. Covid-19 has revealed significant racial and ethnic disparities in who is most vulnerable to both the health and economic effects of the pandemic.⁶ Growing gaps between the haves and have-nots track along race and gender lines, with a persistent gender wage gap and vast wealth disparities.⁷ As of 2019, the average net worth of a Black family was about one-eighth that of a typical white family.⁸ And Congress does not remotely resemble the nation it governs. The 117th Congress is the most diverse in U.S. history. And yet, it is 77 percent white and 73 percent male.⁹ During the 116th Congress, which held the previous record for member diversity, fewer than five percent of U.S. House members cited blue-collar jobs in their biographies, and 70 percent of all members came from just three white collar professions: law, medicine, and business.¹⁰

The lesson is that governance “by and for the people” has always been an American ideal. And it has always been an unmet ideal: America’s leaders — and the people who choose them with their votes and their dollars — have never fully reflected everyday Americans. This asymmetry between ordinary citizens and the political and donor class in government shapes what policies get made, and whose concerns get prioritized by those in power. Indeed, it shapes who gets to participate, both as voters and leaders, in our democracy. And with a status quo that leaves aside many voters and limits who may lead us, we are constrained in our ability to realize our vision of a government of, by, and for the people. Something must change.

Part of the problem are the rules that structure political power.

Over the past decade, the challenges to a fair and equal democracy have ballooned — from widespread, blatant voter suppression, to extreme and discriminatory gerrymandering, to a campaign finance system increasingly

dominated by a small and unrepresentative group of mega donors that serves as a barrier for many diverse candidates running for office. Right now, entrenched interests struggling against a changing demography are making their final, grasping efforts to maintain an exclusionary system. Unfortunately, our laws and institutions are not currently sufficient to prevent this anti-democratic wave and to guarantee a fair and truly representative democracy.

But there is hope. There is a bill for this transformative moment: the For the People Act — our next great civil rights bill.¹¹ This sweeping package of democracy reforms arrives against the backdrop of an existential crisis over who America is and what we stand for. The reforms of the For the People Act are tailored to meet these exact crises. The bill goes a significant way toward advancing equity in our political systems, all while dismantling many longstanding inequities that have hindered access and narrowed possible outcomes for a democracy that serves everyone. Its most important reforms would combat overt discrimination, affirmatively expand opportunities to vote for all eligible Americans, outlaw discriminatory gerrymandering, and blunt the political effects of wealth inequality.

Ultimately, the For the People Act envisions an inclusive American future where every voter's voice is heard, and where our leaders represent and reflect our citizens. It is the best opportunity we have ever had to fulfill the American promise of expanding who belongs in "We, the People." Perhaps most importantly, its basic reforms to the broken infrastructure of democracy are an urgent and necessary prerequisite to make way for the work we must do in every other arena — from protecting healthcare to challenging the climate crisis, advancing education to embracing innovation — work that cannot afford to wait.

Equity and Our Democratic Institutions: The Context

When policies restrict democratic participation, the brunt of those policies is consistently borne by those already marginalized in the United States — including people of color, women, working-class people, immigrants, people with disabilities, LGBTQ+ people, people with limited English proficiency, and those who fall within all those intersecting identities.

In today’s America, Black voters in Georgia should not have to stand in 10-hour lines at the polls.¹² Native American voters should never be assigned a chicken coop as a polling place.¹³ Asian and Latino Americans should not be wrongfully purged from rolls because of common surnames.¹⁴ 378,000 trans Americans should not worry they cannot vote because their ID does not reflect their gender identity.¹⁵ Young voters should not be barred from voting by mail because they are not yet 65.¹⁶ Voters with disabilities should not find potential barriers at 83 percent of polling places.¹⁷ And working moms running for office should not have to plead to the Federal Election Commission for special permission to pay their babysitters from their campaign funds, while male candidates can use their campaign funds to rent tuxedos, no special permission required.¹⁸ This is not the inclusive democracy we had dreamed of — but it is the one we structured.

This is not a coincidence. The America of today was never envisioned by our Founding Fathers. “All men are created equal” meant “men” alone and was written by a slaveholder. Accordingly, the United States has a long tradition of intentional systemic oppression — expressly excluding people from democracy because of who they are. At the time of the first U.S. presidential election in 1789, only white, male property owners were eligible to vote.¹⁹ Thus, our nation’s original government, by design, excluded people from democracy based solely on their sex, skin color, and socioeconomic status.

In significant part, today’s inequities are an inheritance of that choice. Because of our history of systemic oppression, current policies that *seem* neutral disparately impact groups that have historically been marginalized. Modern day felony disenfranchisement laws are a living legacy of Jim Crow. Today’s restrictive voter registration and ballot access laws, which are being rapidly advanced in diversifying states, have tones of the same anti-Black, anti-Asian, anti-Native American, and anti-Latino xenophobic impulses that too often *created* them before the turn of the century.²⁰ And today’s campaign finance laws, which ensure that wealth is often a gatekeeper to political power, harm people and communities who have historically been excluded from the accumulation of generational wealth — because their labor was exploited to create wealth for others, and they were persistently and actively excluded from so many avenues to prosperity available to other Americans.²¹

A brief historical review helps to demystify why existing power structures do not reflect the diverse lived experiences of most Americans. Even after nominal enfranchisement with the 15th Amendment to the Constitution, African American men spent almost a century enduring the horror of lynching, poll taxes, and literacy tests when attempting to exercise the franchise. The Reconstruction Amendments did not do better by other minority groups: when the 14th Amendment to grant citizenship rights to Black Americans was passed in 1866, the government specifically interpreted the Amendment to exclude Native Americans on reservations.²² Native Americans were denied citizenship (requisite to the vote) until the 1924 Indian Citizenship Act, and state restrictions on the Native American vote persisted through 1962.²³ Despite the 15th Amendment, many Asian Americans were barred from being naturalized, so voting was not an option where citizenship was unavailable. Some states such as California even prohibited American-born Asians from voting.²⁴ 1954 was the first time the Supreme Court made clear that the Equal Protection clause protected Latino Americans from racial discrimination, beyond the “two class theory” that only contemplated Black and white Americans.²⁵ Yet prior to that, Latino Americans faced English-only literacy tests at the polls in diverse geographies including New York

and Arizona.²⁶ Texas Democrats adopted a “White Man’s Primary” in the early 1900s to effectively disenfranchise Mexican American voters, and as late as 1964, Arizona’s “Operation Eagle Eye” was a program for officials to make citizenship challenges to intimidate Latino voters at the polls.²⁷ A full decade after the original Voting Rights Act, following litigation on behalf of Latino Americans, President Gerald Ford signed into law an amendment to the Act to prohibit discrimination against “language minorities,” finally bringing non-English-speaking Latino Americans, Native Americans, Asian Americans and others into the fold.²⁸

Women of color from all backgrounds lacked federal protection for their right to vote until the 1965 Voting Rights Act; they did not get the practical benefit of the 15th Amendment because of their gender, and, following Jim Crow, they did not get the practical benefit of the 19th Amendment because of their race. (While men of color were also functionally excluded from the franchise by Jim Crow, they had been nominally formally enfranchised by the 15th Amendment. Women of color experienced the unique dignitary harm of being often left aside in the struggles for the franchise for Black men and white women.)

Discrimination impacted not just who could vote in our democracy, but who could offer herself up as a candidate to lead and represent the people. Under the historic and current campaign finance system, access to wealth has largely dictated access to political power. And people of color have less access to that door-opening wealth.²⁹ That, too, is the legacy of deliberately designed systems of exclusion and exploitation: American wealth was built on the seizure of Native lands, the forced enslaved labor of Black people, and the undercompensated labor of immigrants. After the labor and resources of communities of color were forcibly seized to produce capital for others (never returned or compensated), those same groups were then excluded from “inherited” American prosperity. This was accomplished via diverse tactics from legally sanctioned race-based employment discrimination to domestic terror campaigns like the systematic murders of the oil-rich Osage Indians in Oklahoma, or the Tulsa Race Massacre, which destroyed Black Wall Street in order to keep African Americans on the rise “in their place.”³⁰ Women, especially women of color, also have a long history in the United States of underpaid and unpaid labor, a legacy that persists to this day.³¹ Thus, in the unforgiving context of history, wealth accumulation and political power in the United States are inextricably intertwined with a story of marginalization and exclusion based on race and gender (and often both).

The impacts of these historical restrictions have not been quarantined in the past — they live on today in countless ways that determine who wields political power in our society, from enduring efforts to restrict voting rights to wealth disparities that limit which candidates can raise enough money to compete. This history has hindered our ability to achieve a government that reflects the diversity of Americans, with impacts spreading beyond even directly elected officials.³² Consider the three branches of the federal government. Legislatively, 40 percent of Americans are people of color, while Congress is only 23 percent people of color.³³ Although women are 51 percent of Americans, they are just over one in four members of Congress.³⁴ Women in the U.S. House of Representatives got their own bathroom near the House Floor, for the first time, in 2011.³⁵ Of the 1994 senators who have served in U.S. history, 1.6 percent have been people of color.³⁶ Only 58 women have ever served in the Senate.³⁷ Five have been women of color, three of whom are serving currently. In the U.S. Senate, there is one immigrant and no Black women.³⁸ The Supreme Court is chosen by our elected officials to make decisions for all Americans, yet it also does not reflect America’s diversity: of the 115 Justices, 108 have been white men — a total of two men of color and five women have served.³⁹ Although women of color are 20 percent of the population, they have held 0.87 percent of Supreme Court seats — one.⁴⁰ In the executive branch, 97.8 percent of presidents have been white men.⁴¹ There has never been a woman president.⁴²

We cannot change this history, but through policy informed by that past, we may shape the American future.

The For the People Act

Knowing the historic roots of American exclusion empowers us to reveal and remedy harms that masquerade today as “neutral” policies — policies that, unsurprisingly, consistently yield unequal and inequitable outcomes for certain historically marginalized groups. But we do not have to be resigned to inequity as a structural feature of the United States. Instead, understanding this history of exclusion equips modern policy makers to recognize the long reach of the past into policy today — and to offer a tailored, effective solution that invites every American to participate, fully and fairly, in our democracy. The For the People Act is crafted in this spirit.

The bill’s reforms do *not* expressly focus on race, gender, class, or other status. (Another critical bill, the John Lewis Voting Rights Advancement Act, discussed below, would restore critical protections against racial discrimination in voting that have been hobbled by the Supreme Court.) But by simply opening up access to democracy for all — by leveling the playing field so no group gets special advantages to exclude others — the For the People Act powerfully rebukes a longstanding history of American exclusion.

The For the People Act is designed to pave the way toward a more equitable and fair future for all Americans. We can begin to undo deep, historic, structurally created harms through the concrete policy fixes neatly packaged in this bill. The bill will advance equity in our political system while dismantling many longstanding inequities in access to and outcomes of democracy.

In this way, it is transformational.

Among other things, the bill’s reforms include:

- **Combatting Overt Disenfranchisement.** The For The People Act combats efforts to disenfranchise voters — often in communities of color and limited-English proficiency communities — by, among other things, restoring voting rights to millions of formerly incarcerated people, mandating safeguards for voters who lack identification, prohibiting discriminatory purges, affirming the necessity of restoring the Voting Rights Act, and prohibiting and further penalizing voter intimidation, deception, and online voter suppression.
- **Affirmatively Expanding Opportunities to Vote.** The For the People Act also affirmatively expands voting opportunities in ways that will benefit marginalized communities by, among other things, modernizing our voter registration systems with automatic, same-day, and online voter registration, giving all voters the option to vote early in-person or by mail, limiting time in line at polling places, and providing additional protections to voters with disabilities.
- **Outlawing Discriminatory Gerrymandering.** The For the People Act would outlaw extreme partisan gerrymandering that frequently targets communities of color and would establish critical guidelines for the drawing of congressional districts in a manner that promotes fair representation. It would bring the redistricting process into public view, inviting transparency and public participation in a process that has previously occurred behind closed doors, often to the detriment of vulnerable communities. And it would end the practice of prison-based gerrymandering, which, informed by mass incarceration, creates an imbalance that undercuts the representation of communities of color.
- **Blunting the Political Effects of Wealth Inequality.** The For the People Act would blunt the political effects of wealth inequality, most notably by establishing a voluntary small dollar matching system for federal congressional races to give candidates a way to fund their campaigns without relying primarily on networks of wealthy donors. The bill would also blunt the power of dark money and curb super PACs. And

it would loosen other rules that make it especially hard for middle-and-working class candidates — especially candidates of color, women candidates, and women of color candidates — to run.

Ultimately, the reforms of the For the People Act address an old truth: our democracy has always been aspirational. Yet our most damning history need not be our destiny. This bill offers today’s Americans a choice: surrender to the crushing failures of the past, or choose an optimistic future, one that honors the ability of Americans to take the profound words of a slaveholder and breathe life and meaning into them across time and place, from Seneca Falls to Selma, Stonewall and beyond. The For the People Act will profoundly yet practically advance an inclusive democracy, long overdue, and needed now more than ever.

Combating Overt Disenfranchisement

First the 15th Amendment and then the Voting Rights Act of 1965 established that race-based discrimination in voting was illegal. Yet even with that prohibition in place, discrimination persists. Some seemingly neutral policies have the effect (and sometimes the intent) of actively disenfranchising members of already-marginalized communities when they seek to exercise the franchise. The For the People Act recognizes that discrimination, whether invidious or insidious, creates real harm, and has no place in our modern democracy. Accordingly, it includes critical provisions to combat overt disenfranchisement.

Democracy Restoration

The For the People Act creates a uniform, bright-line standard to restore the right to vote in federal elections for citizens with criminal convictions in their pasts: if an otherwise eligible person is not incarcerated, they can vote. Due to systemic biases in policing, enforcement, and incarceration, people of color today continue to be remarkably overrepresented among the United States' imprisoned population.⁴³ It is therefore not surprising that when state law disenfranchises individuals with felony convictions, people of color bear a disproportionate loss of voting rights. Today, 29 states still disenfranchise a portion of their citizens with past criminal convictions, even if they are no longer incarcerated.⁴⁴

Many felony disenfranchisement laws are rooted in deliberate minority voter suppression: after the Civil War, when suffrage was expanded to Black men, lawmakers in many states across the country responded by especially tailoring criminal laws to target Black citizens, and then enacting disenfranchisement laws to revoke the vote from anyone convicted of those crimes.⁴⁵ Some research suggests that western and southwestern states used these Jim Crow methods of suppression to also target Latino, Asian, and Native American populations for disenfranchisement.⁴⁶ Even while racial disparities in incarceration rates have recently narrowed, the gap remains stark: Pew reports that, in 2018, “black Americans represented 33% of the sentenced prison population, nearly triple their 12% share of the U.S. adult population. Whites accounted for 30% of prisoners, about half their 63% share of the adult population. Hispanics accounted for 23% of inmates, compared with 16% of the adult population.”⁴⁷ While new data based on the 2020 census is forthcoming, one analysis of 2010 census data by the Prison Policy Initiative found that American Indians and Alaska Natives were incarcerated at more than twice the rate of white Americans. In some states with large Native populations, such as North Dakota, incarceration rates among American Indian and Alaskan Natives were as high as seven times that of the state's white population.⁴⁸

Disenfranchisement fractures the political power of many communities of color. New data released by the Sentencing Project in 2020 found that 1 in 16 voting-aged African Americans are disenfranchised — 3.7 times greater than the rate of non-African Americans. Their 2020 research also estimates that more than 1 in 50 voting-eligible Latino Americans are disenfranchised, though numbers vary greatly by state; in Arizona and Tennessee, roughly 1 in 14 voting-eligible Latino Americans are disenfranchised because of felony-level convictions.⁴⁹ Disenfranchisement also has “spillover effects” throughout families and communities — research suggests disenfranchisement laws may impact neighborhoods with high incarceration rates, depressing turnout even among citizens who are eligible to vote.⁵⁰ One recent study found that neighborhoods that experience rampant felon disenfranchisement turn out to vote at substantially lower rates than otherwise similar neighborhoods, with Black neighborhoods particularly impacted.⁵¹ Restoration is a necessary step to repair harm that has an undeniable racial angle.

While voter disenfranchisement laws were written to target men of color, the consequences of disenfranchisement also increasingly impact women of color. There are many more men than women in prison in absolute terms, but in many states, women’s incarceration rates continue to grow faster than men’s.⁵² In particular, women of color remain overrepresented in the population of incarcerated women, with Black and Latina women incarcerated at 1.7 and 1.3 times the rate of white women, respectively.⁵³ Just as for men, disenfranchisement creates restrictions on women’s political participation even after incarceration. The Sentencing Project estimates that 1.2 million women are disenfranchised, constituting over one-fifth of all disenfranchised Americans.⁵⁴ This disenfranchisement has an especially devastating effect on the Black community’s political power given data that, for those able to vote, Black women are one of the most active voting blocs in the American electorate.⁵⁵

Communities of color are also impacted by patchwork state laws that make it difficult for them to actually exercise their restored right, even once individuals are again eligible to vote. This is the phenomenon of “de facto disenfranchisement,” where individuals are legally allowed to vote but may not vote or even be aware of their rights because of practical barriers.⁵⁶ Additionally, participation may be chilled even among those who are actually eligible to vote because of fear that they may be mistaken about their eligibility, and could subsequently suffer under the over-zealous and punitive enforcement of disenfranchisement laws. The controversial case of Crystal Mason demonstrates why — Mason, a Black woman in Texas, was on supervised release for a federal conviction. She did not know she was ineligible to vote under Texas’s state laws and cast a provisional ballot (which was never counted). Mason was sentenced to five years in prison for casting that provisional ballot. While her case is under review, local advocates pointed to her harsh sentence as an effort to intimidate even eligible voters of color and deter them from attempting to vote.⁵⁷ Such situations of uncertain eligibility would be avoided if the For the People Act’s standard rule of democracy restoration became the law across the nation.

Finally, administrability problems can be compounded by state legislatures hostile to expanding the franchise to all citizens. For example, due to felony disenfranchisement in Florida, more than 20 percent of otherwise eligible Black Floridians were unable to vote.⁵⁸ In 2018, 64.5 percent of Florida voters voted to pass Amendment 4, which would have restored voting rights to 1.4 million eligible Floridians who had completed the terms of their sentence including parole or probation.⁵⁹ Yet shortly after Amendment 4 passed, the Florida legislature passed a law that placed additional financial burdens on these formerly incarcerated citizens — demanding that they pay administrative and occasionally prohibitive fines and fees — before their rights could be restored.⁶⁰ The result is that more than 774,000 Floridians remain disenfranchised by the new law — the vast majority simply cannot afford to pay what they owe.⁶¹ Further, Black Floridians are more likely to owe money, and owe more money, than their white counterparts.⁶² Absent the For the People Act, the price they pay is their vote.

The For the People Act’s bright-line standard would restore the franchise to approximately 3.9 million Americans nationwide, including an estimated 1.6 million Black and Latino citizens.⁶³ The bill would resolve ambiguities about eligibility, require states to notify citizens of their restored rights, and establish enforcement mechanisms to ensure rights are realized. In short, it would flip the status quo to an expectation that the millions of Americans once again living in the community — disproportionately those from communities of color — are equal. Just as they work, pay taxes, and raise families like their neighbors, they deserve the right to vote alongside their fellow citizens.

Voter ID

The For the People Act requires states with in-person voter identification requirements to permit voters who lack legally required identification — disproportionately people of color, women, and LGBTQ+ Americans — to vote

if they complete a sworn written statement attesting to their identity (unless the individual is a first-time voter who registered by mail).

Strict voter ID laws are a relatively recent phenomenon that have been justified as measures to guard against the unsubstantiated specter of voter fraud.⁶⁴ These laws not only fail to solve a mythical problem; they also create a new problem by disenfranchising those who lack identification.

Voter ID laws disproportionately impact people of color, at times inadvertently and at times by design. Across several states, various studies have also shown that ID ownership is lower among eligible Black and Latino voters than among white voters.⁶⁵ Additionally, poll workers tend to ask voters of color for photo ID more often.⁶⁶ One study showed such laws tend to emerge among states with larger Black populations relative to other states.⁶⁷ In North Dakota legislators passed a restrictive voter ID law in 2017 that required residential addresses for valid IDs, claiming that tribal IDs met this requirement. However, legislators were also aware that most tribal IDs do not have residential addresses printed on them, due in part to the fact that “*the state* has failed to assign residential street addresses to homes on tribal reservations.”⁶⁸ A federal district court found that 19 percent of Native Americans in North Dakota lacked qualifying identification, in comparison to less than 12 percent of other possible voters.⁶⁹

The disproportionate impact that voter ID requirements have on communities of color is often exacerbated by the *types* of ID considered acceptable. Under Texas law, for instance, qualifying identification to vote includes handgun licenses, but not student ID cards from state universities. The impact is not race-neutral: in 2018, more than half of University of Texas students were racial or ethnic minorities, while more than 80 percent of all handgun licenses issued in Texas went to white Texans.⁷⁰

Voter identification requirements also create barriers for voters around gender and gender identity, and voter ID laws impact women more than men. Recent estimates suggest that 90 percent of American women change their name upon marriage, and many change their names back upon divorce.⁷¹ Women face particular burdens when attempting to update their identification with changed legal names, as demonstrated by recent frustrations in California with women attempting to update to the new “Real ID” system.⁷² Without access to accurate underlying identification, women will face hurdles to meet voter ID requirements.

As is often the case, women of color have borne an even heavier burden: in North Carolina, data from the 2012 elections reveal that among all registered voters lacking photo ID that matches the name on their voter registration card, 63.62 percent are women.⁷³ Further analysis revealed that while Black women were 23.79 percent of registered female North Carolinians in 2012, they accounted for 34.22 percent of registered women with no IDs.⁷⁴

Finally, transgender Americans are uniquely impacted by ID requirements and may be deterred from even attempting to vote if their legal documents do not reflect their lived gender identity. Nearly 1 million trans Americans are eligible to vote, and 892,400 of those eligible voters live in the 45 states that generally conduct elections by voting at the polls (instead of “all-mail” elections).⁷⁵ Yet 42 percent of those voters (over 378,000) lack accurate ID they might need at the polls.⁷⁶ (This problem is exacerbated by the pandemic, which has delayed administrative procedures like ID updates.) Systemic discrimination experienced by trans Americans compounds the difficulties they face in obtaining accurate voter ID. For instance, there is a trans-specific legal barrier: to update gender markers on official identification, some states require a court order recognizing the gender-affirming change.⁷⁷ Then there are economic barriers: the administrative costs associated with obtaining a legal name change and an updated ID may be prohibitive, especially given that trans people are twice as likely

as cisgender people to live in poverty.⁷⁸ Further, this financial instability also contributes to housing instability. When a stable address is required to register to vote or must be included in a valid voter ID, the trans community is disadvantaged: the National Center for Transgender Equality notes one in five trans people has been homeless, and therefore may not have a stable address to register to vote.⁷⁹

The affidavit substitute provided in the For the People Act is a common-sense workable solution to protect the integrity of the vote and verify voter identity. Most importantly, the affidavit will achieve these ends without advancing voter suppression that uniquely impacts voters of color, women, and trans voters.

The Voting Rights Act (VRA)

The For the People Act conveys the support of Congress for updating and restoring the Voting Rights Act, which the Supreme Court gutted in its 2013 *Shelby County v. Holder* decision. The VRA, which would be restored through separate legislation — the John Lewis Voting Rights Advancement Act (H.R.4 in the last Congress) — has been heralded as the single most effective civil rights law in American history.⁸⁰

Historically, the innovative, diverse methods deployed to disenfranchise some Americans led President Lyndon Johnson to say, before offering the Voting Rights Act to Congress in 1965: “Every device of which human ingenuity is capable has been used to deny this right.”⁸¹ The Voting Rights Act was intended to protect Americans from patently discriminatory laws. For 48 years, the VRA provided for a “preclearance” framework under which jurisdictions that had a history of voting discrimination were required to seek pre-approval (or “preclearance”) of changes to election rules that could potentially disenfranchise racial, ethnic, or language minorities.⁸² But in *Shelby County*, Chief Justice John Roberts suggested that while the 1965 Voting Rights Act was right for its time (when invidious racism was often on full display), it was no longer needed in today’s ostensibly much-improved climate. Writing for the majority, Chief Justice Roberts argued that “our country has changed,” and on that basis struck down the coverage formula that determined which geographic areas needed to preclear prospective voting rights changes to ensure they were not discriminatory.⁸³ Justice Ruth Bader Ginsburg forcefully dissented. Pointing out the irony of Justice Roberts’ insight on how discriminatory practices had lessened, she wrote that “[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”⁸⁴

The problems with gutting the VRA became evident immediately after the *Shelby County* decision: under preclearance, the federal government had blocked Texas from making discriminatory changes in voting laws a total of 207 times — more than any other state.⁸⁵ Within hours of the decision, Texas announced its intention to institute a voter identification law that had previously been denied preclearance. Subsequently, Alabama, Arizona, Florida, Mississippi, North Carolina, and Virginia moved forward with laws that would also have been subject to preclearance.⁸⁶

Minority communities have borne the brunt of a weakened VRA: the 2018 elections were marred by blatant voter suppression, including large-scale voter purges and closure of early voting sites and polling places, particularly in minority neighborhoods. As previously discussed, voter ID requirements passed in the wake of *Shelby County* have disproportionately burdened minority groups.⁸⁷ Georgia’s restrictive “exact match” rules disproportionately held up minority applicants — approximately 80 percent of pending applications were submitted by Black, Latino, or Asian American registrants.⁸⁸ And measures that lead to racially disparate voter suppression or depression persist today: for the 2020 election, polling place closures in communities of color limited opportunities to vote and created long lines.⁸⁹ In 2021, the Georgia legislature considered a state-level provision that would limit early voting on Sundays, a day known for “Souls to the Polls” drives sponsored by Black churches; the measure was dropped only after widespread public outcry.⁹⁰

In the intervening years since the *Shelby* decision, states have supplied ample evidence that voter discrimination persists, and in fact flourishes, without mechanisms like preclearance.

The For the People Act not only contains numerous provisions to proactively combat rules that disenfranchise voters of color, it also indicates Congress's support for passing the John Lewis Voting Rights Advancement Act to restore the VRA itself with an updated coverage formula informed by a voluminous record assembled over several congressional sessions since *Shelby*. Both bills must move forward together to repair discriminatory harm and advance an inclusive democracy.

Voter Purges

The For the People Act establishes important new safeguards to curb discriminatory purges of voter rolls. “Voter purging” is a process in which certain names are flagged for removal from a state’s voter rolls. Maintenance of updated, accurate voting rolls is critical, but too often voters are purged in a slipshod or biased manner, and without uniform due process protections to ensure that those who should not be purged can adequately respond and stay registered. Voter purges may cause a voter to be removed from her state’s rolls without knowing about her removal until it is too late for her to cast her vote, which effectively disenfranchises her.

Improper purges often disproportionately impact — and sometimes target — voters of color and those for whom English is a second language. For instance, the common purge tactic of matching voter lists to other government lists to discover duplicate names, without safeguards, can yield discriminatory results. Specifically, Black, Asian, and Latino American voters are more likely than white voters to have one of the most common 100 names in the United States, names which yield false positives that might remove them from the rolls.⁹¹

Even purge methods that have no discriminatory effect in theory can be applied unevenly with discriminatory effects. Voter “challenges,” whereby the validity of a voter’s registration can be called into question, is open to abuse. A 2015 mayoral race in Sparta, Georgia between an African American candidate and a white candidate prompted the majority-white Board of Elections to seek out registered voters to challenge. Challenged voters could be removed for simply not showing up to a petition hearing.⁹² Ultimately, about 20 percent of the town’s electorate was challenged, and the majority of challenged voters were Black. Only after a lawsuit did the county agree to reinstate wrongfully purged voters.⁹³

The problem of discriminatory purges has become substantially worse since the 2013 Supreme Court case *Shelby County v. Holder*. That decision hobbled the VRA’s all-important preclearance provisions, under which purges in covered jurisdictions with histories of voting discrimination had to be pre-approved by federal authorities.⁹⁴ The problem has since expanded even beyond VRA jurisdictions, targeting communities of color in other geographic areas; effects are now being felt in critical swing states that were not previously covered by the VRA, such as Wisconsin. A 2020 analysis of that state by *The Guardian* found that predominantly Black zip codes and zip codes heavily populated by students were twice as likely as other areas to have voters flagged for removal, often in error. In 2020, 232,000 voters were at risk of being purged from the state’s rolls; the 2016 presidential election in Wisconsin came down to 22,748 votes — less than one percent of all votes in the state.⁹⁵

Further, discriminatory purges are being pursued privately, as well as by governments: while litigation was previously brought to *protect* those who had been improperly purged, several activist groups have organized behind litigation to get certain communities, and specifically counties with large voting populations of color, to purge their rolls more aggressively.⁹⁶ Once such group, the American Civil Rights Union (ACRU), targeted Noxubee County, a majority-Black, low-income county in Eastern Mississippi, ultimately causing more than 12

percent of its 9,000 voters to be rendered inactive.⁹⁷ Interpreting the strategy, election commissioner for Noxubee County’s fourth district, Willie M. Miller, stated, “They went after minority counties who didn’t have the financial resources to push back.”⁹⁸ Ultimately, groups such as ACRU are weaponizing what should be routine list maintenance and targeting vulnerable communities of color in the process.

Restoration of the VRA’s full protections would help to curtail the worst discriminatory purges, but the proactive safeguards of the For the People Act provide important supplemental protections, which are especially critical in non-covered jurisdictions. The bill requires that states may only remove voters on the basis of objective, verified, and reliable evidence, specifically prohibiting states from simply removing voters who did not vote in a previous election or failed to respond to a delivered notice in the mail (unless the notice is returned as undeliverable). Critically, for those who have been removed, the bill requires elections officials to provide impacted voters with notice of the removal and information on how to contest or remedy their removal from the rolls. These thoughtful features allow for responsible list maintenance without risking voters’ participation rights.

Increased Penalties for Voter Intimidation

The For the People Act increases penalties for illegal voter intimidation. Voter intimidation is persistent for voters of color, from the historical domestic terror campaigns of lynching to modern-day threats of Immigration and Customs Enforcement policing the polls, made by mainstream politicians and vigilantes alike.⁹⁹ In 2020, former President Donald Trump appeared to actively solicit federal and state law enforcement and private white supremacist groups to engage in a range of voter intimidation activities, from telling supporters to “go into the polls and watch very carefully,” to requesting that the Proud Boys, a violent extremist organization, “stand by.”¹⁰⁰ These explicit calls may have been intended to deter voters from the polls, uniquely resonating with voters of color due to a long institutional history of voter intimidation.

The For the People Act increases the penalties for voter intimidation, specifically raising them to a fine of up to \$100,000 and imprisonment up to five years. In doing so, the bill makes a strong statement that intimidation will no longer be met with a wink and a nod — it is a grave violation that will trigger strict enforcement and serious penalties.

Deceptive Practices Act

The For the People Act prohibits false information intended to mislead voters about elections and prevent them from voting. It also requires officials to step in and correct disinformation among the public. Deceptive practices like spreading misleading information are age-old methods of voter suppression that have long dogged communities of color and have been updated for the internet era. During the 2016 general election, Russian government operatives engaged in a concerted internet propaganda and misinformation effort to suppress voter turnout, specifically targeting Black voters.¹⁰¹ Disinformation “explained” how to vote by text and sought to create confusion about voting rules.¹⁰² Other efforts encouraged voters to vote the Wednesday *after* Election Day.¹⁰³ The Special Counsel Investigation by Robert Mueller also found that American Muslim communities were targeted for voter suppression and demobilization.¹⁰⁴

Domestic disinformation persisted through 2020. In October 2020, Michigan’s attorney general filed charges against individuals behind robocalls to 12,000 Michigan residents — calls which specifically targeted voters of color before the general election. The individuals were subsequently indicted.¹⁰⁵ The calls falsely claimed that voting by mail jeopardized voters’ personal information and would result in voter data being given to police departments to “track down old warrants,” given to credit card companies to “collect outstanding debts,” and possibly even shared with the CDC to “track people for mandatory vaccines.” Attorneys general in Illinois, New York, Ohio, and Pennsylvania also reported similar robocalls targeting urban areas with large populations of

color.¹⁰⁶ These calls are believed to have reached 85,000 people nationally.¹⁰⁷ In 2020, social media misinformation campaigns targeted Latino Americans in the swing state of Florida, who are 17 percent of the state’s registered voters.¹⁰⁸

The For the People Act would mitigate these kinds of harms by creating a clear federal prohibition on the intentional communication of false and misleading information related to elections with the intent of preventing eligible voters from casting ballots. Perhaps most importantly, the bill provides that if state and local officials fail to clarify and correct disinformation, the attorney general will be required to step in, correcting the disinformation in a manner that meaningfully reaches those impacted. This would fill a critical gap: currently, no federal law expressly prohibits these specific deceptive practices, and no entity is accountable for investigating the origins of such deception and correcting its impacts within the community.

Online Ad Transparency

The For the People Act also requires greater transparency for online ads like those the Kremlin used in 2016 to attempt to dissuade Americans of color from voting. This is particularly relevant for communities of color who have been historically targeted; a Senate Intelligence Committee inquiry found that Russian disinformation campaigns targeted African Americans more than any other specific group.¹⁰⁹

While some of the ads the Kremlin used to target Black voters in 2016 would be banned under the Deceptive Practices Act, others that do not contain objectively false information would not be barred. To fill this gap, the For the People Act prohibits ads if they are sponsored by a foreign government in an election year. It also includes the bipartisan Honest Ads Act, which would require the major online platforms to include information about all such ads — including who paid for them — in public ad databases that law enforcement, journalists, and civil society could use to hold ad sponsors accountable. Importantly, the Honest Ads Act would also cover situations that occurred *after* an election but were nevertheless intended to harm democracy. For instance, after the 2020 general election was declared for Joe Biden, Facebook, Twitter, and WhatsApp became hotbeds for Spanish-language disinformation claiming the election was stolen and questioning the legitimacy of printed ballots.¹¹⁰ The bill would help to unmask the actors behind such disinformation efforts intended to undermine faith in final election results.

Additional Legislation

The For the People Act also includes findings in support of separate, complementary legislation that will counter open discrimination in voting.

The bill finds that residents of the District of Columbia deserve full self-governance and congressional voting rights, which only statehood could meaningfully provide.¹¹¹ (A bill approving DC statehood passed the House in April of 2021 and is awaiting Senate consideration.)¹¹²

While DC’s residents have never had congressional voting rights, debates over voting in the District have long been tethered to racial resentment. During the Reconstruction era, for example, lawmakers in Congress responded to the growing political power of the District’s Black community by replacing DC’s locally-elected territorial government with presidentially-appointed commissioners. Voting rights lawyer Adriel Cepeda Derieux notes that in 1890, Alabama Senator John Tyler Morgan was explicit in stating the racial motivation behind this change: “[T]he negroes came into this district,” making it necessary to “deny the right of suffrage entirely to every human being.” Tyler stated it was necessary to “burn down the barn to get rid of the rats.”¹¹³

Although DC residents have since regained the right to vote in local elections, their continued disenfranchisement in federal congressional elections represents a modern chapter in the history of discriminatory efforts to limit District residents' political power. Even though the District has a population larger than that of two states (Wyoming and Vermont, which are 92.5 percent and 94.2 percent white, respectively), DC's more than 700,000 residents — 46 percent of whom are Black — still lack voting representatives in Congress.¹¹⁴ Granting DC statehood would rectify the denial of fundamental rights to one of the country's most vibrant Black communities, and rightfully enfranchise hundreds of thousands of Americans.

The bill also commits to protecting and promoting the voting rights of Native Americans and to conducting hearings to combat voter suppression efforts within Tribal lands. It finds that Native Americans have been the target of discriminatory voter ID laws and suffer from election administration obstacles. These range from lacking adequate language assistance to dismal conditions at polling locations on reservations; in South Dakota, one polling place for Native voters was a dirt-floored chicken coop.¹¹⁵

Finally, the For the People Act acknowledges the critical importance of the right to vote for U.S. citizens in the territories. In the five major U.S. territories with permanent residents — Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the U.S. Virgin Islands — more than 98 percent of the territorial residents are racial or ethnic minorities.¹¹⁶ Given the diversity of residents across the many U.S. territories, the bill establishes a Congressional Task Force to study and report back on the obstacles that U.S. citizens in the territories face when it comes to having a full and equal vote in presidential and congressional elections and full and equal voting representation in the U.S. House. The bill charges the Task Force with creating a report, to be delivered within a limited time frame, including recommended changes that, if adopted, would allow full and equal voting rights in federal elections, and full and equal representation for the territories in the U.S. House. This proposed task force is an important step forward — it represents an effort to acknowledge and begin to address the disadvantages faced by U.S. nationals in the territories who are denied the full franchise, often due to a history of American racism against territorial residents or failed imperial ventures.

Affirmatively Expanding Opportunities to Vote

Overt efforts to disenfranchise some voters remain a persistent problem today, but voters face a related challenge that is more subtle. The seemingly benign structures that govern our voting process have disparate impacts on different groups — and sometimes these discriminatory effects are deliberate. Streamlining voter registration, making voting more accessible, and other efforts to affirmatively expand access to the ballot for everyone will also help those who have been left out by the bad practices of the past.

The For the People Act would ensure that every state provides a foundational floor to access the franchise, including automatic voter registration, same-day voter registration, early voting, voting by mail with no excuse required, online registration, and expanded opportunities for people with disabilities to vote. These reforms benefit every American, but they will have particularly wide-ranging benefits for voters of color and those from other marginalized communities, who are the most likely to be excluded or targeted under the current patchwork system.

History of Voter Registration in the United States

The United States is one of the only industrialized nations where the burden of voter registration is largely left on individual voters.¹¹⁷ This may influence the relatively low rate of voter participation in the United States compared to other developed democracies — in a recent Pew analysis, the U.S. ranked 30th out of 35 Organization for Economic Co-operation and Development (OECD)-member countries with data available on votes cast relative to the voting age population.¹¹⁸ The problem is amplified in American communities of color, where registration rates of eligible voters are low relative to white Americans, as discussed below.

American voter registration has discriminatory roots in many places. Voter registration did not exist at the time the U.S. Constitution was ratified. In fact, the majority of pre-election registration laws were adopted between the 15th Amendment’s enfranchisement of formerly enslaved peoples and the early 20th century, as a growing population of immigrants diversified the electorate.¹¹⁹ Historian Alexander Keyssar noted these pre-election registration laws served dual purposes. While they provided “... a means of keeping track of voters and preventing fraud; they also served — and often were intended to serve — as a means of keeping African American, working-class, immigrant, and poor voters from the polls.”¹²⁰

In some states, the voter registration requirement is a direct vestige of an attempt to maintain control over who was eligible to vote, even as Jim Crow restrictions like the poll tax were being banned. For example, in 1949, Texas passed a law that, should the poll tax be abolished, statewide voter registration would automatically spring up to take its place.¹²¹ Former presidential staffer David Litt summarizes: “In Texas, voter registration was explicitly designed as a backup plan for segregation.”¹²² Today, restrictive voter registration deadlines, while seemingly neutral, maintain a suppressive effect based on arbitrary deadlines that have historically had a “disproportionate impact on poor, foreign-born, uneducated, or mobile voters.”¹²³

These disparate impacts of restrictive voter registration deadlines have particularly pernicious potential as the American electorate continues to diversify. As of 2020, the youngest Americans — Millennials and Generation Z — surpassed Baby Boomers to become the largest bloc of eligible voters.¹²⁴ Given Generation Z’s unprecedented racial diversity, the United States is on track to only become more diverse in the future.¹²⁵ However, young people are registered at lower rates relative to the general electorate, representing an opportunity for increased engagement of America’s diverse young people.¹²⁶

Yet, while America is rapidly diversifying, citizens of color are registered to vote at lower rates than white citizens across every racial and ethnic group. According to the U.S. Census Bureau, as of November 2020, 77 percent of white citizens over 18 reported being registered to vote. By contrast, only 69 percent of Black citizens, 64 percent of Asian citizens, and 61 percent of Latino citizens affirmatively reported the same.¹²⁷ Thus, expanding access to voting and voter registration represents a key step toward increasing voter participation across all Americans, including eligible voters of color. Increasing access to voting and voter registration will help the active voting electorate better reflect the United States at large, remedying the current underrepresentation of minority voters on the rolls.

Automatic Voter Registration (AVR)

The For the People Act establishes Automatic Voter Registration for federal elections nationwide, which will improve registration rates of communities of color. In the AVR model, every eligible citizen who interacts with a designated government agency, such as the Department of Motor Vehicles or a public university, is automatically registered to vote unless they affirmatively decline.

AVR as envisioned in the For the People Act would bring tens of millions of eligible voters onto the rolls and will specifically benefit voters of color who are currently underrepresented in registration rates. Although research quantifying the impact of AVR on disparities in voter turnout remains limited, some early research suggests that AVR boosted turnout among Latino voters in Oregon.¹²⁸ The For the People Act will amplify this benefit further by allowing 16-and-17-year-olds, who, as noted above, are a very racially diverse demographic, to “pre-register” at places like the DMV such that they will be automatically registered once they turn 18.

Independent of increasing turnout, AVR will also increase accuracy of the rolls to the benefit of voters of color.¹²⁹ The For the People Act requires that agencies transfer voter information electronically to elections officials. This modern transfer method will eliminate antiquated paper forms, which will reduce inaccuracies due to human error such as poor handwriting, manual data entry, and general mishandling.¹³⁰ This matters when voters of color are often disproportionately impacted by inaccuracies.¹³¹

The For the People Act contains several safeguards to protect the integrity of the vote *and* vulnerable ineligible individuals interacting with AVR, such as legal permanent residents or others who lack citizenship status. Safeguards include mechanisms to ensure that ineligible individuals are not inadvertently registered, and, in the event of an ineligible individual being unwittingly inappropriately registered by a government official under AVR, the bill protects against prosecution and adverse immigration consequences. Thus, the bill’s AVR provisions will responsibly increase the registrant pool while preserving citizen choice about registration and registration integrity.

Same-Day Registration (SDR)

Even with AVR, some eligible voters will find themselves unregistered as Election Day approaches. The For the People Act ensures these qualified citizens will not be disenfranchised by allowing them to both register to vote and cast their ballots on the same day, while still ensuring the security of the vote.

In addition to boosting turnout overall, SDR benefits different types of voters, including traditionally marginalized voters who are more likely to be impacted by restrictive registration rules.¹³² A 2018 survey by *The Atlantic* and the Public Religion Research Institute found that 11 percent of both Black and Hispanic respondents reported missing the registration deadline in their most recent attempt to vote, compared to only three percent of white respondents.¹³³ SDR would solve this problem for all voters.

Research indicates that SDR would expand ballot access for historically disenfranchised communities and other groups of the most residentially mobile Americans — not only people of color, but also young people and low-income communities of all races.¹³⁴ For instance, in 2007, North Carolina implemented same-day registration during the period of early voting. The following year, African Americans made up 36 percent of same-day registrants, even while they were only 21 percent of the state’s general voting-age population.¹³⁵

According to a recent academic study, SDR is especially effective at boosting turnout among young voters — voters who are far less white than their elders in the electorate.¹³⁶ Its impact for the United States’ most diverse age cohort is especially notable: recent research suggests same-day registration would increase turnout “among 18- to 24-year-olds by as much as 10 percentage points — a potential difference of millions of votes.”¹³⁷ These diverse young people cite not being registered as their top reason for not voting.¹³⁸ Thus, this simple change to allow for same-day registration would dramatically increase the potential participation of young Americans of color.

Finally, same-day registration preserves the opportunity to vote for those who are victims of a wrongful or discriminatory voter purge. It also aids in critical technical “clean-up” of voter rolls, allowing voters to correct inaccuracies in the voter rolls on the day of their vote, without forfeiting their chance to vote. Such inaccuracies might otherwise block eligible voters from voting due to a name change or address change — changes which disproportionately affect women, people of color, low-income people, and young people.¹³⁹ Thus, SDR is an effective method to ensure inclusive, accurate, up-to-date rolls while preserving the franchise for many.

Perhaps because of its impact, same-day registration has become a top target for voting rights opponents: rolling back SDR was a centerpiece of the 2013 omnibus bill passed by the North Carolina state legislature that a federal appellate court later struck down, finding that it had targeted African American voters for disenfranchisement “with almost surgical precision.”¹⁴⁰ More recently, lawmakers in Montana eliminated Election Day registration, creating new barriers to voting for many citizens, including Native Americans living on reservations and college students.¹⁴¹ By guaranteeing SDR for all federal elections, the For the People Act would blunt these sorts of discriminatory laws.

Online Voter Registration

The For the People Act requires that states provide online voter registration that may be completed, submitted, and received entirely online, while also allowing voters to update their registration information online. Most states have implemented this reform, but online voter registration is still unavailable in 10 states.¹⁴² This is a particular inconvenience when so many important day-to-day activities, from banking to learning, are conducted online, especially during the ongoing pandemic.

Online registration benefits younger eligible voters able to access the internet, who are a more diverse demographic than older generations. One study found that implementing online registration increased youth turnout in presidential election years by three percentage points, and the use of online voter registration increased a voter’s probability of voting by 18 to 20 percentage points.¹⁴³ Online voter registration updates will also benefit women who change their name when they marry, as an estimated 90 percent of American women do.¹⁴⁴ Easier online updates will help to ensure their voter registration information matches their current legal name.

Alternatives to In-Person Election Day Voting

Voter registration requirements are not the only seemingly neutral aspect of our election system that can have detrimental effects. Barriers also arise when a state limits eligible voters' options for casting their ballots.

The United States' tradition of a single weekday for in-person voting is antiquated — its origins were to accommodate farmers who had to ride a horse and buggy into their county seat in order to cast a vote.¹⁴⁵ Today, voters face different challenges and require flexible options to cast their vote. Communities of color are especially impacted by challenges in election administration, from poll closures to long lines deterring those who may not be able to take time off to vote.

The For the People Act addresses these challenges by having states provide standardized alternatives to in-person Election Day, including early voting and voting-by-mail, no excuse required. When provided in tandem with other options, these methods of voting fundamentally open the franchise to those often left out of the system by administrative challenges. For these groups, including minorities and the working class, the hidden costs associated with in-person Election Day voting — including childcare, lost pay, and transit — are higher and pose a greater barrier to voting.¹⁴⁶

Accordingly, options like early voting and voting-by-mail as provided in the For the People Act would benefit would-be voters who work low-wage jobs without flexible time off — a group that is disproportionately Americans of color.¹⁴⁷ Benefits stretch beyond race, as well: women are heavily overrepresented in jobs with little flexibility, especially those hourly wage jobs without flexible paid time off. For the lowest paying jobs in the United States, those paying \$10/hour or under, over two-thirds are held by women.¹⁴⁸ Ultimately, vote-by-mail, early voting, and in-person Election Day voting must all be provided in tandem to allow for optimal turnout suited to the diverse circumstances of many everyday Americans.¹⁴⁹

Early Voting

The For the People Act establishes a minimum standard of two weeks of early voting, including weekends, for all federal elections. When pre-Election Day voting options are available, they have shown to be remarkably popular with voters of color. Compared to 2016, Latino voters in 2020 quadrupled their participation in early and absentee balloting — a 224 percent increase, compared to a 165 percent increase for early and absentee ballots cast by voters overall.¹⁵⁰ In the 13 most contested battleground states in the 2020 election, Asian American and Pacific Islander voters saw their early and absentee voting rise nearly 300 percent from 2016 levels.¹⁵¹ Early voting has also been popular with African American voters, prompting some state backlash discussed below.

Before Election Day in 2020, 45 states and DC offered some version of early voting, demonstrating that widespread early voting implementation has practical precedents. Yet absent a uniform standard, such as the one provided in the For the People Act, early voting opportunities have been uneven and even subject to political manipulation, causing specific harm to communities of color.

Importantly, the protections in the For the People Act respond to several instances where early voting was exercised robustly by voters of color and subsequently targeted with state-sanctioned restrictions. In North Carolina in 2012, African Americans were overrepresented as early voters: 64 percent of Black voters used early voting, while only 49 percent of white voters voted early.¹⁵² After a Republican became governor in 2012, Republican legislative staff began seeking demographic data on which racial groups voted by which methods, building a bill informed by this data to specifically limit methods popular with voters of color.¹⁵³ The resulting bill is the same one discussed above for its “surgical” targeting of voters of color, yet it did much

more than end same-day registration. This omnibus bill became the “monster law,” unleashed in North Carolina after *Shelby County* left voters of color vulnerable. The Republican legislature and governor moved quickly to also roll back early voting opportunities, including on the Sunday before Election Day, when many Black churches customarily staged “Souls to the Polls” efforts to encourage members of their communities to vote. As previously noted, a federal appeals court later found that this roll back targeted African Americans, and struck down the law.¹⁵⁴ Similarly, federal courts struck down early voting cutbacks in Wisconsin after judges found them to be intentionally discriminatory.¹⁵⁵

Yet efforts in the courts are not always successful, as demonstrated by the recent experience of Native Americans in Arizona: the Pascua Yaqui Tribe in Tucson, Arizona fought for over two years to have its sole early voting site on its reservation restored. This was a particularly pressing need during the pandemic voting of 2020 so as not to burden the single Election Day polling place with gathered crowds, especially given high rates of death from Covid-19 in the small tribal community.¹⁵⁶ Getting to the nearest early voting site off the reservation posed challenges: one in five reservation residents lack access to a vehicle, and travel to the site required at least a two-hour roundtrip journey involving two public buses, made dangerous by the pandemic’s spread in enclosed spaces.¹⁵⁷ Further, the Tribe argued that mail-in voting was not a trusted or viable alternative for their community. Their complaint notes, “Only 18% of Native American voters in Arizona have home mail service; white voters have home mail service at a rate over 350% higher than Native Americans.”¹⁵⁸ Yet absent a federal standard, a single local election official had the final word on providing a voting site.¹⁵⁹ After a lawsuit, a federal judge declined to order her to add an early voting site, so the tribe went without.¹⁶⁰

Together, these examples demonstrate that, absent a bright-line standard provided by federal law, litigation has its limits. Even after state suppression efforts were struck down in courts in North Carolina’s successful litigation, counties maintain control and have used their power to chip away at early voting with only slightly less extreme measures. North Carolina officials have drastically reduced early voting locations, especially in communities of color. *The Nation* reports, “In 40 heavily black counties, there were 158 fewer early polling places for the all-important first week of voting. Early voting places were also eliminated at the state’s many historically black colleges and universities.”¹⁶¹

New restrictions with blatantly discriminatory effects continue to be proposed. Expert analysis in 2014 considering an Ohio bill and directive to cut back early in-person voting revealed that in the 2012 election, 19.55 percent of African American voters reported using early in-person absentee ballots, compared to 8.9 percent of white voters.¹⁶² And in the wake of the 2020 election, legislators in Georgia floated elimination of voting on the last Sunday before Election Day, mimicking the North Carolina “Souls to the Polls” rollback discussed above, which would ultimately impact voter mobilization drives in Black churches.¹⁶³

The For the People Act’s early voting provisions, which include weekend voting and 10 hours a day for the entire two-week voting period, will not only help to offset existing election administration challenges that are rife in communities of color — it will also defend against demonstrated discriminatory efforts to curb early voting. Its requirements that early voting sites be accessible to rural voters and by public transportation to the greatest extent practicable also increase voting access, particularly for communities who lack access to personal automobiles, which disproportionately includes Americans of color.¹⁶⁴

Ultimately, the bill’s early voting provisions would allow for more people to vote and would protect against discriminatory efforts to limit access to voting methods that are popular among minority groups, including early voting. In today’s climate, flexibility is required to ensure all eligible voters can cast a ballot.

Vote-by-Mail (VBM)

Mail-in voting is another important option for many communities. The For the People Act requires states to allow voting by mail, with no special conditions, while still preserving other methods of voting like early voting and in-person voting. Voting by mail has long been critical for some groups, from the homebound elderly to voters whose schedules do not coincide with regular polling hours, including working Americans unable to take time off to vote in person. VBM has experienced a gradual rise in recent years.¹⁶⁵

The bill also includes important measures to protect due process and opportunities to cure for mailed votes. These increased safeguards will ultimately benefit voters of color, whose VBM ballots and votes are disproportionately rejected or found in need of curing under current systems.¹⁶⁶ Overall, the For the People Act provides thoughtful measures to advance equitable administration of VBM. As one method among many options, voting by mail simply expands the possible universe of safe and secure participation for all communities, including voters of color.

Preventing Long Lines at the Polls

The For the People Act also addresses the persistent problem that communities of color often face longer lines at the polls than white communities. A 2020 Brennan Center analysis reported that Latino and Black voters were more likely than their white counterparts to find themselves in the longest lines on Election Day: “Latino voters waited on average 46 percent longer than white voters, and Black voters waited on average 45 percent longer than white voters.”¹⁶⁷ Stanford University political science professor Jonathan Rodden analyzed data collected by Georgia Public Broadcasting/ProPublica and found that the average wait time after 7:00 p.m. across Georgia was 51 minutes in polling places that were 90 percent or more nonwhite, but only six minutes in polling places that were 90 percent white.¹⁶⁸ In 2020, during the first days of early voting in Georgia, some voters reported waiting over 10 hours in line to cast their vote, with some experts pointing to voter enthusiasm, not voter suppression, as the source of delays.¹⁶⁹

Nevertheless, the length of lines often deters some voters or forces some voters to leave before voting.¹⁷⁰ And while these delays occur for a host of reasons, ranging from a gradual closing of polling places in certain areas to preferences among some voters of color for voting in person on Election Day, the fact remains that long lines inconvenience voters, present challenges for election administrators, and disproportionately impact voters of color.

The For the People Act addresses this issue by establishing a requirement that states provide sufficient resources to ensure that lines for in-person voting be no more than 30 minutes. The bill further authorizes funding to help election administrators meet requirements like this. The preference in many communities of color for in-person voting is likely to remain for the foreseeable future. This provision will help ensure voters of color can cast their ballots free from disproportionate and burdensome wait times.

Voting for People with Disabilities

The For the People Act also contains important new protections for voters with disabilities. Currently, voters with disabilities practically lack full access to the franchise. For example, the Government Accountability Office (GAO) estimated that in the 2008 election, only 27 percent of polling places were fully accessible to voters with disabilities.¹⁷¹ A GAO report to congressional investigators on the 2016 election found that 83 percent of polling places surveyed had one or more potential impediments to accessible voting, and that “most were set up in a way that could impede casting a private and independent vote.”¹⁷² Voters with disabilities must have innovations to ensure meaningful, private, and independent access to vote and they must be centered in the development of those innovations.

The For the People Act mandates the availability of absentee ballots for individuals with disabilities and facilitates innovations in access for an estimated 38 million voting-aged Americans with disabilities.¹⁷³ The bill provides grants for making absentee voting and voting at home accessible, making polling places accessible, and providing accessibility solutions that are universally designed and provide the same opportunities to vote for individuals with and without disabilities. It also directs the Election Assistance Commission to make grants to eligible states to conduct pilot programs enabling individuals with disabilities to register to vote privately and independently at their residences (pending appropriations).

Further, the bill's remedies will yield benefits across people's intersecting identities, such as race and disability: for instance, elderly Black and Latino Americans use mobility devices at higher rates than the general population — thus it is especially helpful to these communities that the For the People Act ensures drop boxes are fully accessible.¹⁷⁴ Black Americans have the highest prevalence of blindness in the United States, and the bill explicitly requires that all polling places have voting systems that are accessible for individuals with disabilities, including nonvisual accessibility.¹⁷⁵ Ultimately, innovations to increase access for voters with disabilities assist those who face the double-bind of systemic discrimination and disenfranchisement based on race *and* disability status.

Importantly, advocates in the disability community agree that the bill benefits many voters, including voters with disabilities, but some have also expressed concerns about the mandate for paper ballots in the For the People Act, which could potentially limit access for those voters with disabilities who cannot currently mark and cast a paper ballot privately and independently.¹⁷⁶ The For the People Act helps to address concerns over the paper ballot mandate by establishing grants for entities to study, test, and develop assistive voting technology, which includes technology to help all voters mark, verify, and cast paper ballots privately and independently. Congress and civil society are continuing collaboration to develop the bill to ensure the needs of individuals with disabilities are heard and appropriately addressed.

Outlawing Discriminatory Gerrymandering

The For the People Act also overhauls the congressional redistricting process nationwide. Every 10 years, states redraw congressional districts around the country based on census data during a process known as redistricting.¹⁷⁷ While the purpose of redistricting is to ensure that districts are equal in population and comply with other legal requirements, the process is often marked by abuses that harm communities of color, either as a result of racially discriminatory motives or as a consequence of map drawers cynically using race as a tool for partisan advantage.¹⁷⁸ The For the People Act addresses these problems by prohibiting partisan gerrymandering, strengthening protections for communities of color, and setting minimum standards for transparency and public participation to make the redistricting process more inclusive.

Ending Partisan Gerrymandering

Among the most important of the For the People Act's redistricting reforms is the ban on partisan gerrymandering of congressional districts, which in much of the country is almost invariably accomplished at the expense of communities of color.

Politicians currently draw congressional districts in most states, generally with few meaningful limits on what they can do.¹⁷⁹ As a result, map drawers, especially when one party has sole control of the process, have often used redistricting to protect existing political majorities and maintain the status quo.¹⁸⁰ Redistricting abuses affect all communities, but communities of color bear a disproportionate burden. The legacy of historical residential segregation policies — including “redlining,” where the federal government refused to insure mortgages in Black neighborhoods while actively subsidizing the construction of white-only neighborhoods — means that voters of color are often conveniently concentrated from the standpoint of map drawers.¹⁸¹ Even small adjustments to the number of people of color in a district can be enough to dramatically skew a map, leading to systematic underrepresentation for communities of color.

While racial discrimination in redistricting is illegal under the Voting Rights Act of 1965 and the Constitution, partisan gerrymandering was found nonjusticiable by the Supreme Court in 2019.¹⁸² But by last decade, at least one measure indicated that entrenched partisan advantages had already reached a 50-year high point.¹⁸³ And because party affiliation is often closely tied to race, partisan gerrymandering is often used to defend maps that target and disadvantage communities of color. This occurred nationwide during the 2011 redistricting cycle. When Republican-drawn maps in Texas, Virginia, and North Carolina were proven to impermissibly target voters of color, Republicans defended the plans by arguing they were driven by partisan rather than racial motives.¹⁸⁴ During the same period, Maryland Democrats refused to approve a congressional map that would have enhanced Black voters' electoral opportunities because it would have given Republicans an additional seat.¹⁸⁵

The For the People Act takes several steps to combat racially discriminatory maps and promote fair representation in the congressional redistricting process. In addition to an immediate ban on partisan gerrymandering, the bill establishes uniform, neutral rules that must be used to draw districts in the upcoming redistricting cycle. These rules prioritize the fair representation of racial, ethnic, and language minorities and require “communities of interest” (groups of people concentrated within a geographic area who share similar priorities) to be kept together as much as possible when drawing districts.¹⁸⁶

The For the People Act also brings public participation and transparency to a process that has traditionally taken place behind closed doors. The bill would require proposed maps to be released well before they are voted on. It would also mandate open meetings and public hearings, as well as the creation of an online portal, to allow the public to give feedback on proposed maps. In contrast to backroom deals that favor powerful interests at the

expense of communities of color, these reforms would ensure oversight of redistricting and democratize the process by encouraging ordinary citizens to get involved in shaping representation.

Without the reforms of the For the People Act, communities of color will face significant threats during future redistricting cycles. Advanced map-drawing technologies have developed over the past decade, enabling partisans to gerrymander with unprecedented levels of specificity.¹⁸⁷ Only the legislature can provide relief: the Supreme Court has left it up to Congress to prevent redistricting abuses by refusing to rule on partisan gerrymandering claims and eliminating map preclearance requirements for states with records of racial discrimination.¹⁸⁸ By strengthening protections for communities of color, banning partisan gerrymandering, and broadening opportunities for political participation, these redistricting reforms would help create a more inclusive democracy.

Ending Prison-Based Gerrymandering

The For the People Act will also require the Census Bureau to count incarcerated persons as members of their pre-incarceration communities for redistricting purposes. This would outlaw the widespread practice of “prison-based gerrymandering,” in which incarcerated individuals are counted towards the population of the area where they are incarcerated during redistricting rather than their previous primary residences. The reform is a logical step given that people generally maintain active social and political ties to their communities of origin and often return to these areas upon release.¹⁸⁹

Ending this policy would also correct an imbalance that specifically undercuts the representation of communities of color. Prison-based gerrymandering perversely rewards a discriminatory process: Black, Latino, and Native Americans are overpoliced and overincarcerated, and are then erased from the neighborhoods to which they will overwhelmingly return after incarceration.¹⁹⁰ Instead, these individuals are counted as part of mostly majority-white, rural areas where correctional facilities tend to be built, despite their having no political voice or community ties there.¹⁹¹ This yields poorer representation for communities of color by artificially depressing their reported population numbers.¹⁹² Areas with prisons, on the other hand, unfairly benefit from stronger legislative representation because overincarceration falsely exaggerates their population totals.¹⁹³

Ending prison-based gerrymandering would aid in correcting this imbalance. The For the People Act’s approach of counting people in their pre-incarceration communities rather than the locations where they are imprisoned would benefit those who are most marginalized by, and overrepresented in, the U.S. prison system. It would also benefit their communities by ensuring that the political representation and influence of overpoliced areas is not unfairly diminished. This reform is also popular — since 2010, 11 states have already passed legislation to transition to counting people at their pre-incarceration residences in some form, and there has been movement toward this change in other states as well.¹⁹⁴

In the interest of accuracy and fairness, it is only appropriate that people have representation in the places where they have community ties, and that communities of color have representation that reflects the actual size and demographic makeup of their members. Ending prison-based gerrymandering would encourage more equitable representation across groups, which could ultimately help erode the discriminatory pipeline between communities of color and carceral control.

Blunting the Political Effects of Wealth Inequality

Background: The Problem of Big Money

In the United States' current political system, private wealth often plays a decisive role in determining who has access to political power, both with respect to who gets elected and who has influence over politicians once in power. That has profound negative consequences for American people of color, women, and women of color, who have traditionally been shut out of wealth accumulation through legal and extra-legal means.¹⁹⁵

Economic inequality continues to divide Americans — as of 2020, the average net worth of a Black family was about one-eighth that of a typical white family.¹⁹⁶ Among the United States' current largest generation, millennials, the gap is even more pronounced: the typical white millennial family's wealth is about \$88,000, compared to \$5,000 for the typical Black millennial family.¹⁹⁷ The gender wealth gap also persists: for every dollar owned by American men, American women, on average, own just 32 cents.¹⁹⁸ The wealth disparities between white women and women of color are even more pronounced — Black and Latina women respectively hold about one cent of wealth for every dollar of white women's wealth.¹⁹⁹

As wealth is increasingly concentrated, so too so too are the sources of campaign contributions: elite donors skew overwhelmingly white and disproportionately male.²⁰⁰ Between 1980 and 2012, 90 percent of reported campaign contributions came from white Americans.²⁰¹ Top super PAC donors (those writing \$2 million-plus checks) are nearly exclusively white.²⁰² Since 2009, the Top 100 political spenders list has had exactly one Black donor, and a handful of other nonwhite donors.²⁰³ Even with an historic first-ever female candidate as a Democratic presidential nominee in 2016, 81 of the top 100 Democratic donors were men. The top 10 male donors gave more than the top 100 female donors combined.²⁰⁴

The makeup of this donor class has significant consequences. First, candidates of color and women often face greater barriers to raising enough money to mount competitive campaigns.²⁰⁵ This matters especially at the early stage, when unknown contenders often call upon their personal networks to generate seed money.²⁰⁶ Challenges in fundraising are especially stark for women candidates of color: in 2018, large donors gave Black women congressional candidates barely one-third of what they gave their other female counterparts.²⁰⁷

Second, large donors have outsized influence on the priorities of the politicians they support. Because large donors are the gatekeepers for candidates to run viable campaigns, candidates and incumbents spend significant time courting them and listening to their concerns, often giving them extra influence over which priorities elected politicians choose to advance amidst competing issues.²⁰⁸ This has a direct impact on policy: donor priorities are often different (and differently ordered) than the priorities of the vast majority of everyday Americans.²⁰⁹ Yet because of current campaign finance structure, the concerns of the small, elite class of high-dollar, white, male donors often outweigh the concerns of ordinary people, including millions of people of color, women, and women of color.

This especially matters when wealthy donors' top interests are starkly different from those of other Americans, especially Americans of color. On critical issues like student loan debt, housing, and paid sick leave, top political donors have demonstrated divergent priorities from those of most Americans.²¹⁰ And too often, communities of color — disproportionately burdened by student debt, housing costs, and the financial precarity associated with low-wage employment — have borne the brunt of public policies favored by political donors.²¹¹ Ultimately, when elected officials' attention is disproportionately spent on donors' interests over those of the average voter, the result is a distortion in U.S. policy.²¹²

Importantly, large donors are not the *only* political donors. Everyday Americans are also making contributions, and small dollar donations have been on the rise. But unfortunately, large donors maintain their outsized influence even when outnumbered by small donors: even with 2018’s record-setting levels of small-donor campaign contributions, the estimated 7 million small donors were outspent by fewer than 3,500 donors who gave \$100,000 or more.²¹³ In the wake of *Citizens United*, large donors account for ever more of the money spent in campaigns, amplifying the need for a legislative policy solution.

Until access to personal wealth ceases to be the paramount ticket to political power, the United States will not approach equity in government representation. This is not because of malice or corruption among current officeholders. Rather, with notable exceptions, persistent inequity in our political leadership is largely attributable to a lack of shared interest between two groups: on the one hand, those who are able to marshal the significant resources required to run and the donors who back them, and on the other hand, most of the American people. Thus, an overhaul of money in politics is one of the single most effective actions needed to advance toward an actually representative democracy — where the people who choose the policy being made, and the people who put them in the decision-making seats, reflect the American people at large.

Voluntary Small-Donor Matching

The For the People Act would give candidates a path to mount viable campaigns without relying primarily on wealthy donors by creating a voluntary small-donor matching system for federal races. This reform would facilitate a more representative democracy, while instituting a proven mechanism to address inequities that have worsened in the post-*Citizens United* era.

Under the bill’s new voluntary matching system, ordinary Americans who give small donations to participating candidates can have their contributions matched \$1 to \$6 — not out of the public coffer, but using funds generated by corporate lawbreakers and wealthy tax evaders. This reform aids the vast majority of candidates but is especially beneficial to those who face systemic barriers in accessing large donors.²¹⁴ Had the bill’s small-donor match system been active in 2018, the share of small-donor contributions would have jumped from 13 percent to 56 percent of all contributions.²¹⁵ And in the 2018 cycle, this small-donor-focused reform could have reduced the average fundraising gap experienced by women of color candidates by 34 percent.²¹⁶ Most importantly, an analysis based on Federal Election Commission data revealed that, for the 2018 elections, an estimated 94 percent of House candidates would have done *as well or better* in terms of dollars raised if fundraising under the small-dollar system proposed in the For the People Act — free from mega-donor influence.²¹⁷

Not only does this method enable a more diverse pool of candidates to run (inspiring yet more diverse donor support in turn), but it also encourages political leaders of all stripes to be more responsive to diverse constituents, newly identified as potential donors. Small donors are far more reflective of the racial, gender, and economic diversity of the American public, especially compared to wealthier, larger donors.²¹⁸ Small donor matching as envisioned in the For the People Act will help these everyday Americans drive the agenda for the decisions that matter to them, while relieving pressure on candidates and incumbents to court a small group of elite donors with very different priorities. Without this change, it will be far harder to tackle systemic economic and social disparities — disparities that were on stark display during the Covid-19 pandemic and that continue to pervade so many aspects of American life.

Curbing Super PACs and Dark Money Groups

The For the People Act contains several provisions, from candidate coordination to donor disclosure, that would curb the ability of wealthy interests to take advantage of their financial power to advance policies that harm communities of color, often without having to disclose their identities to the public. *Citizens United* has made it easier than ever for wealthy interests to translate their wealth into political clout, including through super PACs that can raise and spend unlimited funds and dark money groups that can hide their donors. On issue after issue — from regulation of predatory lenders, to wages and job benefits, to healthcare accessibility — major donors have priorities that diverge from most other Americans, especially Americans of color.²¹⁹

Specifically, the Act would close several loopholes that *Citizens United* either created or exacerbated. The bill's reforms include limiting the ability of outside groups to coordinate with candidates, requiring large campaign spenders to disclose all their major donors, and overhauling campaign finance enforcement via reform of the Federal Election Commission. Coupled with voluntary small-donor matching, these additional reforms will empower working Americans, including those not adequately represented by the corps of elite white male donors.

Removing Barriers so Everyday Americans Can Run for Office

The For the People Act includes the Help American Run Act (HARA), which would allow non-incumbent candidates in federal races to use a capped amount of their campaign funds to cover certain necessary expenses like child care. Current campaign finance law does not allow personal expense exemptions for certain everyday needs, including childcare or elder care. While current law does permit non-incumbent candidates to pay themselves a salary from their campaign funds, many are reluctant to do so before winning a race, and the salary rules disadvantage candidates who did not previously have high-paying jobs.²²⁰

While seemingly neutral, these rules have the practical effect of making it so *only* those who do not need family or dependent care — or do not need help paying for such care — can run. This means everyday Americans who intimately know the importance of stable childcare, a social safety net, or a functional public education system are effectively left out of the candidate pool, and thus do not get a seat at the decision-making table. Only 10 members of Congress have ever given birth while serving.²²¹ And the bill's sponsor, Representative Katie Porter of California, is the first-ever single mother of young children to win a seat in Congress, even though this familial situation is a common one across the country.²²² When government has more representatives with direct knowledge of life experiences like the need for child care or elder care, it increases the likelihood that those policies will be prioritized.

This reform especially matters for gender equity, as the population providing primary family care is disproportionately women, even in a nominally equitable society.²²³ The For the People Act's HARA provision acknowledges that those burdens keep many caretakers out of the running for office. To address their needs, the bill allows the usage of campaign funds, under a certain cap, to cover childcare, elder care, care for disabled dependents, and health insurance premiums.

In a status quo that privileges wealthy (and therefore disproportionately white and male) candidates, HARA would help level the playing field, encouraging non-wealthy candidates with the needs of everyday Americans to run.²²⁴ Ultimately, this will yield a more diverse group of elected leaders more likely to pass policies friendly to those traditionally left out of the political class, including working-class people, women, people of color, and especially women of color.

Conclusion

There has been a sea change in America's electorate and her leaders over time — yet to name how far we still must go does not diminish how far we have come. The comprehensive, seismic reforms proposed by the For the People Act honor the work done by Americans of all kinds, since our founding, to create a nation true to the words “We, the People.” We are only strengthened when the definition of “the People,” expands — as it has done since the days when those words were written by a Founding Father, a slaveholder who was, complicatedly, also an American visionary. Facing our complex past — condemning the wrongs while being inspired to envision the remedies — is what has and will always make our nation great.

In these tumultuous times, the Senate now considers the For the People Act, the greatest civil rights bill since the civil rights movement itself. In a year rich with historic symbolism — the first time a woman has been elected to executive office, the first time a Confederate flag was walked through the U.S. Capitol — the bill could not come at a more fitting hour.²²⁵ As inequality reaches its highest levels in 50 years, and efforts to destroy democracy, from the Big Lie to voter suppression, sweep the nation, we once again confront what Dr. Martin Luther King called the fierce urgency of now.²²⁶

We stand at the fulcrum of history, at an unprecedented but ripe moment for change.

The For the People Act is the bill to seize these times.

It is a critical step toward achieving an inclusive democracy, long promised, but not yet delivered. The bill protects and secures a diverse polity, combatting the harms of the past. But it also does more. Through innovation and simple, common-sense reform, it looks forward, crafting a democracy for all Americans. The bill may yet help us realize the potential of our nation, the vision seen by the Founding Fathers so long ago and lived today by young Americans raised in a world where all people, truly, are equal, and are free to live as so. Passing the For the People Act would be a testament to American optimism — and a foundation upon which to build our future.

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¹⁹ Library of Congress, “The Founders and the Vote,” accessed June 3, 2021, <https://www.loc.gov/classroom-materials/elections/right-to-vote/the-founders-and-the-vote/>.

²⁰ While many restrictive voting laws have been debated and passed under the guise of baseless voter fraud concerns, lawmakers have also defended these laws with rhetoric alarmingly similar to that used during Jim Crow to justify the disenfranchisement of Americans of color. For example, one Arizona state representative, explaining his support for new restrictions on vote by mail, argued that “everybody shouldn’t be voting.” Stating that some voters are “totally uninformed on the issues,” he further noted the “quantity [of votes] is important, but we [legislators] have to look at the quality of votes, as well.” Justine Coleman, “Arizona House Republican Says Party Thinks ‘Everybody Shouldn’t Be Voting,’” *The Hill*, March 11, 2021, <https://thehill.com/homenews/state-watch/542796-arizona-house-republican-says-party-thinks-everybody-shouldnt-be-voting>; Veronica Stracqualursi, “Arizona GOP Representative Struggles to Justify State Bill That Would Purge Early Voting List,” *CNN*, April 27, 2021, <https://www.cnn.com/2021/04/23/politics/arizona-lawmaker-early-voting-list-legislation-cnntv/index.html>. Critics have noted that this “idea that some people are simply too ignorant to vote has a toxic history — one rooted in intelligence and literacy tests that were central to limiting Black people from voting in the Jim Crow South.” Timothy Bella, “A GOP Lawmaker Says the ‘Quality’ of a Vote Matters. Critics Say That’s ‘Straight Out of Jim Crow.’” *Washington Post*, March 13, 2021, <https://www.washingtonpost.com/politics/2021/03/13/arizona-quality-votes-kavanaugh/>. For more on the links between modern restrictions on the right to vote and Jim Crow, see Keith Gunnar Bentele and Erin E. O’Brien, “Jim Crow 2.0?: Why States Consider and Adopt Restrictive Voter Access Policies,” *Perspectives on Politics* 11, no. 4 (2013): 1088–1116, <https://www.cambridge.org/core/journals/perspectives-on-politics/article/abs/jim-crow-20-why-states-consider-and-adopt-restrictive-voter-access-policies/A3FD871345BE34882F434CA89489D64A>; and Ari Berman, “Jim Crow Killed Voting Rights for Generations. Now the GOP Is Repeating History.” *Mother Jones*, June 2, 2021, <https://www.motherjones.com/politics/2021/06/jim-crow-killed-voting-rights-for-generations-now-the-gop-is-repeating-history/>.

²¹ The exclusion of people of color, especially Black Americans, from wealth creation in the United States has a long history. Throughout the 20th century, for example, federal, state, and local governments sanctioned the exclusion of people of color from government benefits that created social mobility for white people. The ostensibly race-neutral GI Bill was designed to maintain local control, so local jurisdictions could still exclude soldiers of color from benefits if they chose. Similarly, affirmative governmental policies like redlining served to systemically undervalue Black communities and perpetuate racial segregation in housing. The lasting impact of these policies continues to impact wealth accumulation, educational access, and social mobility for people of color today. See, e.g., Erin Blakemore, “How the GI Bill’s Promise Was Denied to a Million Black WWII Veterans,” *History*, June 21, 2019, last modified April 20, 2021, <https://www.history.com/news/gi-bill-black-wwii-veterans-benefits>; and Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liveright Publishing Corporation, 2017).

²² Representing then-contemporary racism justifying Indian exclusion, Michigan Senator Jacob Howard said, “I am not yet prepared to pass a sweeping act of naturalization by which all the Indian savages, wild or tame, belonging to a tribal relation, are to become my fellow-citizens and go to the polls and vote with me . . .” Matthew L. Campbell and Jacqueline De León, “A History of Native Voting Rights,” Native American Rights Fund, accessed June 10, 2021, <https://www.narf.org/cases/voting-rights/>; *Cong. Globe*, 39th Cong., 1st Sess. 2895 (1866), <https://memory.loc.gov/ammem/amlaw/lwcglink.html#anchor39> (Statement of Sen. Howard). Campbell and De León also note that, beyond racism, it was politically pragmatic to exclude Native Americans from voting — based on their large numbers at the time, Native Americans would have exerted significant political power. The text of the 14th Amendment even expressly states that Native Americans simply do not count in representative apportionment. It reads in part: “Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed.” U.S. Const. amend. XIV, § 2.

²³ National Constitution Center, “On This Day, All Indians Made United States Citizens,” June 2, 2021, <https://constitutioncenter.org/blog/on-this-day-in-1924-all-indians-made-united-states-citizens>; Becky Little, “Native Americans Weren’t Guaranteed the Right to Vote in Every State Until 1962,” *History*, last modified November 13, 2020, <https://www.history.com/news/native-american-voting-rights-citizenship>.

²⁴ Some Asian American scholars note that the harm of this historical practice stretches to Asian American voters today, who feel the dominant culture does not grasp Asian American reluctance at democratic participation because they are “largely unaware” of the history of Asian American exclusion. Robert S. Chang, “Critical Race Theory,” in *Race and Races: Cases and Resources for a Diverse America*, ed. Juan F. Perea et al., 3rd edition, (West Academic Publishing, 2015), 704.

²⁵ Brief for National Latino Organizations as Amici Curiae Supporting Respondents at 6, footnote 11, *Shelby County v. Holder*, 570 U.S. 529 (2013) (No. 12-96), <https://www.brennancenter.org/sites/default/files/legal-work/2013.2.1%20Brief%20of%20National%20Latino%20Organizations%20in%20Support%20of%20Respondents.pdf>.

²⁶ Michelle Garcia, “The Latino Vote and Its Legacy,” *Texas Observer*, October 27, 2020, <https://www.texasobserver.org/latino-vote-election/>.

²⁷ Brief for National Latino Organizations as Amici Curiae Supporting Respondents at 7–8 <https://www.brennancenter.org/sites/default/files/legal-work/2013.2.1%20Brief%20of%20National%20Latino%20Organizations%20in%20Support%20of%20Respondents.pdf>, *Shelby County v. Holder*, 570 U.S. 529 (2013).

²⁸ Raquel Reichard, “A Brief History of Latino Voting Rights Since the 1960s,” *Remezcla*, October 22, 2018, <https://remezcla.com/features/culture/latino-voting-rights-1960s/>; U.S. Department of Justice, “History of Federal Voting Rights Laws,” last modified July 28, 2017, <https://www.justice.gov/crt/history-federal-voting-rights-laws>.

²⁹ Some detractors of policies to advance political and economic equity imply that equitable treatment for people of color is tantamount to asking for special privileges or handouts. Juana Summers, “For Biden Administration, Equity Initiatives Are a Moral Imperative,” NPR, February 6, 2021, <https://www.npr.org/2021/02/06/964469190/for-biden-administration-equity-initiatives-are-a-moral-imperative>. However, this argument ignores facts and elides history. Disparate wealth accumulation is not the fault of a contemporary lack of personal agency on the part of people of color as is suggested, but is directly attributable to state-sanctioned policies to deny wealth to, and take wealth from, Americans of color. For more on this, see discussion of the GI Bill and redlining in footnote 21.

³⁰ Race-based discrimination in employment was only formally outlawed with the Civil Rights Act of 1964. The rare few people of color who accumulated sizeable wealth often became targets of overt or covert violence. See, e.g., Kimberly Fain, “The Devastation of Black Wall Street,” *JSTOR Daily*, July 5, 2017, <https://daily.jstor.org/the-devastation-of-black-wall-street/>; David Grann, *Killers of the Flower Moon: The Osage Murders and the Birth of the FBI*, (New York: Doubleday, 2017).

³¹ See, e.g., Abigail Johnson Hess, “Here’s How Much More Women Could Earn if Household Chores Were Compensated,” CNBC, April 10, 2018, <https://www.cnbc.com/2018/04/10/heres-what-women-could-earn-if-household-chores-were-compensated.html>; Jasmine Tucker, *The Wage Gap Has Robbed Women of Their Ability to Weather Covid-19*, National Women’s Law Center, 2021, <https://nwlc.org/wp-content/uploads/2021/03/EPD-2021-v1.pdf>.

³² While no group is a monolith in its experiences or outlook, the capture of power by one group, largely white and male throughout history, is not likely to reflect all Americans' preferences and experiences. Thus, representation beyond that group which has historically held power alone ensures a better reflection of a cross-section of Americans' lived experiences and needs. And the relative diversification of Congress is still quite recent: 2016 was the first time a South Asian woman was elected to Congress; 2018 was the first time a Native American woman was elected to Congress; 2020 brought the United States' first openly gay Black men to Congress. Congresswoman Pramila Jayapal, "About Me," accessed June 3, 2021, <https://jayapal.house.gov/about-me/>; Kyung Lah and Annie Grayer, "Kamala Harris Invokes South Asian Heritage in Response to Trump's Immigration Plan," CNN, May 16, 2019, <https://www.cnn.com/2019/05/16/politics/kamala-harris-south-asian-heritage/index.html>; Eli Watkins, "First Native American Women Elected to Congress: Sharice Davids and Deb Haaland," CNN, November 7, 2018, <https://www.cnn.com/2018/11/06/politics/sharice-davids-and-deb-haaland-native-american-women>; and Dana Rubinstein, "Torres and Jones Win and Will Become 1st Gay Black Members of Congress," *New York Times*, November 4, 2020, <https://www.nytimes.com/2020/11/04/nyregion/ny-house-torres-jones.html>.

³³ William H. Frey, "The Nation Is Diversifying Even Faster Than Predicted, According to New Census Data," Brookings Institution, July 1, 2020, <https://www.brookings.edu/research/new-census-data-shows-the-nation-is-diversifying-even-faster-than-predicted/>; Katherine Schaeffer, "Racial, Ethnic Diversity Increases yet Again with the 117th Congress," Pew Research Center, January 28, 2021, <https://www.pewresearch.org/fact-tank/2021/01/28/racial-ethnic-diversity-increases-yet-again-with-the-117th-congress/>.

³⁴ U.S. Census Bureau, "QuickFacts: United States," accessed June 3, 2021, <https://cawp.rutgers.edu/election2020-results-tracker>.

³⁵ Nancy McKeon, "Women in the House Get a Restroom," *Washington Post*, July 28, 2011, https://www.washingtonpost.com/lifestyle/style/women-in-the-house-get-a-restroom/2011/07/28/gIQAFgdwfl_story.html.

³⁶ Senate Historical Office, "A Chronological List of Senators since the First Congress in 1789," January 20, 2021, <https://www.senate.gov/artandhistory/history/resources/pdf/chronlist.pdf>. In the history of the U.S. Senate, there have been 11 African Americans senators, 11 Hispanic American senators, 8 Asian American senators, and 3 Native American senators. United States Senate, "Ethnic Diversity in the Senate," accessed June 3, 2021, <https://www.senate.gov/senators/EthnicDiversityintheSenate.htm>. (Note this assessment counts biracial former Senator Kamala Harris twice, once in the African American category and once in the Asian American category.)

³⁷ United States Senate, "Women Senators," accessed June 3, 2021, <https://www.senate.gov/senators/ListofWomenSenators.htm>.

³⁸ Rebecca Traister, "Mazie Hirono Is Okay with a Little Confrontation: A Long Talk about Anger with the Gloriously Foulmouthed Senator from Hawaii," *The Cut*, April 16, 2021, <https://www.thecut.com/2021/04/senator-mazie-hirono-interview-heart-of-fire.html>; Center for American Women in Politics, "History of Women of Color in U.S. Politics," accessed June 3, 2021, <https://cawp.rutgers.edu/history-women-color-us-politics>.

³⁹ Jessica Campisi and Brandon Griggs, "Of the 114 Supreme Court Justices in US History, All but 6 Have Been White Men," CNN, September 26, 2020, <https://www.cnn.com/2020/09/25/politics/supreme-court-justice-minorities-history-trnd/index.html>. As of the swearing in of Justice Amy Coney Barrett on October 27, 2020, a total of 115 justices have served on the Supreme Court.

⁴⁰ U.S. Census Bureau, "2019 Population Estimates by Age, Sex, Race and Hispanic Origin," June 25, 2020, <https://www.census.gov/newsroom/press-kits/2020/population-estimates-detailed.html>; Campisi and Griggs, "114 Supreme Court Justices."

⁴¹ The White House, "Presidents," accessed June 3, 2021, <https://www.whitehouse.gov/about-the-white-house/presidents/>.

⁴² White House, "Presidents"; see also Farida Jalalzai, "Why the US Still Hasn't Had a Woman President," *The Conversation*, March 9, 2020, <https://theconversation.com/why-the-us-still-hasnt-had-a-woman-president-131125>.

⁴³ Wendy Sawyer, "Visualizing the Racial Disparities in Mass Incarceration," Prison Policy Initiative, July 27, 2020, <https://www.prisonpolicy.org/blog/2020/07/27/disparities/>.

⁴⁴ Brennan Center for Justice, “Criminal Disenfranchisement Laws across the United States,” last modified May 4, 2021, <https://www.brennancenter.org/our-work/research-reports/criminal-disenfranchisement-laws-across-united-states>. Importantly, some states are more expansive regarding the voting rights of incarcerated people. Maine and Vermont allow currently incarcerated people to vote; their state racial makeups are 94.4 percent and 94.2 percent white, respectively. National Conference of State Legislatures, “Felon Voting Rights,” last modified June 1, 2021, <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>; U.S. Census Bureau, “QuickFacts: Maine, United States,” accessed June 6, 2021, https://www.census.gov/quickfacts/fact/table/ME_US/; and U.S. Census Bureau, “QuickFacts: Vermont, United States,” accessed June 6, 2021, https://www.census.gov/quickfacts/fact/table/VT_US/. Washington, D.C., which is 46 percent Black, also allows currently incarcerated people to vote, but as noted in the D.C. statehood section, all of its residents lack full federal voting rights. U.S. Census Bureau, “QuickFacts: District of Columbia, United States,” accessed June 6, 2021, https://www.census.gov/quickfacts/fact/table/DC_US/.

⁴⁵ Erin Kelley, *Racism & Felony Disenfranchisement: An Intertwined History*, Brennan Center for Justice, 2017, 1, <https://www.brennancenter.org/our-work/research-reports/racism-felony-disenfranchisement-intertwined-history>.

While the South is traditionally associated with this particular type of tailored Jim Crow law, Northern states also had restrictive laws targeted at limiting the franchise for people of color. New York was the only state to require that Black Americans — and only Black Americans — own real property as a requirement to vote. When that requirement was forced to change by the 14th and 15th Amendments, New York’s disenfranchisement law took its place. The Brennan Center notes that, until very recently, the disenfranchisement law in New York was “nearly identical to the provision enacted 140 years ago.” More pointedly, under that law, “[n]early 80% of those who have lost their right to vote under New York’s law are African-American or Hispanic.” These racial disparities were persuasive in adopting recent reforms in New York: On May 4, 2021, New York’s Governor Andrew Cuomo signed into law a bill that restores voting rights automatically for all New Yorkers who are not in prison. Erika Wood et al., *Jim Crow in New York*, Brennan Center for Justice, 2010, <https://www.brennancenter.org/our-work/research-reports/jim-crow-new-york>; Brennan Center for Justice, “Voting Rights Restoration Efforts in New York,” last modified May 4, 2021, <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-new-york>.

⁴⁶ Nina Lakhani, “How Native Americans’ Right to Vote Has Been Systematically Violated for Generations,” *The Guardian*, October 16, 2020, <https://www.theguardian.com/us-news/2020/oct/16/native-americans-voting-rights-mail-in-ballots-us-elections>, quoting Professor Jean Reith Schroedel. Further research forthcoming from Professor Schroedel; see also Christina Rivers, “A Brief History of Felon Disenfranchisement and Prison Gerrymanders,” Organization of American Historians, accessed June 3, 2021, footnote 2, <https://www.oah.org/tah/issues/2017/november/a-brief-history-of-felon-disenfranchisement-and-prison-gerrymanders/#fn2>. Further, California’s 1879 constitution stated “no native of China, no idiot, insane person, or person convicted of any infamous crime” could vote, and the state initially refused to ratify the 15th Amendment, which banned race-based voting restrictions. Patrick Berry and Stuart Baum, “California Voters Will Have the Chance to Restore Voting Rights to Tens of Thousands,” Brennan Center for Justice, June 25, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/california-voters-will-have-chance-restore-voting-rights-tens-thousands>.

⁴⁷ John Gramlich, “Black Imprisonment Rate in the U.S. Has Fallen by a Third since 2006,” Pew Research Center, May 6, 2020, <https://www.pewresearch.org/fact-tank/2020/05/06/share-of-black-white-hispanic-americans-in-prison-2018-vs-2006/>.

⁴⁸ Roxanne Daniel, “Since You Asked: What Data Exists about Native American People in the Criminal Justice System?” Prison Policy Initiative, April 22, 2020, <https://www.prisonpolicy.org/blog/2020/04/22/native/>.

⁴⁹ Chris Uggen et al., *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, Sentencing Project, 2020, 4, 11–12, <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/#III.%20Disenfranchisement%20in%202020>.

⁵⁰ Kevin Morris, “Neighborhoods and Felony Disenfranchisement: The Case of New York City,” *Urban Affairs Review* (2020), <https://journals.sagepub.com/doi/abs/10.1177/1078087420921522>; see also Kelley, *Racism & Felony Disenfranchisement*.

⁵¹ Morris, “Neighborhoods and Felony Disenfranchisement.”

⁵² Prison Policy Initiative, “Women and Gender,” accessed June 3, 2021, https://www.prisonpolicy.org/women.html?gclid=Cj0KCQjw1PSDBhDbARIsAPeTqrc0w_NzyLtdKND0nvp9L2JRwb7H9v4Xh2YcDVZng31GaA-MoqDecakaAI9YEALw_wcB.

⁵³ Sentencing Project, “Incarcerated Women and Girls,” November 24, 2020, <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>. Additional disparities may exist, but it is difficult to track them given the lack of consistent and contemporary data related to gender and incarceration in the United States. This problem is particularly pronounced for certain groups, including women of color. Hannah L. Walker, email message to authors, April 19, 2021. For instance, challenges with data collection on Native Americans (including the tendency to group Native Americans with other groups in data collection) generally renders it difficult to demonstrate the full impacts of mass incarceration on the Native American community, and Native American women especially. See Daniel, “Since You Asked.”

⁵⁴ Uggen et al., *Locked Out 2020*, 4.

⁵⁵ Danyelle Solomon and Connor Maxwell, “Women of Color: A Collective Powerhouse in the U.S. Electorate,” Center for American Progress, November 19, 2019, <https://www.americanprogress.org/issues/race/reports/2019/11/19/477309/women-color-collective-powerhouse-u-s-electorate/>.

⁵⁶ American Civil Liberties Union, “Reports Show Widespread Confusion about the Voting Rights of People with Criminal Records,” October 1, 2008, <https://www.aclu.org/press-releases/reports-show-widespread-confusion-about-voting-rights-people-criminal-records?redirect=cpreirect/37003>.

⁵⁷ Ken Kalthoff, “Dozens Rally to Keep Election Violation Defendant out of Prison,” NBC DFW, September 7, 2020, <https://www.nbcdfw.com/news/local/dozens-rally-to-keep-election-violation-defendant-out-of-prison/2439795/>.

⁵⁸ Tim Mak, “Over 1 Million Florida Felons Win Right to Vote With Amendment 4,” NPR, November 7, 2018, <https://www.npr.org/2018/11/07/665031366/over-a-million-florida-ex-felons-win-right-to-vote-with-amendment-4>.

⁵⁹ Brennan Center for Justice, “Voting Rights Restoration Efforts in Florida,” last modified September 11, 2020, <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-florida>.

⁶⁰ Brennan Center, “Voting Rights Restoration Efforts in Florida.”

⁶¹ Brennan Center for Justice, “Litigation to Protect Amendment 4 in Florida,” last modified September 11, 2020, <https://www.brennancenter.org/our-work/court-cases/litigation-protect-amendment-4-florida>.

⁶² Brennan Center, “Protect Amendment 4.”

⁶³ Uggen et al., *Locked Out 2020*, 16–18. We calculate the total number of Americans who would have their voting rights restored by the For the People Act by subtracting the estimated number of disenfranchised individuals currently in prison or jail due to a felony conviction from the estimated total number of disenfranchised individuals with felony convictions.

⁶⁴ Credible studies have extensively debunked these claims, yet voter ID law proponents continually rely on such arguments to justify intents and outcomes that have the demonstrated effect of suppressing minority votes. Brennan Center for Justice, *Debunking the Voter Fraud Myth*, 2017, <https://www.brennancenter.org/our-work/research-reports/debunking-voter-fraud-myth>. When Georgia and Indiana pioneered strict photo ID requirements to vote in 2005, they were “outliers.” Brennan Center for Justice, “Election 2016: Restrictive Voting Laws by the Numbers,” September 28, 2016, <https://www.brennancenter.org/our-work/research-reports/election-2016-restrictive-voting-laws-numbers#strictphotoidlaws>. In 2008, America’s first Black president was elected, buoyed by historic Black turnout. Just before the next presidential election, in 2011, the National Conference of State Legislatures reported that “voter ID laws exploded. Lawmakers in 34 states introduced legislation to either strengthen existing voter ID laws or institute new ones.” National Conference of State Legislatures, *Voter ID: Where Are We Now?*, April 2012, 2, https://www.ncsl.org/documents/legismgt/elect/Canvass_Apr_2012_No_29.pdf; see also Dale E. Ho, “Election Day Registration and the Limits of Litigation,” *Yale Law Journal* 129 (2019): 194, footnote 39, <https://www.yalelawjournal.org/forum/election-day-registration-and-the-limits-of-litigation>.

⁶⁵ For summary of findings from various papers, see Table 1 in United States Government Accountability Office, *Elections: Issues Related to State Voter Identification Laws*, GAO-14-634, Report to Congressional Requesters, September 2014, 22–28, <https://www.gao.gov/assets/gao-14-634.pdf>.

⁶⁶ Jon C. Rogowski and Cathy J. Cohen, *Black and Latino Youth Disproportionately Affected by Voter Identification Laws in the 2012 Election*, accessed June 3, 2021, http://blackyouthproject.com/wp-content/uploads/2015/11/voter_id_effect_2012.pdf; Lonna Rae Atkeson et al., “A New Barrier to Participation: Heterogeneous Application of Voter Identification Policies,” *Electoral Studies* 29 (2010): 66–73, <https://www.sciencedirect.com/science/article/abs/pii/S0261379409000912>; and Rachael V. Cobb, D. James Greiner, and Kevin M. Quinn, “Can Voter ID Laws Be Administered in a Race-Neutral Manner? Evidence from the City of Boston in 2008,” *Quarterly Journal of Political Science* 7 (2012): 1–33, https://www.law.berkeley.edu/files/VoterIDLaw_Rachael-Cobb-Greiner.pdf; see also Ariel R. White, Noah L. Nathan, and Julie K. Faller, “What Do I Need to Vote? Bureaucratic Discretion and Discrimination by Local Election Officials,” *American Political Science Review* 109 (2014): 129–142, <https://www.cambridge.org/core/journals/american-political-science-review/article/abs/what-do-i-need-to-vote-bureaucratic-discretion-and-discrimination-by-local-election-officials/76859FDA6A55B8B4D11A851F13ED8AAF>

⁶⁷ Bentele and O’Brien, “Jim Crow 2.0?” 1103.

⁶⁸ Native American Rights Fund, “North Dakota Voter ID Law (Brakebill, et al. v Jaeger),” accessed June 3, 2021, <https://www.narf.org/cases/nd-voter-id/> [emphasis added].

⁶⁹ Theodore R. Johnson, “The New Voter Suppression,” Brennan Center for Justice, January 16, 2020, <https://www.brennancenter.org/our-work/research-reports/new-voter-suppression>.

⁷⁰ Johnson, “New Voter Suppression.”

⁷¹ Reid Wilson, “Five Reasons Voter Identification Bills Disproportionately Impact Women,” *Washington Post*, November 5, 2013, <https://www.washingtonpost.com/blogs/govbeat/wp/2013/11/05/five-reasons-voter-identification-bills-disproportionately-impact-women/>.

⁷² Kate Cimini, “Real ID Sexist? Some Monterey County Women Struggle Supplying Documents, ID,” *The Californian*, December 26, 2019, <https://www.thecalifornian.com/story/news/2019/12/26/california-women-report-struggling-documents-real-id/2679465001/>.

⁷³ “Voter ID — the Major Impact on Women of Color,” Southern Coalition for Social Justice, November 4, 2013, <https://southerncoalition.org/nc-women-voters-heavily-burdened-by-new-voting-restrictions/>.

⁷⁴ Southern Coalition for Social Justice, “Voter ID.”

⁷⁵ Kathryn O’Neill and Jody L. Herman, *The Potential Impact of Voter Identification Laws on Transgender Voters in the 2020 General Election*, UCLA School of Law Williams Institute, 2020, 2, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Voter-ID-Feb-2020.pdf>.

⁷⁶ O’Neill and Herman, *Voter Identification Laws*, 2.

⁷⁷ Stuart Baum, Mikael Morelión, and Izabela Tringali, “How Voter ID Laws Threaten Transgender Voters,” Brennan Center for Justice, November 20, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/how-voter-id-laws-threaten-transgender-voters>; National Center for Transgender Equality, “ID Documents Center: Texas,” last modified May 2020, <https://transequality.org/documents/state/texas>.

⁷⁸ Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, 2016, 56, <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

⁷⁹ Scottie Andrew, “Why Some Transgender Voters Have an Even Bigger Challenge to Casting Their Ballots,” CNN, October 13, 2020, <https://www.cnn.com/2020/10/13/politics/transgender-voter-suppression-2020-election-trnd/index.html>.

⁸⁰ United States Department of Justice, “Introduction to Federal Voting Rights Laws,” last modified June 19, 2009, <https://www.justice.gov/crt/introduction-federal-voting-rights-laws-0>. Interestingly, the Voting Rights Act was rendered necessary because the landmark Civil Rights Act of 1964 allowed for the maintenance of poll taxes and literacy tests in its voting rights section, due to the cynically effective work of Southern Democrats in the Senate like Strom Thurmond in watering down the bill. (Attempting to kill the Civil Rights Act of 1957, Thurmond set a record for the longest single-speaker filibuster in Senate history. The longest multiple-speaker filibuster subsequently occurred to stop the Civil Rights Act of 1964, adding to the history of using the filibuster to block critical civil rights legislation.) Jim Rutenberg, “A Dream Undone: Inside the 50-Year Campaign to Roll Back the Voting Rights Act,” *New York Times*, July 29, 2015, <https://www.nytimes.com/2015/07/29/magazine/voting-rights-act-dream-undone.html>; Gillian Brockell, “Note to Mitch McConnell: The Senate’s Longest Filibuster Was Definitely Racist” *Washington Post*, March 26, 2021, <https://www.washingtonpost.com/history/2021/03/26/thurmond-filibuster-senate-mcconnell/>.

⁸¹ Lyndon Baines Johnson, “The American Promise” (speech, Washington, DC, March 15, 1965), LBJ Presidential Library, <http://www.lbjlibrary.org/lyndon-baines-johnson/speeches-films/president-johnsons-special-message-to-the-congress-the-american-promise>.

⁸² While the VRA technically still provides for preclearance today, the requirement applies in very few places. After the *Shelby County* decision struck down the coverage formula in Section 4(b) governing which jurisdictions were subject to preclearance, jurisdictions became subject to a slightly different preclearance (under Section 3) only if they were “bailed in” to the requirement by a court as a remedy for a violation. Only two jurisdictions have been bailed into preclearance under Section 3 since the *Shelby County* decision: Evergreen, Alabama and Pasadena, Texas. *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 729–30 (S.D. Tex. 2017); Order at 4, *Allen v. City of Evergreen*, No. 13-0107 (S.D. Ala. Jan. 13, 2014), 2014 WL 12607819, at *2; see also Edward K. Olds, “More Than ‘Rarely Used’: A Post-*Shelby* Judicial Standard for Section 3 Preclearance,” *Columbia Law Review* 117 (2017).

⁸³ *Shelby County*, 570 U.S. at 557.

⁸⁴ *Shelby County*, 570 U.S. at 559.

⁸⁵ Pooja Salhotra, “Shelby County v. Holder: Seven Years Later, Its Wreckage Persists,” *Texas Signal*, June 25, 2020, <https://texassignal.com/shelby-county-v-holder-seven-years-later-its-wreckage-persists/>.

⁸⁶ Tomas Lopez, “‘Shelby County’: One Year Later,” Brennan Center for Justice, June 24, 2014, <https://www.brennancenter.org/analysis/shelby-county-one-year-later>; Weiser et al., *Congress Must Pass*, 5.

⁸⁷ See, e.g., Native American Rights Fund, “North Dakota Voter ID Law.”

⁸⁸ Plaintiffs’ Complaint for Injunctive and Declaratory Relief, *Georgia Coalition for the People’s Agenda v. Kemp*, No. 01-1:18-cv-0427-ELR (N.D. Ga. 2018), at 5, <https://campaignlegal.org/sites/default/files/2018-10/GA%20FINAL.pdf>.

⁸⁹ Stephen Fowler, “Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours? Their Numbers Have Soared, and Their Polling Places Have Dwindled.” *ProPublica*, October 17, 2020, <https://www.propublica.org/article/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-their-numbers-have-soared-and-their-polling-places-have-dwindled>.

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⁹¹ Comenetz, “Frequently Occurring Surnames,” 6–7; Weiser et al., *Congress Must Pass*, 4.

⁹² Sean Holstege, “Do Voter Purges Discriminate against the Poor and Minorities?” NBC News, August 24, 2016, <https://www.nbcnews.com/news/us-news/do-voter-purges-discriminate-against-poor-minorities-n636586>.

⁹³ Jonathan Brater et al., *Purges: A Growing Threat to the Right to Vote*, Brennan Center for Justice, 2018, 10, <https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote>.

⁹⁴ In 2016 to 2018 alone, 17 million voters were purged nationwide; the median purge rate in jurisdictions that previously had been covered by the VRA was 40 percent higher than in those that were not covered. Essentially, areas that had previously been vigilantly monitored because of histories of discrimination were unfettered and purged accordingly, often with discriminatory results. Ultimately, the *Shelby County* decision was likely responsible for nearly 2 million voters being purged in previously covered counties. Kevin Morris, “Voter Purge Rates Remain

High, Analysis Finds,” Brennan Center for Justice, last modified August 21, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds>. For more on this, see Kevin Morris and Myrna Pérez, “Florida, Georgia, North Carolina Still Purging Voters at High Rates,” Brennan Center for Justice, October 1, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/florida-georgia-north-carolina-still-purging-voters-high-rates>.

⁹⁵ Erin McCormick, Spenser Mestel, and Sam Levine, “Revealed: Wisconsin’s Black and Student Populations at Highest Risk of Voter Purges,” *The Guardian*, April 6, 2020, <https://www.theguardian.com/us-news/2020/apr/06/wisconsin-voter-purges-black-student-populations-risk>.

⁹⁶ Jonathan Brater, *Voter Purges: The Risks in 2018*, Brennan Center for Justice, 2018, 7, footnote 57, https://www.brennancenter.org/sites/default/files/2019-08/Report_Voter_Purges_The_Risks_in_2018.pdf.

⁹⁷ ACRU is in part funded by the Bradley Foundation, which also funded, in part, the placement of threatening billboards reading “Voter fraud is a felony!” in minority communities in 2010. Bradley also funded other racially charged advocacy, including the challenge to affirmative action in *Fisher v. Texas*, and the successful efforts to eviscerate the Voting Rights Act in *Shelby County v. Holder*. These related campaigns with discriminatory impacts highlight the need for donor transparency in policy reform, a feature of the For the People Act discussed later in this paper. Simon Lewis and Joseph Tanfani, “Special Report: How a Small Group of U.S. Lawyers Pushed Voter Fraud Fears into the Mainstream,” Reuters, September 9, 2020, <https://www.reuters.com/article/us-usa-election-voter-fraud-special-report/CAKBN2601GZ>; Brendan Fischer, “For Bradley Foundation, Challenging Affirmative Action & Voting Rights Is Part of Long-Term Crusade,” *PRWatch*, June 27, 2013, <https://www.prwatch.org/news/2013/06/12142/bradley-foundation-challenging-affirmative-action-voting-rights-part-long-term-cr>.

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⁹⁹ According to Dan Cox, the research director at the Public Religion Research Institute, “roughly one in 10 Hispanics said that the last time they or someone in their household tried to vote, they were bothered at the polls.” Vann R. Newkirk, “Voter Suppression is Warping Democracy,” *The Atlantic*, July 17, 2018, <https://www.theatlantic.com/politics/archive/2018/07/poll-pri-voter-suppression/565355/>. Modern iterations of intimidation cast a long shadow; in 1981, the Democratic National Committee accused the Republican National Committee of voter intimidation by paying off-duty officers to patrol polling sites in Black and Latino neighborhoods in New Jersey, bearing guns, walkie-talkies, and armbands and proclaiming themselves “ballot security.” After a lawsuit by the Democratic party, a federal court monitored such GOP operations for 35 years, but a court order providing the monitoring expired in 2017. Matt Katz, “Armed Men Once Patrolled the Polls. Will They Reappear in November?” NPR WNYC, September 1, 2016, <https://www.wnyc.org/story/armed-men-once-patrolled-polls-will-they-reappear-november/>. The 2020 general election, amidst a national reckoning with race, became the first modern presidential election with no express decree. Josh Gerstein, “Judge Ends Consent Decree Limiting RNC ‘Ballot Security’ Activities,” *Politico*, January 9, 2018, <https://www.politico.com/story/2018/01/09/rnc-ballot-security-consent-decree-328995>.

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¹³⁸ In 2012, the Black Youth Project Survey found that, among non-voters, 61 percent of white respondents, 55 percent of Black respondents, and 45 percent of Latino respondents cited “not [being] registered to vote” as their reason for not voting. Jon C. Rogowski and Cathy J. Cohen, *Black Millennials in America: Documenting the Experiences, Voices and Political Future of Young Black Americans*, Black Youth Project, 2015, 38, <http://blackyouthproject.com/wp-content/uploads/2015/11/BYP-millennials-report-10-27-15-FINAL.pdf>.

¹³⁹ Chris Carson and Virginia Kase, “Why Same Day Registration is Critical to the Success of HR1,” *The Hill*, December 31, 2018, <https://thehill.com/blogs/congress-blog/politics/423343-why-same-day-registration-is-critical-to-the-success-of-hr1#.XCp5yydY9UA.twitter>.

¹⁴⁰ N.C. State Conf. of the NAACP v. McCrory, 831 F.3d 204, 214 (4th Cir. 2016). Still, same-day registration remains limited in North Carolina: it may be used only during the early voting period, leaving out those voters who are motivated to vote by Election Day, and may realize they are unregistered too late to remedy the problem.

¹⁴¹ Sam Wilson, “Gov Signs Bills Ending Election Day Registration, Tightening Voter ID Restrictions,” *Bozeman Daily Chronicle*, April 19, 2021, https://www.bozemandailychronicle.com/news/mtleg/gov-signs-bills-ending-election-day-registration-tightening-voter-id-restrictions/article_bb1c8b83-06e5-5895-b658-090d0e75e330.html. Faced with claims that ending Election Day registration would disproportionately harm Native American voters in Montana, proponents of the bill ending Election Day registration countered that registration and voting can be done by mail. However, Native Americans communities specifically face significant obstacles in accessing vote by mail, ranging from slow and unreliable mail delivery to challenges in getting registered. The Native American Rights Fund notes vote-by-mail often requires in-person registration on paper registration forms for their community: “Over 90% of reservations lack broadband access so many Native voters cannot register online. Many Native voters do not have driver’s licenses and DMVs are too far away—in North Dakota some Standing Rock members have to travel 131.6 miles roundtrip to get to the nearest DMV. Without a driver’s license Native voter’s signatures are not on file with the state and cannot be easily matched with their mail in ballot if a signature match is required.” Native American Rights Fund, “Vote By Mail,” accessed June 12, 2021, <https://www.narf.org/vote-by-mail/>.

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¹⁴⁵ Wendy Weiser and Alicia Bannon, *Democracy: An Election Agenda for Candidates, Activists, and Legislators*, May 2018, 7, <https://www.brennancenter.org/our-work/policy-solutions/democracy-election-agenda-candidates-activists-and-legislators>.

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¹⁴⁸ Jasmine Tucker and Kayla Patrick, *Low-Wage Jobs are Women’s Jobs: The Overrepresentation of Women in Low-Wage Work*, National Women’s Law Center, 2017, 1, <https://nwlc.org/wp-content/uploads/2017/08/Low-Wage-Jobs-are-Womens-Jobs.pdf>.

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¹⁷⁸ Yurij Rudensky and Annie Lo, *Creating Strong Rules for Drawing Maps*, Brennan Center for Justice, 2020, 3, https://www.brennancenter.org/sites/default/files/2020-01/2020_01_Redistricting%20Criteria.pdf.

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¹⁸⁰ Allowing politicians to control the redistricting process leads to the underrepresentation of minority voices because, as previously discussed, elected officials are less racially diverse than the U.S. population. State-level studies show that maps drawn by commissions and courts are more responsive to shifts in public opinion than maps drawn by legislators. (See Annie Lo, “How Did Democrats Flip the House? Fairer Maps,” Brennan Center for Justice, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/how-did-democrats-flip-house-fairer-maps>). As the U.S. voting population becomes younger and more racially diverse, gerrymandering could thus prevent these demographic shifts from being reflected in electoral outcomes, further depriving minority communities of the representation they deserve. For more on this issue, see Laura Royden and Michael Li, *Extreme Maps*, Brennan Center for Justice, 2017, <https://www.brennancenter.org/sites/default/files/publications/Extreme%20Maps%205.16.pdf>.

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²¹⁹ See Benjamin I. Page, Larry M. Bartels, and Jason Seawright, “Democracy and the Policy Preferences of Wealthy Americans,” *Perspectives on Politics* 11, no. 1 (2013): 51–73, <http://faculty.wcas.northwestern.edu/~jnd260/cab/CAB2012%20-%20Page1.pdf>; Black Futures Lab, *More Black than Blue: Politics and Power in 2019 Black Census*, 2019, <https://blackcensus.org/wp-content/uploads/2019/06/Digital-More-Black-Than-Blue.pdf>; and Jens Manuel Krogstad, Mark Hugo Lopez, and Abby Budiman, “Latino Voters Favor Raising Minimum Wage, Government Involvement in Health Care, Stricter Gun Laws,” Pew Research Center, February 20, 2020, <https://www.pewresearch.org/fact-tank/2020/02/20/latino-voters-favor-raising-minimum-wage-government-involvement-in-health-care-stricter-gun-laws/>.

²²⁰ Rachel M. Cohen, “A Campaign Finance Rule Makes Life Much Harder for Working-Class Challengers,” *The Intercept*, January 16, 2020, <https://theintercept.com/2020/01/16/campaign-finance-law-wealthy-working-class-candidates/>. Candidates running for office can pay themselves a per-diem rate of the job they had before running for office, or the salary of the office they are running for, whichever is less. (If their prior job paid a low-level income, they would be restricted to that compensation even while campaigning full-time.)

²²¹ Jennifer Haberkorn, “The Baby Boom in Congress,” *Politico*, May 1, 2018, <https://www.politico.com/magazine/story/2018/05/01/congress-tammy-duckworth-women-give-birth-in-office-history-218113/>.

²²² Marisa Agha, “Rep. Katie Porter Wants to Make It Easier for Single Moms Like Her to Serve in Congress,” *The Nation*, February 10, 2020, <https://www.thenation.com/article/politics/representative-katie-porter-parents-congress/>.

²²³ Aliya Hamid Rao, “Even Breadwinning Wives Don’t Get Equality at Home,” *The Atlantic*, May 12, 2019, <https://www.theatlantic.com/family/archive/2019/05/breadwinning-wives-gender-inequality/589237/>.

²²⁴ Carnes, “Here’s How to Help.”

²²⁵ Kamala D. Harris, “Voting Is the Best Way to Honor Generations of Women Who Paved the Way for Me,” *Washington Post*, August 26, 2020, https://www.washingtonpost.com/opinions/kamala-harris-womens-equality-day-19th-amendment/2020/08/25/7c268a82-e704-11ea-97e0-94d2e46e759b_story.html; Clint Smith, “The Whole Story in a Single Photo,” *The Atlantic*, January 8, 2021, <https://www.theatlantic.com/ideas/archive/2021/01/confederates-in-the-capitol/617594/>.

²²⁶ “U.S. Income Inequality at Highest Level in 50 Years, Economic Gap Growing in Heartland,” *NBC News*, September 26, 2019, <https://www.nbcnews.com/news/us-news/u-s-income-inequality-highest-level-50-years-economic-gap-n1058956>; “Brennan Center for Justice, “Voting Laws Roundup: May 2021”; Martin Luther King Jr., “I Have a Dream” (speech, Washington, D.C., August 28, 1963), *American Rhetoric*, <http://www.americanrhetoric.com/speeches/mlkhaveadream.htm>.