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H.R. 1: THE "FOR THE PEOPLE ACT OF 2019"

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

JANUARY 29, 2019

Serial No. 116–1

Printed for the use of the Committee on the Judiciary

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H.R. 1: THE "FOR THE PEOPLE ACT OF 2019"

TUESDAY, JANUARY 29, 2019

HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

Washington, DC.

The committee met, pursuant to call, at 10:05 a.m., in Room 2141, Rayburn Office Building, Hon. Jerrold Nadler [chairman of the committee] presiding.

Present: Representatives Nadler, Lofgren, Jackson Lee, Cohen, Johnson, Deutch, Bass, Richmond, Jeffries, Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Correa, Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Mucarsel-Powell, Escobar, Collins, Gohmert, Jordan, Buck, Ratcliffe, Gaetz, Biggs, McClintock, Lesko, Reschenthaler, Cline, and Armstrong.

Staff present: Perry Apelbaum, Majority Staff Director; James Park, Majority Chief Counsel, Subcommittee on Constitution; Keenan Keller, Majority Senior Counsel; David Greengrass, Majority Senior Counsel; Rosalind Jackson, Majority Professional Staff Member.

Chairman NADLER. The Judiciary Committee will come to order. Without objection, the chair is authorized to declare recesses of the committee at any time.

We welcome everyone to this morning's hearing on H.R. 1, the "For the People Act of 2019." I will now recognize myself for an opening statement.

While the specific question before us concerns the merits of H.R. 1, the "For the People Act of 2019," the broader issue is what kind of country America is and should be. H.R. 1, a comprehensive bill that strengthens our voting, campaign finance, lobbying, and government ethics laws in numerous ways, is a notable attempt to renew our nation's commitment to having a government of the people, by the people, for the people.

America's promise lies in its democracy. When at its best, our nation has taken pride in being the world's oldest democracy and has defined itself not by race, religion, or ethnicity, but by its democratic and constitutionally-based system of government, one that strives to guarantee individual freedom and genuine representation of its citizens. This is what has made America a shining city on a hill in the world's eyes for over 200 years.

Yet, the general arc of our nation's politics over the last generation has made it easy to be cynical, easy to say that America in

that time has increasingly tended towards an oligarchy in which more and more of the political power is concentrated in fewer and fewer wealthy and powerful hands.

H.R. 1 is a bold and far-reaching attempt to correct this dangerous drift away from representative democracy by reducing the role of money in politics, by restoring ethical standards and integrity to government, and by strengthening laws to protect voting.

For example, the bill declares Congress's commitment to reinvigorating the Voting Rights Act by restoring the act's most important enforcement provision—its pre-clearance provision.

Before the Voting Rights Act was enacted in 1965, states and localities passed a host of voter suppression laws, secure in the knowledge that it could take many years before the Justice Department could successfully challenge them in court, if at all. As soon as one law was overturned another would be enacted, essentially setting up a discriminatory game of whack-a-mole.

Pre-clearance broke this legal logjam by requiring states and localities with a history of discrimination against racial and ethnic minority voters to submit changes to their voting laws to the Justice Department or to the federal district court for approval prior to taking effect.

This vital provision was effectively gutted in 2013, however, when the Supreme Court issued its disastrous decision, Shelby County v. Holder, which struck down the formula for determining which states and localities are subject to the pre-clearance requirement. In its absence, the game of whack-a-mole has returned.

Predictably, some states wasted no time enacting discriminatory voter suppression laws in the wake of the Shelby County decision. In fact, North Carolina and Texas announced their intention to reinstate such measures just one day after Shelby County was decided.

Although the Texas and North Carolina laws were eventually struck down by the courts, several elections were conducted under these laws and the damage was done.

The 2018 report by the U.S. Civil Rights Commission confirms that many other formerly-covered jurisdictions have also become emboldened to enact discriminatory voting measures since pre-clearance was effectively eliminated. They know how difficult it is to challenge such laws after they go into effect. Restoring pre-clearance is essential to preventing the further erosion of voting rights.

It does not help that President Trump has encouraged conspiracy theories about massive voter fraud as a justification for voter identification laws and other voter suppression tactics.

Just this past Sunday, the president seized on tentative and unverified information from Texas election officials about potential noncitizens who were allegedly registered to vote. He sent the wildly misleading tweet about the report, calling voter fraud rampant and demanding voter ID laws. I hope our witnesses today will help dispel the dangerous myth of widespread voter fraud.

H.R. 1 also incorporates the Democracy Restoration Act of 2019—legislation I introduced in the first day of this Congress that would restore federal voting rights for citizens with felony convictions.

Many states deny voting rights for such citizens, permanently branding them with a scarlet letter long after they have paid their

debt to society. Not only is ex-offender disenfranchisement wrong and anti-democratic in and of itself, many of these laws were deliberately designed and—admittedly at the time—designed to entrench white supremacy and they continue to have a particularly disproportionate impact on communities of color, exacerbating the racially discriminatory effect of other voter suppression measures.

H.R. 1 also aims to end voter intimidation, the dissemination of deceptive voting information about times and places, and other voter suppression tactics by prohibiting such activities and adding or increasing criminal penalties for violations.

In addition to enhancing voting rights protections, H.R. 1 takes aim at the increasing dominance of big money and dark money in politics and influence peddling, all of which take governing decisions away from ordinary people and diminishes their faith in government.

For example, the bill outlines the many important reasons why the Supreme Court's decision in Citizens United v. FEC, which unleashed a flood of dark money in politics, must be overturned. It also closes the shadow lobbying loophole and requires that those who provide legislative, political, and strategic counseling services in support of someone else's lobbying activity is also required to register under the Lobbying Disclosure Act.

In addition, the bill enhances the Foreign Agents Registration Act by creating a new enforcement office at the Department of Justice and giving it authority to pursue civil penalties. H.R. 1 also includes a provision that passed last year on a bipartisan basis to require the development of a judicial code of ethics that would apply to all federal judges including the judges of the Supreme Court, the only court in the country currently not subject to any binding code of ethics.

H.R. 1 helps level the playing field to give ordinary Americans the voice that they deserve in how our country is governed. Now more than ever Congress must return to fundamental American ideals in leading our country out of the darkness. Passing H.R. 1 is an important first step on that journey. I thank our witnesses for appearing and I look forward to hearing from them.

It is now my pleasure to recognize the ranking member of the Judiciary Committee, Mr. Collins of Georgia, for his opening statement.

Mr. COLLINS. Thank you, Mr. Chairman.

As we start today, I am confident that every lawmaker in this room agrees that our democracy depends on protecting voting rights and election integrity. Congress has the authority to prohibit discriminatory treatment in voting based on race or ethnicity as part of its duty to ensure the sanctity of every vote.

Unfortunately, this bill actively undermines those goals. This bill before us today federalizes elections in ways that have nothing to do with outlawing discrimination. Instead, it federalizes elections in ways that actually disenfranchises state voters.

H.R. 1 would deprive state voters of their own right to determine their state's voting qualifications, district lines, and means of guarding against ballot fraud. The official title of this bill is "For the People Act." This bill, though, is not for the people. It is not for everyday citizens. This bill siphons power from state legisla-

tures, local elected officials, and voters and cedes power to Washington lawmakers, unelected federal judges, and lawyers.

This bill is, in particular, for the unelected elites. It is for the people who don't answer directly to the voters. Contrary to its name, this bill takes power away from the people and it does this by violating the Constitution by trampling over both the spirit and the letter of our most fundamental laws.

One of the interest groups buoyed by this bill is lawyers. The "For the Lawyers Act" creates a private cause of action for lawsuits related to Title 3 of the Help America Vote Act of 2002 called HAVA. You might well remember the whole point of this legislation was precisely to avoid the kinds of lawsuits that brought chaos to the 2000 presidential election.

It required that all voting systems allow voters to verify their candidate selections before casting their ballots, provide voters with the opportunity to change their selection before casting their ballots, and notify voters when they make multiple selections for the same office. It also requires states to enable people to vote by provisional ballot.

To ensure that states comply with these requirements, Congress has gave the Department of Justice the authority to bring civil actions against state or a jurisdiction whenever the facts assessed by career prosecutors justified the actions to bring states into compliance with the Title 3 requirements.

To ensure that states appropriately send these—spend HAVA funds, the Election Assistance Commission has the authority to audit each state or jurisdiction. The Department of Justice Civil Rights Voting Division has the authority to enforce HAVA and develop a broad election-monitoring program to oversee the administration of elections.

Since that time, we have not seen another post-election litigation nightmare like the 2000 presidential election. But under the "For the Lawyers Act" the possibilities of elections disruption and voter disillusionment could be limitless.

H.R. 1 would upend HAVA's enforcement system. It would instead allow disgruntled voters and activist groups who are intent on getting federal judges to overturn elections the ability to file unlimited private lawsuits. Does a candidate need a million more votes to win? This bill allows the losing candidate to rely on disgruntled voters or advocacy groups in all 50 states to cherry pick likeminded judges.

Those judges could then use the lawsuit to overturn election results by swinging votes from one column to another. Such lawsuits would effectively take time and money away from the state and local election officials who desperately need those resources to administer fair elections, not pay bogus legal fees.

We can also call H.R. 1 the "For the Unelected Judges Act." The bill denies state legislatures the right to draw district lines according to the will of the voters who elected those state lawmakers and reassigns that power to unelected commissions in a federal court in Washington, D.C.

Nine states already have redistricting commissions, but theirs would be overridden by the commissions created under H.R. 1. The advisory redistricting commissions and backup commissions that

have been established in eight other states would also fall victim to H.R. 1's new commissions.

This section also allows for the private right of action, stating any citizen of a state who is aggrieved by the failure of the state redistricting plan, which is enacted into law, to meet the requirements for such a plan may bring a civil action in the appropriate district court for such relief as may be appropriate to remedy the failure.

We see that under H.R. 1 not only can lawyers run wild after every congressional election but they can cripple duly-elected state legislatures before elections by challenging every inch of the redistricting lines drawn by the commissions under this bill.

Instead of simply allowing voters to hold state legislators accountable for their actions, which happens every election cycle, this bill steals the election authority and hands the power over to unaccountable federal judges—judges who enjoy lifetime tenures and judges who voters cannot replace.

I am sad to say that H.R. 1 is also a "For the Violent Criminals Act." I have worked with many of my friends across the aisle on this committee to make responsible justice reforms a reality—one of our biggest successes of last Congress, Mr. Chairman.

We agree that the power of redemption and necessity of rehabilitation and promoting justice and public safety. We believe in helping people who have served their debt to society become productive citizens. Any commitment we share in that area, however, does not empower lawmakers to take power away from the voters and the state representatives they elected.

Yet, H.R. 1 does that. It denies state voters their ability to limit the vote to people who haven't been convicted of murder, violent felonies, or other serious crimes including, by the way, voter fraud.

Do states' voters believe that a person who has been convicted of murder or perpetuating a fraud in our election system has forfeited their right to vote? H.R. 1 overrides those votes and their communities.

These provisions are not just anti-democratic. They are patently, patently unconstitutional. The Supreme Court, including Justices Ginsburg, Breyer, Sotomayor, and Kagan, all held just a few years ago that, and I quote, "Surely, nothing in the Election Clause of the Constitution lends itself to the view that voting qualifications in federal elections are to be set by Congress."

Further, the Fourteenth Amendment of the Constitution itself explicitly recognizes the rights of states to deny the vote for, and I quote, "in participation of a crime."

In addition to prioritizing felons over law-abiding voters, H.R. 1 forces taxpayers to expand the dark web of anonymous donors before the politicians' bill spends your money by forcing a 6 to 1 taxpayer match based on anonymous small-dollar donations.

That means that for every $1 and small-dollar—a small donation someone makes to a candidate, the bill compels American's hard-working citizens to forfeit $6 of their income to further that candidate and their priorities, even if you are morally opposed to their priorities.

Not only is this system cloaked in darkness, it is abusive. There is no transparency here, no room for freedom of conscience, no room for debate—just compulsion cloaked in secrecy.

If Democrats want to truly work on true campaign finance transparency, H.R. 1 would require all donations to federal candidates to be disclosed, from $1 to $2,700. It is simple. You donate, you disclose.

One 2018 congressional candidate, for example, raised $100,000 basically in anonymous donations. The only listed donor on their federal filing was ActBlue. That tells voters nothing about who is supporting a candidate, why, and to what end. H.R. 1 would take more money from the voters but shines no light on the hidden web of anonymous donations that it would support. What are my colleagues trying to hide?

H.R. 1 could also be called the "Voting Fraud Act" because it makes unlawful for states and localities to help verify voter residents by sending out cards to addresses. If the card goes unanswered within a reasonable period of time, that information could be used to help remove names from the voter rolls and the voter's true identity cannot be verified.

Why would responsible officials take this step? Because they want to protect the sanctity of every vote by guarding against voter fraud. The practice is entirely legitimate when it purposes to identify individuals who are not properly registered to vote and to prevent individuals from voting illegally.

Just last year, the Supreme Court upheld Ohio's voter registration which uses voter register's failure to return a card verifying their residence combined with such person's inactivity over four years as a reason to remove them from the voting rolls. This practice is authorized under the National Voting Registration Act of 1993, which President Clinton signed into law, as well as the Help America Vote Act of 2002.

Justice Alito, in noting these procedures, said such are used because voters are required to live in a district in which they vote, and more than 10 percent of voters move every year so states must be allowed some means of verifying a person's address to avoid potential fraud—for example, the same person votes multiple times based on the multiple listed residences.

The Supreme Court has already told us that promoting election integrity is both—this way is both legal and necessary. However, H.R. 1 rejects that decision and insists on widening the path to voter fraud.

In summary, Mr. Chairman, my sense is that if your lawyer is running for—running elections supporting this bill, if your unelected justices running elections support this bill, if you are multiplying opportunities for voter fraud and registering voter rights for those who commit voting fraud, then support this bill.

And, of course, if you want to take away the ability of democratically-elected representatives to write laws according to the will of the people who sent those representatives to the state legislatures, then support the bill.

But if you are earnestly for the people, if you want everyday citizens to have the power that only comes through their ability to hold elected officials accountable at the ballot box, you send this

bill back to the drafting table because the bill before us today throws a strong left hook to the Constitution and expects voters to take it on the chin.

I look forward to working on areas of this bill we can work with and with that, I look forward to hearing the witnesses and yield back.

Chairman NADLER. Thank you, Mr. Collins.

I will now introduce today's witnesses. The first witness is Vanita Gupta. Ms. Gupta currently serves as president and chief executive officer of the Leadership Conference on Civil and Human Rights.

Previously, she served as principal deputy assistant Attorney General and head of the Civil Rights Division at the U.S. Department of Justice during the Obama administration. Ms. Gupta graduated magna cum laude from Yale University and received a law degree from NYU School of Law, which is in my district.

The second witness is Sherrilyn Ifill. Sherrilyn Ifill is the seventh president and director-counsel of the NAACP Legal Defense and Educational Fund. She has also been a member of the faculty of the University of Maryland's School of Law where she has taught civil procedure, constitution law, and a variety of seminars. Ms. Ifill is a graduate of Vassar College and received her JD also from New York University School of Law.

Sarah Turberville is director of the Constitution Project at the Project on Government Oversight. In this position, Ms. Turberville coordinates TCP's public education and advocacy efforts on a variety of matters relating to the protection and enforcement of constitutional rights such as independence of the courts, access to habeas corpus, policing, and surveillance. She is an elected councilmember for the town of Edmonston, Maryland, and serves on the board of the port town's Community Development Corporation. Ms. Turberville is a graduate of Tulane Law School.

J. Christian Adams serves as president and general counsel of the Public Interest Legal Foundation. From 2005 to 2010, he worked in the voting section at the United States Department of Justice. Prior to his time at the Justice Department, he serves as general counsel to the South Carolina secretary of state. He has a law degree from the University of South Carolina School of Law.

Hans von Spakowsky—I hope I pronounced that—Spakovsky or Spakowsky? Spakovsky. Hans von Spakovsky currently serves as senior legal fellow in the Heritage Foundation's Edwin Meese Center for Legal and Judicial Studies. Previously, he served as a member of the Federal Election Commission and he worked at the Department of Justice as counsel to the assistant attorney general for civil rights. Mr. von Spakovsky is a graduate of the Massachusetts Institute of Technology and the Vanderbilt University School of Law.

Adav Noti is the Campaign Legal Center's chief of staff and senior director of trial litigation. Prior to joining CLC, Mr. Noti served for more than 10 years within the Office of General Counsel of the Federal Election Commission. He received his undergraduate degree from the University of Pennsylvania, his law degree from NYU, and his Master's degree from Georgetown University.

We welcome all of our distinguished witnesses and thank them for participating at the committee's inaugural hearing for the 116th Congress.

Now, if you would please rise I will begin by swearing you in. I want to note for the record, because we are going to swear in our witnesses at every hearing, I find it a little strange but it is our custom so we will do it, for witnesses to swear that they are going to tell us the truth about their opinions.

But, nonetheless, if you would please rise and raise your right hand. Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct, to the best of your knowledge, information, and belief?

[A chorus of ayes.]

Chairman NADLER. Let the record show the witnesses answered in the affirmative. Thank you, and please be seated.

[Discussion off the record.]

Chairman NADLER. Thank you, Mr. Cohen.

Please note that each of your written statements will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in five minutes.

To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you have one minute to conclude the testimony. When the light turns red, it signals the five minutes have expired.

And we will begin by Ms. Gupta.

TESTIMONIES OF VANITA GUPTA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS; SHERRILYN IFILL, PRESIDENT AND DIRECTOR–COUNSEL, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND; SARAH TURBERVILLE, DIRECTOR, THE CONSTITUTION PROJECT, PROJECT ON GOVERNMENT OVERSIGHT; J. CHRISTIAN ADAMS, PRESIDENT AND GENERAL COUNSEL, PUBLIC INTEREST LEGAL FOUNDATION; HANS VON SPAKOVSKY, SENOR LEGAL FELLOW, THE HERITAGE FOUNDATION, MEESE CENTER FOR LEGAL AND JUDICIAL STUDIES; ADAV NOTI, CHIEF OF STAFF, CAMPAIGN LEGAL CENTER

TESTIMONY OF VANITA GUPTA

Ms. GUPTA. Chairman Nadler, Ranking Member Collins, and Members of the Committee, my name is Vanita Gupta. I am president and CEO of the Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations working to build an America as good as its ideals.

I previously served as head of the Justice Department Civil Rights Division where I oversaw the federal government's enforcement of voting rights. The Leadership Conference strongly supports H.R. 1 and the transformative vision for American democracy that it represents.

I thank Chairman Nadler for his leadership in calling this hearing today and commend the other 226 co-sponsors of this important legislation. It is past time to build a 21st century democracy that represents our growing and diverse nation—a democracy that wel-

comes every person's voice and participation—because for too long voter suppression has been a shameful reality in our country, undercutting the power and representation of African Americans, Latinos, and other groups historically excluded from our political process.

Our nation made historic strides in 1965 with the passage of the Voting Rights Act, which sought to end racial discrimination at the ballot box. But nearly 50 years later in 2013, five justices of the Supreme Court gutted its most powerful tool, the pre-clearance system.

That system had enabled the Justice Department and federal courts to block proposed discriminatory voting restrictions in states with well-documented histories of discrimination.

Mere hours after the Shelby County decision, states began to implement voter suppression laws. In striking down the North Carolina law in 2016, the Fourth Circuit described the law as "the most restrictive voting law North Carolina has seen since the era of Jim Crow," with provisions that "target African Americans with almost surgical precision."

There have been finds of intentional discrimination in at least 10 voting rights cases since Shelby County and litigation can take years, and unlike pre-clearance, occurs after elections, after people have been disenfranchised.

This administration has only made things worse by damaging our democracy and institutions, from elections to the Census to the free press. The administration's assault on voting rights can be seen in the creation of the sham Pence-Kobach Commission, a political ploy that was ultimately discredited and disbanded.

We also saw it in their defense of Texas's discriminatory photo ID law and Ohio's voter purge efforts. The administration has not filed a single Voting Rights Act case despite numerous recent state and local efforts to block access to the ballot in communities of color.

A strong democracy should not be a partisan issue. Americans must have faith in their democracy and it is up to Democrats and Republicans to restore integrity and legitimacy to our institutions.

This committee has done it before. In 2006, Congressman Sensenbrenner led a successful effort to reauthorize the Voting Rights Act and we need you to do so again.

People turned out in record numbers during the 2018 election to cast their votes for democracy reform. Not only is this reflected in the most diverse Congress in our nation's history, but voters also cast their ballot to end gerrymandering and make voting more accessible in "red" and "blue" states across the country.

Yet, we know that many states continue to erect barriers to voting and that is why we enthusiastically support H.R. 1. Importantly, H.R. 1 includes a commitment to restoring the Voting Rights Act and updating the pre-clearance provision.

It would also restore voting rights for people with felony convictions, a necessary repudiation of our nation's discriminatory and racially violent past. This would add more than 4.7 million voters to the rolls nationwide.

Reforming felony disenfranchisement has bipartisan support. In November, 65 percent of Florida voters cast their ballots to restore

the right to vote for over 1.4 million people. It would require states to draw congressional districts using independent redistricting commissions.

It would prohibit the distribution of false information about elections, particularly important in the era of Facebook and social media platforms that can be manipulated to spread misinformation. It would ban voter caging, voter intimidation, unwarranted voter purging.

It would adopt nationwide Election Day registration and automatic voter registration, which would add 50 million people to the rolls, and it would make sure that people running elections aren't in charge of running their own elections when they themselves are running for office.

Voting and the ability to participate in our democracy is a racial justice issue, it is a civil rights issue, and we are overdue for change. H.R. 1 is a bold comprehensive reform package that offers solutions to a broken democracy. Repairing and modernizing our voting system goes hand in hand with reforms that address the rampant corruption flowing from the corrosive power of money in our elections.

Both are necessary to ensuring that our government works for all people, not just a powerful few. Our coalition is committed to expanding the franchise and fixing our democracy, and we look forward to working with you until the day that these reforms are signed into law.

Thank you.

[The statement of Ms. Gupta follows:]

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STATEMENT OF VANITA GUPTA, PRESIDENT AND CEO
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

U.S. HOUSE COMMITTEE ON THE JUDICIARY
HEARING ON H.R. 1, THE "FOR THE PEOPLE ACT OF 2019"
JANUARY 29, 2019

Chairman Nadler, Ranking Member Collins, and Members of the Committee, my name is Vanita Gupta and I am the president and CEO of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations working to build an America as good as its ideals. We were founded in 1950 and have coordinated national advocacy efforts on behalf of every major civil rights law since 1957, including the Voting Rights Act of 1965 and subsequent reauthorizations. I previously served as head of the Justice Department's Civil Rights Division from 2014 until January 2017, where I oversaw the federal government's enforcement of voting rights.

The Leadership Conference strongly supports H.R. 1, the For the People Act, and the transformative vision for American democracy it represents. This important legislation would restore the integrity of our elections. I thank Chairman Nadler for his leadership in calling this hearing today and commend the other 226 co-sponsors of this important legislation.

It is long past time to build a 21st century democracy that is representative of and responsive to our growing, diverse nation. A democracy that welcomes every person's voice and vote to participate in civic life. A democracy that demands fairness and transparency in elections.

Our democracy works best when everyone, no matter who they are or what their color, can fully participate. Right now, it is in crisis. At every turn, President Trump has damaged our national norms and institutions — from elections to the 2020 Census to the free press. His administration has aggressively worked to undercut the power of communities of color, particularly African Americans, immigrants, and other groups historically excluded from our political process.

President Trump has furthered the assault on voting rights in America. We saw that in his creation of the sham Pence-Kobach commission that was ultimately discredited and disbanded. The commission was little more than a political ploy to provide cover for the president's inability to win the popular vote, and to lay the foundation to purge eligible voters from the rolls and create unnecessary barriers to the ballot.

Then the Trump administration decided to add an untested citizenship question to the 2020 Census form on the pretext that it was somehow necessary for the Justice Department to enforce the Voting Rights Act.

Based on my experience leading the Civil Rights Division, I can assure you this is not true. Earlier this month a federal court agreed.[1]

The president's assault on voting rights can be seen in his defense of Texas's discriminatory photo ID law and Ohio's voter purge efforts, and in his failure to enforce the Voting Rights Act. The Trump administration has not filed a single Voting Rights Act case, despite numerous efforts to create barriers to the ballot box for communities of color that have occurred over the past two years, including during last year's midterm elections. The U.S. Commission on Civil Rights recently examined the Trump administration's record on voting rights and concluded: "The totality of this report shows that despite the DOJ's diminishing enforcement actions, there is ongoing discrimination in voting that would merit increased VRA enforcement on the part of the DOJ."[2]

Voting Rights Act enforcement through Section 2 is all the more crucial in light of the devastating decision in the 2013 case *Shelby County v. Holder*, when five justices of the Supreme Court gutted the most powerful provision of the Voting Rights Act — the Section 5 preclearance system. That system had enabled the Justice Department and federal courts for 50 years to block proposed discriminatory voting restrictions in states and localities with the most troubling histories of discrimination before these restrictions could disenfranchise voters. The *Shelby County* decision emboldened states to implement voter suppression laws and policies, such as those requiring strict photo identification, cutting back early voting opportunities, shuttering polling places, and eliminating same-day voter registration.

When I was at the Justice Department, we tried to mitigate the damage done by the *Shelby County* decision. We challenged discriminatory laws passed in North Carolina and Texas in the immediate aftermath of *Shelby County*, and we were successful. In striking down the North Carolina law in 2016, the Fourth Circuit described the law as "the most restrictive voting law North Carolina has seen since the era of Jim Crow" with provisions that "target African Americans with almost surgical precision."[3] There have been findings of intentional discrimination in at least 10 voting rights decisions since *Shelby County*.[4] But there are many discriminatory measures going unchallenged by the current administration.

Americans know this. That is why people turned out in record numbers during the 2018 election to cast their votes for democracy reform. Not only is this reflected in the most diverse Congress in our nation's history, but voters also cast their ballot for voting rights across the country. Florida voters restored the right to vote for more than 1.4 million people with felony convictions. Nevada voters cast their ballot for automatic voter registration (AVR). Marylanders voted for same-day voter registration. And Michigan voters cast their ballot for a suite of voting reforms including AVR, same-day registration, an independent redistricting commission, and no-excuse absentee voting. Just last week in the Chairman's home state of

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[1] https://apps.npr.org/documents/document.html?id=5684706-Jan-15-2019-Ruling-by-U-S-District-Judge-Jesse
[2] An Assessment of Minority Voting Rights Access in the United States, 2018 Statutory Report, https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.
[3] *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).
[4] NAACP Legal Defense Fund, Letter Request for Hearing on the Voting Rights Act of 1965, September 7, 2017, http://www.naacpldf.org/files/about-us/Letter%20to%20Rep%20Goodlatte%20re%20Restore%20the%20VRA%20FINAL%209.7.2017.pdf.

New York, a sweeping democracy reform bill was enacted that requires early voting, pre-registration for 16 and 17-year-olds, and automatic transfer of voter registration when someone changes residence.

The Leadership Conference supports these important state initiatives, yet we know the road ahead presents demanding challenges as many states continue to advance legislation and policies that create barriers to full participation in our democracy. It is why we created — together with a group of leading civil rights organizations — a campaign called All Voting Is Local to help ensure that the right and ability to vote are protected at all levels. The campaign works both with election officials and historically disenfranchised communities through data-driven organizing, strategic communications, and partnerships to identify and remedy barriers to the ballot box. The campaign is housed at our sister organization, The Leadership Conference Education Fund, and is a collaborative effort of the American Civil Liberties Union Foundation, the American Constitution Society, the Campaign Legal Center, and the Lawyers' Committee for Civil Rights Under Law. We hope to protect and expand the franchise at the national level through the passage of the For the People Act.

Every two years, The Leadership Conference convenes our 11 task forces and we present legislative and oversight priorities for racial, social, and economic justice to the new Congress. Our Voting Rights Task Force is co-chaired by the NAACP Legal Defense and Educational Fund, Inc., Mexican American Legal Defense and Educational Fund, and the Lawyers' Committee for Civil Rights Under Law, and includes dozens of other national organizations that work on behalf of marginalized communities. Their experience on the ground and in the courtroom helped inform our priority list of voting rights reforms.

H.R. 1 contains many of the Voting Rights Task Force's priorities:

Restoration of voting rights for formerly incarcerated people: H.R. 1 would restore voting rights for people with felony convictions, a necessary repudiation of our nation's discriminatory and racially violent past. Through this reform, more than 6.1 million voters would be added to the rolls.[5] These laws are rooted in the post-Civil War era and were used to prevent freed slaves from voting. And they still have a significant racial impact. About one of every 13 African Americans in this country is denied the right to vote by these laws, a rate more than four times greater than all other Americans. Congressional action is badly needed to restore voting rights in federal elections to the millions of Americans who have been released from prison but continue to be denied their ability to fully participate in civic life.

Voter registration reform: H.R. 1 would modernize America's voter registration system and improve access to the ballot box by bringing AVR, same-day voter registration, and online voter registration to voters across the country, and by ensuring that all voter registration systems are inclusive and accessible for people with disabilities. AVR alone could add an estimated 50 million people to the voter rolls.[6]

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[5] The Sentencing Project, Felony Disenfranchisement 2016, https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/.
[6] Brennan Center for Justice, The Case for Automatic Voter Registration, https://www.brennancenter.org/publication/case-automatic-voter-registration, September 22, 2015.

Early voting: H.R. 1 would require at least 15 consecutive days of early voting, including weekends, for federal elections and require that early voting locations be near public transportation.

Combat voter purging: H.R. 1 would overturn the Supreme Court's troubling 2018 decision in *Husted v. A. Philip Randolph* that allowed Ohio to continue purging its voter rolls due to failure to vote. Voting should not be a "use it or lose it" right. Last year, our All Voting Is Local campaign worked to empower infrequent voters with a text campaign urging them to check their registration status, update their registration, and cast a ballot in the November election. This advocacy campaign was necessary to ensure voters were not silenced by this unfair purge process. But we have the tools to fix this harmful practice for good. H.R. 1 would overturn the *Husted* decision while going the necessary step further to modernize the voter registration process by bringing automatic voter registration to every community across the nation.

Election Assistance Commission reauthorization: The bill would also reauthorize the Election Assistance Commission, which plays an important role in improving the voting process for Americans.

In addition, H.R. 1 contains several significant provisions over which the House Judiciary Committee has lead jurisdiction.

Redistricting reform: H.R. 1 would be an historic milestone in the battle against extreme partisan gerrymandering we have seen in recent years, by requiring states to draw congressional districts using independent redistricting commissions. The bill would establish fair redistricting criteria and ensure compliance with the Voting Rights Act to safeguard minority voting rights.

Prohibit deceptive practices: H.R. 1 would ban the distribution of false information about elections to hinder or discourage voting. This provision is particularly important in this era in which Facebook and other social media platforms can be readily manipulated to spread misinformation about the time, place, and manner of voting to vulnerable communities.

Ban voter caging: H.R. 1 would also ban voter caging to prevent challenges to people's eligibility to vote from individuals who are not election officials, unless the challenge is accompanied by an oath of good faith factual basis.

And importantly, H.R. 1 includes a commitment to restoring the Voting Rights Act and the key preclearance provision that the *Shelby County* decision struck down. H.R. 1 does not itself restore the Voting Rights Act because restoration legislation must be pursued on a separate track that will involve investigatory and evidentiary hearings. This will enable Congress to develop a full record on the continuing problem of racial discrimination in voting and update the preclearance coverage formula. The Leadership Conference supports the Voting Rights Advancement Act, and we look forward to working with the House Judiciary Committee to help build a record to support that critical legislation.

Voting, and the ability to participate in democracy, is a racial justice issue. It is a civil rights issue. And we are overdue for a change.

Without a functional democracy in which everyone is included, heard, and represented, we cannot make real progress on other civil and human rights issues like education, immigration, and economic security, to name just a few. When our democracy is in peril, so, too, are our civil and human rights.

The For the People Act is a bold, comprehensive reform package that offers solutions to a broken democracy. Today's hearing before the House Judiciary Committee is the first of a series before different committees that have jurisdiction over key portions of this legislation, including provisions addressing voting rights, ethics reforms, and money in politics. Repairing and modernizing our voting system goes hand in hand with important reforms that address the rampant corruption that flows from the corrosive power of money in our elections. Both are necessary to ensuring that our government works for and is responsive to all people, not just a powerful few. The civil and human rights community is committed to democracy reform. We look forward to working with you until the day these reforms are signed into law.

Chairman NADLER. Thank you. We will now hear from our next witness, Ms. Ifill.

TESTIMONY OF SHERRILYN IFILL

Ms. IFILL. Good morning. Good morning, Chairman Nadler, Ranking Member Collins, and Members of the Committee. My name is Sherrilyn Ifill and I am the president and director-counsel of the NAACP Legal Defense Fund, or LDF.

I thank you for the opportunity to testify this morning concerning H.R. 1, the "For the People Act." My complete testimony has been submitted for the record.

Since its founding in 1940 by Thurgood Marshall, the Legal Defense Fund has been a leader in the struggle to secure, protect, and advance voting rights for African-American voters and racial minorities.

Beginning with Smith v. Allwright, our successful Supreme Court case in 1944 challenging the use of whites-only primaries in elections in the South, LDF has been fighting to overcome myriad obstacles to ensure the full, equal, and active participation of African Americans in the political process.

H.R. 1 is the first major bill of the 116th Congress that contains critical reforms that promise to strengthen our democracy including restoring voting rights in federal elections to individuals with a criminal background, impacting upwards of 5 million Americans, and prohibiting the use of deceptive practices and preventing voter intimidation.

The introduction of H.R. 1 also begins a larger legislative effort to restore the Voting Rights Act of 1965 to its full strength following a disastrous 2013 Supreme Court decision, Shelby County, Alabama v. Holder, which gutted a key provision of the Act.

LDF litigated that case and, unfortunately, lost in the Supreme Court in a decision which ignored the overwhelming evidence Congress accumulated in 2006 that the pre-clearance provisions of Section 5 of the act were desperately needed to protect the ability of racial minorities to participate equally in the political process.

I remind you that Section 5 of the act was expressly designed to address not only then-existing discriminatory voting schemes in 1965 but to also, in the words of the legislators who debated the provision, address the, quote, "ingenious methods that might be devised and used in the future to suppress the full voting strength of African Americans."

At its pre-Shelby strength, Section 5 would have prevented some of the voter suppression schemes that we have encountered over the last five years, including many that received national exposure in the 2018 election.

The need for H.R. 1 is evident from what we are seeing on the ground and we have been collecting all of the discriminatory voting changes since the Shelby County decision in a publication called "Democracy Diminished," which you can find on the Legal Defense Fund website. This is our attempt to capture a fraction of the thousands of voting changes that would have been scrutinized by the federal government but for the Shelby decision.

We were also on the ground on Election Day and there we found many egregious voter suppression tactics. Many of them you know

about from Georgia, well before the mid-term election. In fact, Georgia officials began placing additional burdens on voters, particularly black and Latino voters, by closing precincts and purging over half a million people from the voter rolls.

The voter purge, which removed 107,000 people simply because they did not vote in previous elections and respond to a mailing, was overseen by the Republican candidate for governor, Brian Kemp, who was also the secretary of state.

LDF and a chorus of others called on him to recuse himself from participating in the election but he refused. In Richland and Charleston Counties in South Carolina, voters endured extremely long lines——

Chairman NADLER. Excuse me, Ms. Ifill. I just want to clarify. I assume you meant you called on him to recuse himself from supervising the election, not from participating as a candidate.

Ms. IFILL. From supervising the election. That is correct. Not from running for secretary of state.

Chairman NADLER. Thank you.

Ms. IFILL. And he refused. In Richland and Charleston Counties, South Carolina, voters endured extremely long lines due to poll worker and machine shortages. In Richland County, voters reported that machines were changing their votes, a problem requiring a recalibration, according to the election officials there, which resulted in long wait times.

In Texas, prior to Election Day we received reports that students at Prairie View A&M, a historically black university, did not have adequate early voting sites and we filed suit to challenge that.

In Alabama, we filed suit on behalf of Alabama A&M students who found themselves suddenly placed on an inactive voter list. In Florida, voters were forced to return to court on behalf of Latino voters to compel election officials to provide Spanish language ballots as they had been ordered to do by a federal court in September.

The good news, however, is that on November 6th the people of Florida voted to approve a state constitutional amendment to restore voting rights to over 1 million people with felony convictions upon the completion of their sentences. This bill, H.R. 1, would expand that across the nation.

And, finally, we must acknowledge the reality that racism and discrimination in the electoral process is a national security issue. Reports from the Senate Intelligence Committee describe how Russian interference in the 2016 election included a concentrated campaign to exacerbate racism and deceive African Americans.

Indeed, Facebook and other platforms became high-tech venues for the kind of racial appeals and misinformation we see regularly in our voting rights advocacy and litigation. It is imperative that we resist all efforts, whether from our international adversaries or from our own lawmakers at the local level, to weaken this effort.

History calls on us today. Millions of voters and the very integrity of our democracy demands that this Congress act to restore the integrity of our elections. It was in the 1880s that the Supreme Court said that the right to vote is preservative of all rights.

H.R. 1 is an important and imperative response to the threats to our democracy and I welcome the opportunity to answer your questions.

Thank you.

[The statement of Ms. Ifill follows:]

Testimony of Sherrilyn Ifill
President and Director-Counsel
NAACP Legal Defense and Educational Fund, Inc.

Before the United States House of Representatives
Committee on the Judiciary

Hearing on
H.R. 1, the "For the People Act of 2019"

Rayburn House Office Building
Room 2141

January 29, 2019

I. INTRODUCTION

Good morning, Chairman Nadler, Ranking Member Collins and members of the Committee. My name is Sherrilyn Ifill, and I am the President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (LDF). Thank you for the opportunity to testify this morning concerning HR 1, For the People Act.

Since its founding in 1940 by Thurgood Marshall, LDF has been a leader in the struggle to secure, protect, and advance voting rights for Black voters and other communities of color. Beginning with *Smith v. Allwright*,[1] our successful Supreme Court case challenging the use of whites-only primary elections in 1944, LDF has been fighting to overcome myriad obstacles to ensure the full, equal, and active participation of Black voters.

HR 1 is the first major bill of the 116th Congress that contains critical reforms that promise to strengthen our democracy, including restoring voting rights in federal elections to individuals with a criminal background, impacting upwards of five million Americans (notably, LDF has been instrumental in challenging such laws across the country), and prohibiting the use of deceptive practices and preventing voter intimidation which I will be discussing today.

The introduction of HR 1 also begins a larger legislative effort to restore the Voting Rights Act of 1965 (VRA) to its full strength following a disastrous 2013 Supreme Court decision, *Shelby County, Alabama v. Holder*[2], which gutted a key provision of the Act. LDF litigated that case and lost in the Supreme Court in a decision which ignored the overwhelming evidence Congress accumulated in 2006 that the preclearance provisions of Section 5 of the Act were desperately needed to protect the ability of racial minorities to participate equally in the political process. Section 5 of the Act was expressly designed to address not only then-existing discriminatory voting schemes, but to also in the words of the legislators who debated the provision, to address the "ingenious methods" that might be devised and used in the future to suppress the full voting strength of African Americans. At its pre-*Shelby* strength, Section 5 would have prevented some of the voter suppression schemes that we have encountered over the past five years, including many that received national exposure most recently in the 2018 midterm elections. HR 1 makes important findings concerning the need to restore the Voting Rights Act to its full strength and calls for "Congress to conduct investigatory and evidentiary hearings to determine the legislation necessary to restore the Voting Rights Act and combat continuing efforts in America that suppress the free exercise of the franchise in communities of color."[3]. Indeed, restoring the VRA is critical to fully restoring our democracy and ensuring our political process functions fairly and equitably.

The Voting Rights Act is universally recognized as the most successful piece of legislation to emerge from the Civil Rights Movement. It enshrined our most fundamental values by guaranteeing to all citizens the right to vote, which the Supreme Court has called

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[1] 321 U.S. 629 (1944).
[2] *Shelby County, Ala. v. Holder*, 570 U.S. 529 (2013).
[3] *See* For the People Act, H.R. 1, 116th Cong. Sub. A, Title II, § 2001.

"preservative of all rights."[4] Congress reauthorized the VRA on four separate occasions each time on a bipartisan basis. Each reauthorization received overwhelming bipartisan support and was signed into law by Republican Presidents in 1970, 1975, 1982, and most recently in 2006 based on a 10,000-plus page record. In 2006, the vote was 98-0 in the Senate and 396-33 in the House. The provisions of the VRA were considered by Congress to be an efficient and effective mechanism for detecting and redressing the many forms of discrimination *before* elections take place that now continue to undermine our democratic process.

Our current political climate demonstrates the continued need for the Voting Rights Act to protect the right to vote for racial minorities. In November 2016, voters participated in the first federal election in more than 50 years without the full protection of the VRA—an election marked by racist and exclusionary campaign tactics and talking points. In May 2017, President Donald Trump created the so-called "Presidential Advisory Commission on Election Integrity" to support his baseless claims of widespread voter fraud and suppress the votes of Black and Latino voters. After several lawsuits were filed, including LDF's suit that alleged that the Commission was formed with the intent to discriminate against voters of color,[5] the Commission was disbanded in January 2018. However, the damage has been and continues to be done by the perpetuation of the false assertion that large amounts of Black and Latino voters are voting illegally. This stereotype has been used decade after decade to justify unconstitutional voter suppression tactics from poll taxes to photo ID laws. At LDF, we have remained vigilant in monitoring voting discrimination and protecting the vote of people of color in a post-*Shelby County* voting rights landscape. My testimony today will focus on what voting rights advocates, Congress, and others can do to remove the obstacles to voting faced by voters of color.

II. THE SECTION 5 PRECLEARANCE FRAMEWORK

For nearly 50 years, Section 5 of the VRA required certain jurisdictions (including states, counties, cities, and towns) with a record of chronic racial discrimination in voting to submit all proposed voting changes to the U.S. Department of Justice (DOJ) or a federal court in Washington, D.C. for pre-approval. By all voting changes, I mean every polling place change, every annexation, every redistricting plan, every voter identification requirement, was scrutinized.

This requirement was known as "preclearance." Section 5 preclearance served as our democracy's discrimination checkpoint by halting discriminatory voting changes before they were implemented thus avoiding possible harm and protecting the sanctity of the vote. It protected Black, Latino, Asian, Native American, and Alaskan Native voters from racial discrimination in the states and localities—mostly in the South—with a history of the most entrenched forms of racial discrimination in voting. Section 5 placed the burden of proof, time, and expense on the covered state or locality to demonstrate that a proposed voting change was not discriminatory before that change went into effect and could spread its harm.

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[4] *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).
[5] *NAACP Legal Def. & Educ. Fund v. Trump*, No. 17 Civ. 5427 (S.D.N.Y. July 18, 2017).

Section 4(b) of the VRA, the coverage provision, authorized Congress to determine which jurisdictions should be "covered" and, thus, were required to seek preclearance. Preclearance applied to nine states (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia) and a number of counties, cities, and towns in six partially covered states (California, Florida, Michigan, New York, North Carolina, and South Dakota).

The preclearance process provided a quick, efficient, and non-litigious way of addressing America's pervasive and persistent problem of voting discrimination. Under Section 5's preclearance framework, communities were given broad public notice about proposed voting changes, and the status quo was preserved until the effect of the proposed changes on voters of color could be fully explored and presented to the federal government. This framework was important and further revealed/substantiated the ongoing struggle to combat voter discrimination. Between 1982 and 2006, the DOJ blocked over 700 discriminatory voting changes under Section 5,[6] and over 800 proposed voting changes were withdrawn or altered after DOJ requested more information.[7] This suggests that many jurisdictions withdrew or altered their proposed voting changes in anticipation of enforcement action by the federal government. In just a three-year period between 2010-2013, DOJ reviewed 10,000 plus changes. Further, many other jurisdictions likely never considered pursuing discriminatory changes because of the VRA.

Until 2013, the VRA had withstood numerous constitutional challenges.[8] On June 25, 2013, the Supreme Court immobilized the preclearance process in its decision in *Shelby County v. Holder*.[9] In a devastating blow to the essence of the preclearance process, the Supreme Court ruled that Section 4(b) was unconstitutional, which effectively disabled Section 5. The Court held that the Section 4(b) formula for determining which jurisdictions would be covered under Section 5 was out of date and not responsive to current conditions in voting.

III. THE POST-*SHELBY* VOTING RIGHTS LANDSCAPE

Formerly covered jurisdictions were emboldened to act immediately after the *Shelby County* decision. For instance, within hours and days of the Court's decision, Alabama, Mississippi, and Texas each announced that their states' voter photo identification (ID) laws, as well as Texas's discriminatory redistricting plans, would go into effect. Within months, several states announced changes to early voting. Each of these changes have been documented as being significant obstacles to voting, particularly for people of color. The passage of time has not diminished the efforts of jurisdictions determined to implement obstacles that prevent voters of color from fully participating in the political process.

Further adding to the devastating impact of *Shelby County*, DOJ has changed its positions and priorities with respect to its role in enforcing voting rights. It no longer sends federal observers to jurisdictions, unless in a handful of cases, it has the cover of a court order. It has

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[6] *Shelby County*, 570 U.S. at 571 (Ginsburg, J. dissenting).
[7] *Id.* at 2639-40.
[8] *See Lopez v. Monterey County*, 525 U.S. 266 (1999) (rejecting a constitutional challenge to the reauthorization of Section 5); *City of Rome v. United States*, 446 U.S. 156 (1980) (same); *South Carolina v. Katzenbach*, 383 U.S. 301 (1996) (upholding the entirety of the VRA against constitutional attack).
[9] 570 U.S. 529 (2013).

brought only a handful of lawsuits affirmatively to challenge discrimination.[10] Indeed, DOJ has become this Administration's voter suppression agency, promoting efforts to curtail voting rights and make it more difficult for people to vote. DOJ reversed course to side with Texas in an effort to impose a racially discriminatory voter identification scheme, asking a federal appeals court to allow the state to enforce the law that a lower court found violated the Voting Rights Act and the 14th and 15th Amendments of the U.S. Constitution.[11] DOJ similarly sided with Ohio in an effort to unfairly purge voters from its rolls,[12] reversing a position which spanned more than two decades and across Republican and Democratic Administrations alike interpreting the National Voter Registration Act as prohibiting the exact type of racially discriminatory voter purges being conducted by Ohio.[13]

Both before and after the *Shelby County* decision, skeptics of the continued need for Section 5 pointed to Section 2 of the VRA as a potential stand-in for Section 5's protection. Section 2, which applies nationwide, authorizes plaintiffs to challenge racial discrimination in voting *after* a discriminatory voting practice or procedure is in place. The differences between Sections 5 and 2 are critical and highlight precisely why Section 2, though a meaningful tool that LDF and other advocates continue to employ, is no substitute for Section 5. Whereas Section 5 served as a shield to protect voters of color *before* discriminatory voting practices were in place, Section 2 may be used as a sword only *after* the fact, when the beneficiaries of an illegal voting scheme have been elected with the advantages of incumbency.

Moreover, federal litigation brought under Section 2 is some of the most expensive and time-consuming types of litigation.[14] So, in order to challenge a package of voter suppression laws such as those in North Carolina or a local discriminatory redistricting plan, it can cost millions of dollars, borne by taxpayers who pay for jurisdictions to defend these laws and minority plaintiffs who must secure legal representation and experts to challenge them. This also means that a discriminatory voter qualification, electoral system, or mechanism can remain in place for years until a federal court strikes it down. Texas's photo ID law was on the books for more than five years before it was changed in response to LDF's successful voting rights lawsuit.

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[10] *See, generally,* NAACP Legal Def. & Educ. Fund, Inc., Democracy Diminished: State and Local Threats to Voting Post-*Shelby County, Alabama v. Holder* (last updated Jan. 9, 2019), https://www.naacpldf.org/wp-content/uploads/Statess-responses-post-Shelby-01.08.2019.pdf (a 50 plus page report documenting voting changes that have impacted minority voters in jurisdictions formerly covered by Section 5).

[11] Jim Malewitz, *Trump's Justice Department Wants Texas to Keep Invalidated Voter ID Law*, TEX. TRIBUNE, Sep. 1, 2017, https://www.texastribune.org/2017/09/01/trumps-doj-wants-texas-be-able-use-id-law-struck-discriminatory/; Veasey v. Abbott, 265 F. Supp. 3d 684 (Aug. 23, 2017).

[12] *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833 (2018); Charlie Savage, *Justice Dept. Backs Ohio's Effort to Purge Infrequent Voters from Rolls*, N.Y. TIMES, Aug. 8, 2017.

[13] https://www.naacpldf.org/files/about-us/16-980bsacNAACPLegalDefenseFundetal.pdf.

[14] *See* Federal Judicial Center, *2003-2004 District Court Case-Weighting Study, Table 1* (2005) (finding that voting cases consume the sixth most judicial resources out of sixty-three types of cases analyzed), https://www.fjc.gov/sites/default/files/2012/CaseWts0.pdf; *Voting Rights Act: Section 5 of the Act–History, Scope, and Purpose: Hearing Before the Sub-comm. on the Constitution of the H. Comm. on the Judiciary,* 109th Cong. 73 (2005) (statement of Anita Earls, Director of Advocacy, Center for Civil Rights) (stating that "two to five years is a rough average" for the length of Section 2 lawsuits), http://commdocs.house.gov/committees/judiciary/hju24120.000/hju24120_0.HTM.

However, despite the challenges associated with Section 2 litigation, LDF and other advocates continue to rigorously pursue enforcement of the law. Since 2013, there have been at least nine federal court decisions finding that states or localities intentionally discriminated against Black and other voters of color.[15] In most of these decisions, the preclearance requirement would have prevented the discriminatory voting change.

The loss of Section 5 resulted in the loss of the notice of discrimination and the opportunity for communities to comment on how proposed changes could harm them. It also of course removed the central mechanism to block a discriminatory change before its implementation.

LDF continues to closely monitor how formerly covered states and localities respond to the *Shelby County* decision, and has been keeping a detailed account of post-*Shelby County* voting changes in its regularly-updated online publication *Democracy Diminished: State and Local Threats to Voting Post-Shelby County, Alabama v. Holder.*[16] This is an attempt to try to capture a fraction of the thousands of voting changes that would have been scrutinized by the federal government for their harm to minority voters via preclearance.

Also, as part of our annual Prepared to Vote initiative, LDF has been on the ground for major primary and general elections to conduct non-partisan poll monitoring and to assist voters primarily in certain states formerly covered by Section 5 of the VRA. Prior to election day, we educate partners on the ground about how to prepare to vote – register, what IDs they need on election day, important election dates. On election day, LDF staff and volunteers visit polling sites to educate voters about their state's voting requirements and engage in rapid response actions when problems arise to ensure every eligible voter is able to cast a ballot. For the 2018 midterm election, LDF was on the ground in Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas. What we saw on November 6, 2018, and in the weeks before and after confirmed what we already knew: Discrimination against Black voters is an overwhelming and growing problem that demands immediate legislative action.

While examples can be found in states and counties all over the country, what transpired in Georgia in particular was a low-point, a disheartening blow to fairness, equality, and core democratic and constitutional principles. Well before the mid-term election, Georgia officials began placing additional burdens on voters, particularly voters of color, by closing voting

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[15] *Stout v. Jefferson County Bd. of Educ.*, 882 F.3d 988 (11th Cir. 2018); *N.C .State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016); *Perez v. Abbott*, 253 F.Supp.3d 864 (W.D. Tex. 2017); *Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017); *Perez v. Abbott*, 253 F.Supp.3d 864 (W.D. Tex. 2017); *Patino v. City of Pasadena*, 230 F. Supp. 3d 667 (S.D. Tex. 2017); *Terrebonne Par. Branch NAACP v. Jindal*, 274 F.Supp.3d 395 (M.D. La. 2017); *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016); *Allen v. Evergreen*, No. 13-107, 2014 WL 12607819 (S.D. Ala. Jan. 13, 2014).

[16] NAACP Legal Def. & Educ. Fund, Inc., Democracy Diminished: State and Local Threats to Voting Post-*Shelby County, Alabama v. Holder* (last updated Jan. 9, 2019), https://www.naacpldf.org/wp-content/uploads/Statess-responses-post-Shelby-01.08.2019.pdf (a 50 plus page report documenting voting changes that have impacted minority voters in jurisdictions formerly covered by Section 5).

precincts[17] and purging over half a million people from the voter rolls.[18] The voter purge, which removed 107,000 people simply because they did not vote in previous elections[19] and respond to a mailing, was overseen by the Republican candidate for Governor, Brian Kemp, who was also the Secretary of State. Under Kemp's purge policy, if a Georgia resident went to the polls in 2008 to, for instance, vote for Barack Obama, and had not voted since, that person could have been purged from the rolls and thus ineligible to vote in 2018.

LDF and a chorus of others called upon Secretary of State Kemp to recuse himself from the position of overseeing his own election,[20] but he refused. The results were even more troubling than one might have anticipated. Candidate Kemp proceeded to block the registration of approximately 53,000 voters, over 70% of whom were reportedly voters of color, in accordance with Georgia's "exact match" voter verification system. A federal lawsuit by our civil rights allies successfully challenged the exact match system less than one week before the election. On top of all this, on election day, LDF witnessed or received reports of malfunctioning voting machines, long lines and wait times of over three hours, changes to precincts with insufficient notice, and an overreliance on provisional ballots.

Our voter protection efforts in Texas also began before election day. We received reports that students at Prairie View A&M University, a historically Black university, did not have adequate early voting sites, and that county officials refused to provide them. Noting that repression of Black voters at the University and in the City of Prairie View dated back to at least the early 1970s, we filed a lawsuit that remains pending demanding that Prairie View A&M students be provided an equal opportunity to vote. In response to our lawsuit, the county provided more hours of early voting on-campus at Prairie View A&M. The lawsuit remains pending.

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[17] Mark Niesse, et al., *Voting Precincts Closed Across Georgia Since Election Oversight Lifted,* Atlanta J. Const. (Aug. 31, 2018), https://www.ajc.com/news/state--regional-govt--politics/voting-precincts-closed-across-georgia-since-election-oversight-lifted/bBkHxptlim0Gp9pKu7dfrN/; Press Release, NAACP Legal Def. & Educ. Fund, Inc., LDF and ACLU of Georgia Send Joint Letter to Georgia Officials Urging Against Discriminatory Polling Place Changes Aug. 22, 2018, https://www.naacpldf.org/press-release/ldf-aclu-georgia-send-joint-letter-georgia-election-officials-urging-discriminatory-polling-place-changes/ (LDF sending letter to all 150 Georgia counties warning about polling place changes with an analysis of their impact on Black and other voters of color).

[18] Johnny Kauffman, *6 Takeaways from Georgia's 'Use It or Lose It' Voter Purge Investigation*, NPR (Oct. 22, 2018), https://www.npr.org/2018/10/22/659591998/6-takeaways-from-georgias-use-it-or-lose-it-voter-purge-investigation; *see also* Press Release, NAACP Legal Def. & Educ. Fund, Inc., Janai Nelson Speaks on MSNBC About Kemp and Georgia's Purged Voter Rolls (Oct. 13, 2018), https://www.naacpldf.org/news/janai-nelson-speaks-msnbc-kemp-georgias-purged-voter-rolls/.

[19] Johnny Kauffman, *6 Takeaways from Georgia's 'Use It or Lose It' Voter Purge Investigation*, NPR (Oct. 22, 2018), https://www.npr.org/2018/10/22/659591998/6-takeaways-from-georgias-use-it-or-lose-it-voter-purge-investigation.

[20] Press Release, NAACP Legal Def. & Educ. Fund, Inc., LDF Sends Letter to Georgia Secretary of State, Urging Recusal From Voter Registration Process During Gubernatorial Campaign (Oct. 12, 2018), https://www.naacpldf.org/press-release/ldf-sends-letter-georgia-secretary-state-urging-recusal-voter-registration-process-gubernatorial-campaign/; Janai Nelson, Op.-Ed., *Georgia Gubernatorial Candidate's Huge Conflict of Interest*, CNN (Oct. 16, 2018), https://www.cnn.com/2018/10/16/opinions/brian-kemp-georgia-voter-supression-stacey-abrams-nelson/index.html.

In states with voter ID laws, we not only see the disenfranchising effects of the laws on economically under-resourced communities of color, but also the confusion and inefficiencies such laws tend to cause at the polls. This was particularly concerning during the midterm election in Alabama, where we received reports that poll workers were improperly rejecting voters who had valid photo IDs because their addresses on their IDs did not match the addresses on their registrations.[21] LDF is currently challenging Alabama's photo ID law in federal court. According to the state's own expert, tens of thousands of disproportionately Black and Latino Alabamians lack acceptable photo ID for voting.[22]

As we have seen repeatedly, voter suppression laws do not function only by blocking people from voting: they are designed to confuse, frustrate, delay, and deter. The most recent photo ID law comes from North Carolina, where the state legislature recently overrode the Governor's veto of the restrictive statute. This is North Carolina's latest attempt at such a law since its previous voter identification law, enacted soon after the *Shelby County* decision, was struck down along with other voting restrictions by a federal court for targeting Black voters "with almost surgical precision."[23]

In Florida, we received reports of problems with confusing ballots, long lines, precinct changes, inaccurate information printed on voter materials, and precincts running out of ballots. On November 6, however, the people of Florida voted to approve a state constitutional amendment that will restore voting rights to over 1 million people with felony convictions upon the completion of their sentences. There will always be a question as to the legitimacy of our democratic system so long as millions of people, a disproportionate number of whom are people of color, are deprived of their right to vote because of a past felony conviction.[24] Mass incarceration, over-policing of Black communities, and felony disenfranchisement laws have not only stripped nearly six million people of their voting rights, but have also contributed to policies that too often deny communities of color the ability to elect candidates of their choice. Relegating the tools and practices of America's Jim Crow history to the past is a moral necessity, and, with respect to felony disenfranchisement laws, is long overdue.

While it is our hope that both lawmakers and voters are motivated by the democratic principles of "one person, one vote" and racial equity, we all must also acknowledge the reality that racism and discrimination in the electoral process is nothing short of a national security

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[21] Press Release, NAACP Legal Def. & Educ. Fund, Inc., LDF Sends Letter to Secretary Merrill Over Widespread Confusion Regarding Inactive Voters and the Photo ID Law in Alabama (Nov. 6, 2018), https://www.naacpldf.org/press-release/ldf-sends-letter-secretary-merrill-widespread-confusion-regarding-inactive-voters-photo-id-law-alabama/.

[22] *Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253, 1269 (N.D. Ala. 2018), appeal docketed, No. 18-10151 (11th Cir. Jan. 1, 2018)

[23] *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

[24] *See* NAACP Legal Def. & Educ. Fund, Inc., Felony Disenfranchisement, (last visited Jan. 24, 2019), http://www.naacpldf.org/case-issue/free-vote-people-felony-convictions.

issue.[25] Reports from the Senate Intelligence Committee describe how Russian interference in the 2016 election included a concentrated campaign to exacerbate racism and deceive Black Americans. Indeed, Facebook and other platforms became high-tech venues for the kinds of racial appeals and misinformation we see regularly in our voting rights advocacy and litigation, illustrated by the indictments by Special Counsel Robert Mueller of 12 Russian nationals and entities that plotted to influence the 2016 Presidential election using tactics which included suppressing black votes.[26] The strength of our country depends on the strength of our democracy, which in turn depends on the strength of the right to vote. It is imperative that we resist all efforts, whether from our international adversaries or our own lawmakers, to weaken that right.

IV. RECOMMENDATIONS

Evidence of widespread discrimination against Black voters is overwhelming and growing, and the need for legislative action is urgent. Accordingly, Congress should reinstate federal preclearance using the formula from either the Voting Rights Advancement Act or Voting Rights Amendment Act.

On January 16, 2014, a bipartisan group of Members of Congress introduced the Voting Rights Amendment Act of 2014 ("VRAA").[27] The VRAA represents a measured, flexible and forward-looking attempt by Congress to update the VRA in response to the *Shelby County* decision. The VRAA contains several components that respond directly to the Court's directive that preclearance be linked to recent acts of discrimination while seeking to provide victims of voting discrimination and the lower courts with the tools to detect and prevent voting discrimination before it takes effect. This bill included, among other things, a mechanism to identify places with the worst recent record of voting discrimination and require preclearance for their proposed voting changes, and an enhanced ability to obtain preliminary injunctive relief when challenging voting changes likely to be discriminatory.

On June 24, 2015, the Voting Rights Advancement Act[28] was introduced in Congress to update the VRA consistent with the *Shelby County* decision. This bill included provisions that would have, among other things, modernized the preclearance formula to cover states with a pattern of discrimination that put voters at risk; ensured last-minute voting changes would not adversely affect voters; and expanded the federal observer program. Four years after the *Shelby County* decision, congressional representatives introduced the Voting Rights Advancement Act of 2017,[29] which, under a new coverage provision, would apply to 13 states—Alabama, Georgia,

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[25] *See* Sherrilyn Ifill, Op.-Ed. *It's Time to Face the Facts: Racism Is a National Security Issue*, Wash. Post (Dec. 18, 2018), https://www.washingtonpost.com/opinions/its-time-to-face-the-facts-racism-is-a-national-security-issue/2018/12/18/f9746466-02e8-11e9-b5df-5d3874f1ac36_story.html?utm_term=.80d1452b897b.
[26] *See* Indictment at 14, *United States of America v. Netyksho et al.* (D.D.C. July 13, 2018), https://d3i6fh83elv35t.cloudfront.net/static/2018/07/Muellerindictment.pdf; Scott Shane & Sheera Frenkel, *Russian 2016 Influence Operation Targeted African-Americans on Social Media*, N.Y. Times (Dec. 17, 2018), https://www.nytimes.com/2018/12/17/us/politics/russia-2016-influence-campaign.html.
[27] H.R. 3899, 113th Cong. (2014).
[28] S. 1659, 114th Cong. (2015).
[29] S. 1419, 115th Cong. (2017).

Mississippi, Texas, Louisiana, Florida, South Carolina, North Carolina, Arkansas, Arizona, California, New York, and Virginia—and, among other things, require these jurisdictions to preclear their voting changes for 10 years with the opportunity to bail-out of this obligation if they demonstrated the necessary record. A bipartisan Voting Rights Amendment Act of 2017 also was introduced.[30] Notably, this bill would make all states and local jurisdictions eligible for preclearance review if they have committed five voting violations in the last 15 years.[31] Now, as called for in HR 1, Congress should move forward with consideration of legislation to restore vitally needed protections after *Shelby County.*

Of course, we continue to vigorously pursue litigation to protect voting rights under Section 2 of the Voting Rights Act, but we know that this is not enough. Even when we prevail – as we did in our suit challenging Texas' voter i.d. law – irreparable damage is done. During the three years we litigated that case, Texas elected a U.S. senator in 2014, all 36 members of the Texas delegation to the U.S. House of Representatives, Governor, Lieutenant governor, Attorney General, Controller, various statewide Commissioners, four Justices of the Texas Supreme Court, candidates for special election in the state Senate, State boards of education, 16 state senators, all 150 members of the state House, over 175 state court trial judges, and over 75 district attorneys. We proved at trial that more than half a million eligible voters were disenfranchised by the i.d. law we were ultimately successful in challenging. But it was too late for those elections.

Congress should also work to remove obstacles to voting in federal elections faced by the nearly 4.7 million disenfranchised citizens who have been released from prison and are still denied the right to vote. It is no secret that people of color are disproportionately represented in the prison population. Accordingly, restoring the voting rights of citizens returning to their communities would roll back unduly restrictive felony disenfranchisement laws that bar people of color from voting. HR 1's democracy restoration provisions would restore voting rights in federal elections to individuals with criminal convictions and is consistent with trends to undo the disenfranchisement of those with criminal backgrounds at the state level.[32]

Finally, as discussed earlier, digital platforms are actively impacting our election system as evidenced by continuous revelations about how they were used to attempt to influence elections and sow seeds of hate and racial division. It is critical that Congress act to investigate and legislate these activities, reframing the intervention from the narrow consideration of privacy and data breaches to one that examines the issue within the context of the historic role of race in the public space. HR 1's provisions prohibiting deceptive practices and preventing voter

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[30] H.R. 3239, 115th Cong. (2017).
[31] H.R. 3239, 115th Cong. § 3(b) (2017).
[32] *See* For the People Act, H.R. 1, 116th Cong. Sub. E, Title I, § 1402; Brennan Center for Justice, *Criminal Disenfranchisement Laws Across the United States* (last updated Dec. 7, 2018), http://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states.

intimidation provide both a vehicle for this examination, as well as a potential tool to address this issue.[33]

CONCLUSION

The ever-growing record of discriminatory voting changes since the *Shelby County* decision requires Congress to fulfill its obligation to protect the right of every eligible to vote citizen and have their vote count. With roughly 10 federal court decisions finding that states or localities intentionally discriminated against voters of color just since 2013, there is no doubt that race discrimination in voting is an endeavor pursued relentlessly by its proponents. LDF and other civil rights law organizations are using both litigation and public advocacy to aggressively combat the repeated attacks on voting rights that have occurred in the absence of Section 5's enforcement authority. However, only Congress has the ultimate authority to enforce the anti-discrimination principle articulated in the Fourteenth and Fifteenth Amendments to the Constitution. Thus, as called for in HR 1, we urge Congress to begin the hearing process on legislation that would restore the VRA. This hearing and fact-gathering process must be thoughtful, rigorous, and driven ultimately by the need to collect the best evidence to support the full restoration of the VRA. We also urge Congress to deploy the other provisions of HR 1 to ensure our democracy and political process is fully functioning, fair accessible to all.

[33] *See* For the People Act, H.R. 1, 116th Cong. Sub. D, Title I, § 1302.

Chairman NADLER. Thank you.
Ms. Turberville.

TESTIMONY OF SARAH TURBERVILLE

Ms. TURBERVILLE. Thank you, Chairman Nadler, Ranking Member Collins, and Members of the Committee for the opportunity to speak with you today about a short but vital component of H.R. 1, Section 7001, on Supreme Court ethics.

My name is Sarah Turberville and I am director of The Constitution Project at the Project On Government Oversight. The Supreme Court ethics provision of this legislation would close a conspicuous gap in federal ethics rule requiring the Judicial Conference to issue a code of conduct applicable to each judge and justice of the United States. We support this long-overdue ethics reform.

By extending a code of ethics to the Supreme Court for the first time, this legislation seeks to balance the need to enhance the public's faith in the judiciary with the imperative to safeguard the separation of powers between the Congress and the courts and, notably, a code of conduct for the entire federal judiciary has bipartisan support.

In the last Congress, a bill sponsored by the former Republican chairman of this committee contained an identical provision.

I would like to explain a little bit about the ethics landscape governing judges. A century ago, the ABA created the first Model Code of judicial ethics. Today, that Model Code has been adopted by two-thirds of the states as well as the Judicial Conference of the United States. The iteration adopted by the Judicial Conference contains five canons of conduct and requires that federal judges uphold the integrity and independence of the judiciary, avoid impropriety and the appearance of impropriety in all activities, perform the duties of the office fairly, impartially, and diligently, permits that judges may engage in extrajudicial activities that are consistent with the obligations of their office, and that judges refrain from political activity.

This code binds a wide range of judges in our federal system, from Circuit Courts of Appeal to judges on the U.S. Tax Court. In fact, virtually every individual serving as a judge in this country is held accountable to a basic code of conduct. The glaring exception is the nine justices on the Supreme Court.

While Chief Justice Roberts assures us that Supreme Court justices do in fact consult the code, a snapshot from just two recent episodes make clear that the chief justice's assurances are no longer sufficient.

Take, for example, the comments of Justice Ruth Bader Ginsburg made to the New York Times in the midst of the 2016 presidential campaign where she said, "I can't imagine what this place would be—I can't imagine what our country would be—with Donald Trump as president."

This seems an obvious violation of the fifth canon prohibiting political activity. Or look to Justice Brett Kavanaugh's conduct during his 2018 confirmation hearing where he described the allegations of sexual misconduct against him as a partisan conspiracy, threatened that what goes around comes around, and demonstrated hostility towards senators inquiring about his fitness for office.

This, rather plainly, violates canon two, requiring judges to avoid impropriety and the appearance of impropriety. And the comments of both justices potentially implicate canon three, requiring a judge to disqualify him or herself for a personal bias or prejudice concerning a party.

In essence, our federal courts operate on a two-tiered system of ethics. Lower court judges whose decisions may be appealed are held to account through a code of conduct and the Judicial Conduct and Disability Act.

Supreme Court justices, however, whose decisions are irreversible and have the widest impacts, are trusted to self-police.

We believe that a code of conduct would help guide justices in ordering their financial and fiduciary affairs, help inform justices' decision-making on recusals, and assist members of the high court in scrutinizing their extrajudicial comments and activities more carefully.

And from this a benefit would flow that is perhaps more important than any other. An operative code of ethics would improve the public's faith in the integrity and legitimacy of the courts. This is all the more important, as Ranking Member Collins just described, because federal judges and justices enjoy lifetime tenure and they cannot be replaced by the voters.

For this provision of H.R. 1 to have the necessary impact, we also encourage the Congress to consider additional measures that would provide for robust financial disclosure obligations, transparency of recusal decision-making, and improving access to information about judges' and justices' public and nonpublic appearances regardless of whether that appearance might trigger a financial disclosure.

I will close by reminding the committee that our federal courts rely on the public's belief in their legitimacy as a co-equal branch of government in order to ensure that their rulings are honored. But the prevalence of incidents like the ones I have just described erode the public's confidence in the institution.

We urge you to pass H.R. 1 as it is a long-overdue proposal to address pressing ethical questions concerning the Supreme Court. I thank you very much for your time and I look forward to your questions.

[The statement of Ms. Turberville follows:]

Statement of Sarah Turberville, The Constitution Project at the Project On Government Oversight
Before the House Committee on the Judiciary
"Closing the Gap in Judicial Ethics"
January 29, 2019

Thank you, Chairman Nadler, Ranking Member Collins, and Members of the Committee for the opportunity to speak with you today about H.R. 1, the For The People Act of 2019. My name is Sarah Turberville and I am the director of The Constitution Project at the Project On Government Oversight. Founded in 1981, the Project On Government Oversight (POGO) is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing; The Constitution Project was founded in 1997 and joined POGO in 2017. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

STATEMENT ON H.R. 1, THE FOR THE PEOPLE ACT OF 2019

Section 7001 of the For the People Act would close a conspicuous gap in federal ethics rules. It would require the Judicial Conference of the United States to issue a code of conduct applicable to each judge and justice of the United States, which may include provisions "that are applicable only to certain categories of judges or justices."[1] We strongly support this long-overdue ethics reform and encourage lawmakers to view this measure as a first step toward preserving the actual and perceived integrity of the federal courts.

By extending a code of ethics to the Supreme Court for the first time, the legislation seeks to balance the need to enhance the public's faith in the judiciary with the imperative to safeguard the separation of powers between the legislative and judicial branches. While tough questions concerning the scope and enforcement of a code of conduct for the Supreme Court may arise, the benefits of applying such a code to the justices—including the benefits that would flow to the public's understanding and perception of the courts—far outweigh any disadvantages.

A code of conduct for all judges and justices of United States courts could increase public confidence in the legitimacy, integrity, and independence of the courts. It would also better ensure fairer application of ethics rules—perhaps with the added benefit of the justices' closer scrutiny of their own conduct. A code of conduct for the entire federal judiciary has bipartisan support. In the last Congress, a Republican-sponsored bill contained an identical provision.[2]

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[1] U.S. House of Representatives, "For the People Act of 2019" (H.R. 1), Introduced January 3, 2019, by Representative John P. Sarbanes. https://www.congress.gov/116/bills/hr1/BILLS-116hr1ih.pdf (Downloaded January 25, 2019)
[2] U.S. House of Representatives, "Judiciary ROOM Act of 2018" (H.R. 6755), Introduced September 10, 2018, by Representative Darrell E. Issa. https://www.congress.gov/bill/115th-congress/house-bill/6755 (Downloaded January 25, 2019)

JUDICIAL CODES OF CONDUCT

The concept of a code of conduct governing the behavior of judges is not new. In 1924, the American Bar Association (ABA) published its Model Code of Judicial Conduct. The ABA has since revised and updated the Model Code several times, most often with an eye toward better reflecting the need for unassailably ethical conduct by judges. Such conduct, and the public perception of such conduct, is essential to ensuring the judiciary is not only independent but enjoys the legitimacy conferred by public trust.

The Model Code, which has been adopted in whole or in various iterations by two-thirds of the states (an additional eight states are considering revising their codes in light of the ABA's latest revision), consists of several "canons" of judicial conduct.[3] The Judicial Conference of the United States adopted its Code of Conduct for United States Judges in 1973, based on the Model Code. The Code of Conduct applies to a wide range of judges: "United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges." In addition, "the Tax Court, Court of Appeals for Veterans Claims, and Court of Appeals for the Armed Forces have adopted this Code."[4] It reads:

> Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary
> Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities
> Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently
> Canon 4: A Judge May Engage in Extrajudicial Activities that are Consistent with the Obligations of Judicial Office
> Canon 5: A Judge Should Refrain from Political Activity[5]

Taken together, the ABA Model Code and the Code of Conduct for United States Judges ensure that virtually every individual serving as a judge in this country is held accountable to a basic code of conduct. The glaring exception is the nine justices of the Supreme Court.

EXISTING ETHICS PROVISIONS FOR SUPREME COURT JUSTICES

Without doubt, the Supreme Court is exceptional. It is the only court created by the Constitution, which provides numerous protections for the Court's independence (for example, justices retain their positions for life during "good behavior").[6] Even so, Congress can place obligations on the justices that do not interfere with the courts' structural or decisional independence endowed by

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[3] Each canon is accompanied by clarifying rules. In addition, the ABA has included commentaries with each canon offering further context and definition to the individual canons but also to the code as a whole. American Bar Association, "Jurisdictional Adoption of Revised Model Code of Judicial Conduct," October 17, 2018. https://www.americanbar.org/groups/professional_responsibility/resources/judicial_ethics_regulation/map/ (Downloaded January 7, 2019); American Bar Association, "Model Code of Judicial Conduct," 2010. https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/ (Downloaded January 25, 2019)

[4] Judicial Conference of the United States, *Guide to Judiciary Policy*, Vol. 2, Ch. 2, 2014 https://www.uscourts.gov/sites/default/files/vol02a-ch02_0.pdf (Downloaded January 25, 2019) (Hereinafter Code of Conduct)

[5] Like the ABA Model Code, the Code of Conduct has extensive commentary. Code of Conduct.

[6] United States Constitution, Art. III, Sec. 1.

the Constitution. Throughout history, whether by mandating the size of the Court, determining the length and dates of its term, setting out recusal standards, or imposing financial disclosure requirements, Congress has exercised its constitutional prerogative to pass laws that govern the Court's form and function.[7]

For example, several statutory provisions govern the conduct of federal judges, including Supreme Court justices. Most notably, Section 455 of Title 28 of the United States Code specifies when judges must recuse themselves from a proceeding.[8] In addition to a blanket obligation to recuse "in any proceeding in which [their] impartiality might reasonably be questioned," the law instructs judges to step aside when they have personal biases toward parties or knowledge of disputed facts; have previously been involved with a case as a lawyer, judge, or public servant; have a financial interest or a family member with a financial interest in the outcome; or when they or a family member are involved in or could be affected by the proceedings. This provision applies to "any justice, judge, or magistrate judge."

Further, the Ethics in Government Act of 1978 requires all federal judges, including Supreme Court justices, to submit annual financial disclosures.[9] To enforce this requirement, the Judicial Conference can refer to the attorney general anyone who is suspected of willfully failing to file required information or falsifying their disclosure.[10] There are civil and criminal penalties for these violations, and the Judicial Conference has promulgated regulations to facilitate compliance with the Act.[11] Notably, and in contrast with the Code of Conduct, which explicitly does not apply to Supreme Court justices, the regulations adopt the statute's definition of "judicial officer," which does include the justices.[12]

Members of the nation's highest court are not, however, covered by the Judicial Conduct and Disability Act of 1980, which created a process for the filing and investigation of complaints,

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[7] Congress's authority to structure the Supreme Court primarily flows from Article I, Sec. 8 of the Constitution, which empowers it "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or any Department or Officer thereof." For example, the Judiciary Act of 1869 legislated the composition of the Supreme Court as a nine-member bench, consisting of a chief justice and eight associate justices. U.S. Congress, "An Act to Amend the Judicial System of the United States," 1869. https://www.loc.gov/law/help/statutes-at-large/41st-congress/session-1/c41s1ch22.pdf (Downloaded January 25, 2019)

[8] 28 U.S.C. § 455. The provision, originally passed in 1940, was extended to appeals court judges and Supreme Court justices in 1974.

[9] 5 U.S.C. App. § 101(f)(11).

[10] 5 U.S.C. App. § 104(b).

[11] 5 U.S.C. App. § 104(a); Judicial Conference of the United States, *Guide to Judiciary Policy*, Vol. 2D, 2018. https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf (Downloaded January 24, 2019)

[12] The statutes barring federal employees from receiving gifts and limiting their outside income apply to judges (5 U.S.C. § 7353(a); 5 U.S.C. App. §§ 501-505). However, the Judicial Conference has "delegated its administrative and enforcement authority under [the laws] for officers and employees of the Supreme Court of the United States to the Chief Justice," and explicitly excludes the justices from the rules, muddying their applicability to them. Regardless, the justices comply with those requirements as a matter of Court policy. Judicial Conference of the United States, *Guide to Judiciary Policy*, Vol. 2C, Ch. 6 § 620.65(a), 2010. https://www.uscourts.gov/sites/default/files/vol02c-ch06.pdf; Judicial Conference of the United States, *Guide to Judiciary Policy,* Vol. 2C, Ch. 10 § 1020.50, 2010. https://www.uscourts.gov/sites/default/files/vol02c-ch10.pdf; Chief Justice John Roberts, "2011 Year-End Report on the Federal Judiciary," December 31, 2011, p. 6. https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf (Downloaded January 24, 2019) (Hereinafter Roberts Report)

and for discipline of federal judges, based on misconduct or an inability to perform the job.[13] (A violation of the Code of Conduct is not necessarily sufficient grounds for punishment under the Act.[14])

WHY DO WE NEED A CODE OF CONDUCT FOR THE SUPREME COURT?

While the Code of Conduct does not formally apply to the justices, Chief Justice Roberts has said that they "do in fact consult the Code of Conduct in assessing their ethical obligations."[15] However, episodes over the last two decades have made clear that the Supreme Court's consultation of the Code is not sufficient. In several notable instances, the conduct of a Supreme Court justice clearly would have violated one or more of the Code's canons of judicial conduct. In other words, if Supreme Court justices were held to the same ethical standard as all other federal judges, their conduct would have been prohibited by the Code, or, even more seriously, the Judicial Conduct and Disability Act, and they could have been subject to censure or sanction of some kind.[16]

Most recently, during his 2018 confirmation process, then-Judge Brett Kavanaugh implied that he would partake in retribution for what he perceived as unfair treatment during the process. Judge Kavanaugh described the allegations of sexual misconduct against him as a partisan conspiracy and said that "what goes around comes around."[17] This comment likely violated the second canon of the Code of Conduct, the commentary for which states, "[a]n appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired." Now that Justice Kavanaugh is on the Court, these comments have arguably already harmed the perception of the Court's impartiality.

In another well-publicized incident, in the midst of the 2016 presidential campaign, Justice Ruth Bader Ginsburg made public comments that would have appeared to violate the Code of Conduct, were she subject to it. In an interview with the *New York Times*, she said: "I can't imagine what this place would be—I can't imagine what the country would be—with Donald Trump as our president."[18] Justice Ginsburg went on to say, "For the country, it could be four

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[13] 28 U.S.C. §§ 351-364.

[14] Judicial Conference of the United States, *Guide to Judiciary Policy*, Vol. 2E, Ch. 3, Commentary on Rule 3, 2016, p. 7. http://www.vaed.uscourts.gov/documents/judcmplaintproc.pdf. The Act provides that "[a]ny person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such judge is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct." 28 U.S.C. § 351.

[15] Roberts Report, p. 4.

[16] 28 U.S.C. §§ 351-364.

[17] "Testimony of Brett Kavanaugh, before the Senate Judiciary Committee on 'Nomination of the Honorable Brett M. Kavanaugh to be an Associate Justice of the Supreme Court of the United States,'" September 27, 2018 (Bloomberg Government transcript). https://www.washingtonpost.com/news/national/wp/2018/09/27/kavanaugh-hearing-transcript/ (Downloaded January 25, 2019)

[18] Adam Liptak, "Ruth Bader Ginsburg, No Fan of Donald Trump, Critiques Latest Term," *New York Times*, July 10, 2016. https://www.nytimes.com/2016/07/11/us/politics/ruth-bader-ginsburg-no-fan-of-donald-trump-critiques-latest-term.html (Downloaded January 14, 2019)

years. For the court, it could be—I don't even want to contemplate that." With this statement, Justice Ginsburg would be in violation of the fifth cannon, which expressly prohibits publicly endorsing or opposing a candidate for public office. Her statements would also be a possible violation of the third cannon, which disqualifies a judge from hearing a case where they have a personal bias or prejudice concerning a party. While Justice Ginsburg later apologized for her comments, they raise concerns about the perception of her impartiality in cases in which President Donald Trump is a party.[19]

In a widely reported incident, in 2004, the late Justice Antonin Scalia participated in a hunting trip with Vice President Dick Cheney, mere weeks after the Supreme Court had agreed to hear a case that had been brought against the Vice President.[20] This kind of potential conflict of interest could certainly have violated the second cannon, which states that judges should avoid "impropriety and the appearance of impropriety." Ultimately, the decision not to recuse was Justice Scalia's own, demonstrating one of the shortcomings of Supreme Court ethics enforcement. He rejected the argument that the hunting trip (which he pointed out had been planned before the petition for certiorari in the case had been filed and, he said, did not result in meaningful private conversations with Vice President Cheney, though he had been a guest on Air Force Two) was reasonable cause to question his impartiality.[21]

As these incidents demonstrate, this is not a novel problem. Our federal courts operate on a two-tiered system of ethics: lower court judges—whose decisions may be appealed—are held to account through a code of conduct and the Judicial Conduct and Disability Act. Supreme Court justices—whose decisions are often irreversible and have the widest impacts—are trusted to self-police.

The fate of the 83 ethics complaints lodged against now-Justice Kavanaugh provide a stark example of this incongruity. These complaints alleged he had violated the Judicial Conduct and Disability Act—encompassing violations of four of the five canons of conduct for United States judges—during his confirmation hearings in 2018, 2006, and 2004.[22] Chief Justice John Roberts referred the matter to the chief judge of the Tenth Circuit Court of Appeals to investigate the complaints.[23] But, on December 18, 2018, the Tenth Circuit's Judicial Council released its report, finding that while the allegations were "serious," nonetheless, "the complaints must be dismissed because, due to his elevation to the Supreme Court, Justice Kavanaugh is no longer a judge covered by the Act."

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[19] Jessica Taylor, "Ginsburg Apologizes for 'Ill-Advised' Trump Comments," *NPR*, July 14, 2016. https://www.npr.org/2016/07/14/486012897/ginsburg-apologies-for-ill-advised-trump-comments (Downloaded January 24, 2019)

[20] Dan Collins, "Scalia-Cheney Trip Raises Eyebrows," *CBS News*, January 17, 2004. https://www.cbsnews.com/news/scalia-cheney-trip-raises-eyebrows/ (Downloaded January 25, 2019)

[21] Notably, Scalia seemed to concede that he was bound by § 455, even though he concluded it did not apply to the situation ("My recusal is required if, by reason of the actions described above, my 'impartiality might reasonably be questioned.' 28 U.S.C. §455(a)") *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367 (2004) (Scalia, J. memo). https://www.supremecourt.gov/opinions/03pdf/03-475scalia.pdf (Downloaded January 24, 2019) (Hereinafter Scalia Memo)

[22] *In Re: Complaints Under the Judicial Conduct and Disability Act*, Order, Judicial Council of the Tenth Circuit, 2018, p. 4. http://www.uscourts.gov/courts/ca10/10-18-90038-et-al.O.pdf (Downloaded January 25, 2019) (Hereinafter Judicial Council Order)

[23] Judicial Council Order; 28 U.S.C. §§ 352 et seq.

While a Supreme Court code of conduct would not in itself address the limited scope of the Judicial Conduct and Disability Act, Section 7001 of the For The People Act of 2019 would begin rectifying the imbalance in ethics standards.

A code of conduct would help inform justices' decision-making on recusals as well as extrajudicial comments and activities. Because a justice's decision to recuse from a case could have lasting implications for the Court, the law, and the country, questions concerning recusal are particularly challenging at the Supreme Court.[24] For instance, in his 2004 memo in *Cheney*, Justice Scalia wrote that recusal to avoid the perception of bias "might be sound advice if I were sitting on a Court of Appeals. ... There, my place would be taken by another judge, and the case would proceed normally. On the Supreme Court, however, the consequence is different."[25] The often-counterproductive argument that justices have a "duty to sit"—that is, to hear cases—may have the effect of keeping justices involved in cases where recusal is prudent.[26] A code of conduct that offers guidance for balancing the duty to sit with the obligation to recuse could help the justices address the tension between the two.

Regardless of whether the situations I have just described represent cases where the justices' impartiality was actually impaired, the perception of impartiality is just as important to the Court's legitimacy. This reality is perhaps the strongest argument in favor of adopting a code of conduct for our nation's highest court. Such a code of conduct would provide explicit guidance to the justices to carefully assess whether a public statement or event could be objectively perceived as undermining their impartiality, independence, or integrity. It would also give the public a better sense of how the justices decide whether or not to recuse.

GUARDING AGAINST IMPROPER THREATS OF JUDICIAL DISCIPLINE

As we laud the introduction of this bill, we issue one note of caution. Congress and the Judicial Conference must take care to ensure that ethics enforcement is never used as a vehicle to retaliate against judges or justices for decisions with which policymakers may disagree. The decisional independence of the courts is a hallmark of our constitutional system. On too many occasions, judicial disciplinary procedures—up to and including threats of impeachment—have been used to retaliate against judges for issuing unpopular decisions.[27] As a Constitution Project task force on the courts said in 2000:

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[24] Supreme Court of the United States, "Statement of Recusal Policy," November 1, 1993. http://eppc.org/docLib/20110106_RecusalPolicy23.pdf (Downloaded January 24, 2019)

[25] Scalia Memo, p. 3.

[26] For example, see Jeffrey Stempel, "Chief William's Ghost: The Problematic Persistence of the Duty to Sit Doctrine," *Buffalo Law Review*, Vol. 57, 2009. https://scholars.law.unlv.edu/facpub/232/ (Downloaded January 25, 2019)

[27] For instance, at least six federal district judges were threatened with impeachment because of controversial rulings in the 1990s. The Constitution Project Task Forces of Citizens for Independent Courts, *Uncertain Justice: Politics and America's Courts*, New York: The Century Foundation, 2000, p. 139-145. http://constitutionproject.org/pdf/uncertain_justice.pdf (Downloaded January 25, 2019) (Hereinafter Task Force Report)

> ...resort[ing] to judicial discipline as a vehicle for discouraging or correcting judicial error can be problematic. Judges' independence could be compromised if they must decide cases in the shadow of a judicial conduct organization poised to take action against them, should it deem one of their decisions sufficiently erroneous or unjustified.[28]

The fact that the canons of judicial conduct prohibit judges from making extrajudicial comments about their decisions exacerbates this concern. Unlike most public officials, judges cannot defend their decisions publicly and "set the record straight."[29] It is therefore incumbent on policymakers to defend the independence of the third branch, even in the face of politically unpopular decisions.

By assigning the task of developing an ethics code to the Judicial Conference, H.R. 1 takes an appropriately cautious approach to the complicated issue of judicial discipline. In fact, it is important to note that, while the Code of Conduct can inform disciplinary proceedings for lower-court judges, the disciplinary process stems from the Judicial Conduct and Disability Act, and not from the Code of Conduct itself. Further, the Act mandates the dismissal of complaints related to the merits of a case.

NEXT STEPS: REQUIRE GREATER TRANSPARENCY

Many task forces, blue-ribbon panels, and special commissions on the courts in recent decades have recommended developing mechanisms to provide the public with a better understanding of the operation of the judiciary.[30] We believe that robust disclosure obligations and enhanced transparency governing all United States judges—including those on the Supreme Court—would advance these goals. We urge Congress to consider measures beyond Section 7001 that would provide the public and litigants with accurate and timely information about relevant extrajudicial conduct of United States judges and justices.

Bringing greater transparency to recusal decision-making should be a priority. Judges' and justices' reasons for recusal are often unstated; the Supreme Court's decisions and orders simply note if a justice did not participate in an opinion or proceeding. A public explanation of the justification for recusal would promote the development of a body of precedent to support consistent application of recusal standards across the federal judiciary, and would assist judges in identifying situations that require actions like divestments so that they need not recuse in the future. Additionally, the public and litigants have a right to know why an individual in such a consequential position must step away from presiding over a case.

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[28] Task Force Report, p. 152.
[29] Task Force Report, p.151.
[30] For example, Task Force Report; Judicial Conference of the United States, *Strategic Plan for the Federal Judiciary*, September 2015. https://www.uscourts.gov/sites/default/files/federaljudiciary_2015strategicplan.pdf (Downloaded January 26, 2019); American Bar Association, *An Independent Judiciary: Report of the Commission on Separation of Powers and Judicial Independence*, Washington, DC, 1997, https://www.americanbar.org/content/dam/aba/migrated/2011_build/government_affairs_office/indepenjud.authcheckdam.pdf (Downloaded January 27, 2019); James Sample, David Pozen, and Michael Young, *Fair Courts: Setting Recusal Standards*, Brennan Center for Justice, 2008. https://www.brennancenter.org/sites/default/files/legacy/Democracy/Recusal%20Paper_FINAL.pdf (Downloaded January 28, 2019)

Litigants and the public should also have access to information about judges' and justices' public and non-public appearances. The Code of Conduct encourages judges to participate in charitable, educational, and civic activities; it prohibits them from participating in extrajudicial activities that "reflect adversely on [their] impartiality."[31] The current process for reporting these appearances is not adequate. Justices and judges report just some of these activities in their financial disclosures. Those disclosures seem to be triggered not by the fact of the appearance, but by reimbursements for transportation, lodging, or meals.[32] Since it is the appearances themselves that could color the public's perception of impartiality, public disclosure and improved access to information about these extrajudicial engagements is critical.

Congress should consider robust rules requiring timely disclosure of judges' and justices' appearances, regardless of their financial component; such rules would go a long way toward improving the public's awareness of judges' and justices' actions, while also requiring judges and justices to scrutinize their extrajudicial conduct carefully so as to avoid the appearance of impropriety.

Congress should also examine the current financial disclosure obligations for federal judges and justices to determine if the transactions and thresholds triggering disclosure are sufficient, as well as examine the need for improved public access to those disclosures.[33]

CONCLUSION

The federal courts rely on the public's belief in their legitimacy as a coequal branch of government in order to ensure that their rulings are honored. Public trust in the integrity of the judges and justices who comprise the judiciary is indispensable to that legitimacy. While the courts, and the Supreme Court in particular, generally enjoy higher levels of public faith and trust than the other two branches of government, incidents like the ones I have outlined erode the public's confidence in the institution.[34] Section 7001 is a long-overdue proposal to address pressing ethical questions concerning the Supreme Court, and should continue to receive bipartisan support.

We urge Congress to pass this provision to enhance both the actual and perceived integrity of our nation's federal courts, including the Supreme Court.

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[31] Code of Conduct, Canon 4.

[32] The rules for judicial financial disclosures require judges to report reimbursements from any single source that are individually worth more than $156 and in aggregate worth more than $390. Thus, an appearance that only resulted in a $40 parking reimbursement would not have to be reported, nor would an appearance that did not result in a reimbursement. Judicial Conference of the United States, *Guide to Judiciary Policy*, Vol. 2D, Ch. 3 § 330, https://www.uscourts.gov/sites/default/files/guide-vol02d.pdf.

[33] See, for example, Fix the Court, "Financial Disclosures." https://fixthecourt.com/fix/financial-disclosures/

[34] Jeffrey Jones, "Trust in Judicial Branch Up, Executive Branch Down," *Gallup*, September 20, 2017. https://news.gallup.com/poll/219674/trust-judicial-branch-executive-branch-down.aspx (Downloaded January 27, 2019); Gallup, "Confidence in Institutions," 2018. https://news.gallup.com/poll/1597/confidence-institutions.aspx (Downloaded January 27, 2019)

Chairman NADLER. Thank you.
Mr. Adams.

TESTIMONY OF J. CHRISTIAN ADAMS

Mr. ADAMS. Thank you, Chairman Nadler, Ranking Member Collins. My name is Christian Adams and I am the president and general counsel for the Public Interest Legal Foundation, a nonpartisan charity devoted to promoting election integrity and preserving the constitutional balance so that states may administer their own elections.

I also served as an attorney at the Voting Section at the Department of Justice and brought multiple enforcement actions under the Voting Rights Act and have litigated a number of areas addressed by H.R. 1.

H.R. 1 is today before this Committee. This proposal would mark the largest transfer of power over elections from the states to the federal government in the history of the nation. Regarding the proposal, we can certainly agree on a number of things.

First, it has never been easier to register to vote and to vote in America than it is in 2019. In fact, it is difficult to avoid opportunities to register to vote. Not only is registration offered every single time you go to a motor-voter office, Americans are offered registration in social service agencies, post offices, county courthouses, outside of grocery stores, county libraries, Marine Corps recruitment stations, in jails, online, in high school, in church, in mobile registration vans, on your front porch when you are visited, and at Lollapalooza, and pursuant to various settlements of the Department of Justice has entered into in the last few years, even in drug treatment facilities. It is harder to avoid opportunities to register to vote than it is to register to vote.

Second, H.R. 1 radically transforms the constitutional relationship between the states and the federal government. It strips powers from states to run their own elections. Under the Constitution, states are strongly presumed to have the power to establish the rules that H.R. 1 seeks to take away.

There is a reason that states were given power to run their own elections. Mainly, decentralization promotes freedom. The Constitution decentralized control over elections to the states because when power is centralized a single malevolent actor can exert improper or dangerous control over the process.

This is not wild speculation. This is a simple historical fact. Decentralized elections are more democratic because each state develops systems more suited to the wishes of their citizens.

The Constitution gives power over elections to the states. It says the times, places, and manner of holding elections for senator and representatives shall be prescribed by each state legislature—prescribed by the state.

This is the default presumption in the Constitution and for good reason. Fifty states and thousands of counties are better suited at running elections than federal officials. Elections are less subject to manipulation when they are run closer to the people.

But, alas, advocates of H.R. 1 go all in on the last part of Article 1 Section 4, which states that the Congress may at any time by law

make or alter such regulations. Using this exception to the Elections Clause to justify H.R. 1 fails for two reasons.

Firstly, this provision of the Constitution was only added when concerns were raised that states would suffocate the power of the new government by refusing to establish election procedures. In other words, it was added because it was feared states would refuse to enact rules for congressional elections and thus terminate the federal government.

In 2019, that is a laugh line. The concern in 1787 that states would suffocate the federal government has not materialized in the slightest.

Second, just because Congress can do something doesn't mean it should. Indeed, the authors of the Constitution made it clear that the power granted to Congress to alter rules should only be used, as Alexander Hamilton put it, as a last resort.

Congressional power to do this is described in Federalist 59 as a means of its own preservation. I will leave it to others to opine how it is that H.R. 1's mandate for felon voting rights granted nationwide has anything to do with Congress's own preservation.

Just because you can do something does not mean you should. Just because I could stay up all night, for example, playing "World of Warcraft" does not mean I should. Just because I can have one more drink does not mean I should.

The Constitution plainly and explicitly establishes the balance between the states and federal government and makes clear who should have the power to set federal election rules. H.R. 1's constitutional offense is grave and serious and intrudes on the power of the states to run their own elections.

Thank you very much.

[The statement of Mr. Adams follows:]

PUBLIC INTEREST
LEGAL FOUNDATION

Testimony of
J. Christian Adams

Before the United States House Judiciary Committee

January 29, 2019

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I am President and General Counsel for the Public Interest Legal Foundation, a non-partisan charity devoted to promoting election integrity and preserving the constitutional decentralization of power so that states may administer their own elections. I also served as an attorney in the Voting Section at the Department of Justice. I have brought multiple enforcement actions under the Voting Rights Act and have litigated in a number of the areas addressed by H.R.1.

H.R.1 is today before this Committee. This proposal would mark the largest transfer of power over elections from the states to the federal government in the history of the nation. Regarding the proposal, we can certainly all agree on three things.

First, it has never been easier to register to vote and to vote in America than it is in 2019. In fact, it is difficult to *avoid* opportunities to register to vote. Not only is registration offered every single time you go to a motor vehicle office, Americans are offered registration in social service agencies, post offices, county courthouses, outside of grocery stores, county libraries, Marine Corp recruitment stations, in forward operating bases, in jails, online, in high school, in church, in mobile registration vans[1], on your front porch as part of a third party registration drive, at Lollapalooza[2], and pursuant to various settlements the Justice Department entered into in the last few years, even in drug treatment facilities and methadone clinics in Rhode Island[3].

It is *harder to avoid* opportunities to register to vote than it is to register to vote.

Second, we all know that no part of H.R.1 is going to become the law during this Congress. This is merely an exercise in educating the public about a variety of election process changes that one political party would like to implement because they believe they will benefit from them. On the other hand, H.R.1 presents an opportunity to also educate the public about how various provisions in H.R.1 that are already the laws of some states – like California – have injected vulnerabilities into the elections process.

Third, H.R.1 radically transforms the Constitutional relationship between states and the federal government. It strips power from states to run their own elections. Under the Constitution, states are strongly presumed to have the power to establish the rules that H.R.1 seeks

[1] See https://www.abqjournal.com/1225442/county-debuts-mobile-voting-unit-during-voter-registration-drive.html.
[2] See http://chronicleillinois.com/news/cook-county-news/lollapalooza-a-good-place-to-register-voters/.
[3] See consent decree at https://www.scribd.com/document/51103523/US-v-RI-Proposed-Consent-Decree.

to take away. There is a reason states were given power to run their own elections, namely, decentralization promotes freedom. The Constitution decentralized control over elections to the states because when power is centralized, a single malevolent actor can exert improper or dangerous control over the process. This is not wild speculation; this is a simple historical fact. Decentralized elections are more democratic because each state develops systems more suited the wishes of their own citizens.

Article 1, Section 4, of the Constitution gives states power over elections. It says "the Times, Places and Manner of holding elections for Senators and Representatives, shall be prescribed in each state by the Legislature thereof." This is the default presumption in the Constitution, and for good reason. Fifty states and thousands of counties are better suited to running elections than federal officials. Elections are less subject to manipulation when they are run closer to the people.

But alas, advocates of H.R.1 go all-in on the last part of Article 1, Section 4, which states, "but the Congress may at any time by Law, make or alter such Regulations."

Using this exception to the Elections Clause to justify H.R.1 fails for two reasons. Firstly, this provision of the Constitution was only added in 1787 when concerns were raised that the states would suffocate the power of the new government by refusing to establish procedures to elect federal officials. In other words, the last part was added because it was feared states would refuse to enact rules for Congressional elections and thus terminate the federal government. In 2019, that is a laugh line. The concern in 1787 that states would suffocate the federal government hasn't materialized in the slightest. This exception to the presumption of state control was put into the Constitution for a circumstance which simply does not exist, and therefore should not justify a federal takeover of election procedures.

Second, just because Congress can do something, doesn't mean it should. Indeed, the authors of the Constitution made it quite clear that power granted Congress to alter the state election rules in Article 1, Section 4 *is to be rarely used.* Alexander Hamilton called federal power in Federalist 59, "a last resort." Congressional power is described in Federalist 59 as "a means of its own preservation." I will leave it to others to opine how it is that H.R.1's mandate that felon voting rights be granted nationwide has anything to do with Congress's "own preservation."

Indeed, were Alexander Hamilton here today, he might testify about what he wrote in Federalist 59 about the very Constitutional clause you rely on to support H.R.1: "suppose an article had been introduced into the Constitution empowering the United States to regulate the elections for the particular states, would any man have hesitated to condemn it, both as an unwarrantable transposition of power and as a premeditated engine for the destruction of the state governments."

Just because Congress can do something doesn't mean it should. Just because I *can* stay up all night playing World of Warcraft does not mean I should. Just because I *can* have just one more Manhattan doesn't mean I should, not if I want to preserve a measure of balance. And the Constitution plainly and explicitly establishes a balance between the states and the federal government, and makes clear who should have the power to set the rules for elections – and the answer is, the states.

H.R.1's Constitutional offense is even worse than this, for it seeks to set the qualification of electors, something that Article 1, Section 2, very explicitly leaves to the state legislatures to set. H.R.1 offends this by dictating who would be qualified to cast a ballot.

Other Committee Jurisdiction

While this Committee only has a portion of H.R.1, and my testimony is mostly confined to provisions within the jurisdiction of this Committee, it bears mention that many of the provisions of H.R.1 not within the jurisdiction are as problematic as the provisions within this Committee's jurisdiction. For example, putting every name on a government list onto the voter rolls will dramatically introduce error into the election process. States must already maintain voter databases that detect and remove or combine error entries. For example, small differences in names will lead to people being registered to vote multiple times under H.R.1's mandates.

Voter Registration Interference

Title I, Subtitle A, Part 7 has a poorly drafted provision regarding interference with voter registration. It states: "It shall be unlawful for any person, whether acting under color of law or otherwise, to corruptly hinder, interfere with, or prevent another person from registering to vote or to corruptly hinder, interfere with, or prevent another person from aiding another person in

registering to vote." For starters, the provision has a split infinitive – "to corruptly hinder." The term is vague. More importantly, this provision could jeopardize very important voter registration safeguards in places like Texas. In Texas, voluntary deputy registrars are private parties who are authorized to engage in voter registration. Texas has implemented protections to ensure that registrations are actually turned in by regulating and certifying the power of the voluntary deputy registrars. There is no doubt that these rules interfere with the registration operation. Whether they corruptly do is perhaps in the eye of the beholder. Nevertheless, this provision jeopardizes voter protections enacted across the United States to ensure registration forms are actually turned in.

Common Sense Voter Roll Maintenance

H.R.1 would undo *Husted v. A. Philip Randolph Institute*, a Supreme Court case that said there is nothing wrong with using voter inactivity to keep the rolls clean of dead and those who no longer reside where they used to. Title I, Subsection C, in H.R.1 refers to this strangely as "voter caging" despite that fact that just about every state uses inactivity and postal mailings to help conduct voter roll maintence. H.R.1 would prohibit what the National Voter Registration Act explicitly suggests as a safe harbor to conduct list maintence – namely using postal mailings to see if registrants still live at the same place.

The voter rolls are currently full of ineligible voters who have died or moved out of the jurisdiction where they are registered. H.R.1 would make the problem worse by stripping the power of states to manage their own voter rolls to keep them clean using well-established best practices such as postal mailings and recurring inactivity of registrants in elections. H.R.1's mandate that states stop using these tools is just bad public policy.

Extinguishing Power of States to Redistrict

Another constitutionally dubious provision of H.R.1 is the provision whereby the Congress extinguishes the power of states to draw their own Congressional districts in Title II, Subtitle E, as they chose to. This proposed federal mandate is grotesquely offensive to the Constitution that vests power in the state legislatures to determine the manner of choosing Representatives.

Lowering Standards of "Voter Intimidation"

Subtitle D in H.R.1 contains a provision regarding "Hindering, Interfering With, or Preventing Voting or Registering to Vote" that states "No person, whether acting under color of law or otherwise, shall intentionally hinder, interfere with, or prevent another person from voting, registering to vote, or aiding another person to vote in an election ..." There are other voter intimidation provisions in H.R.1.

I have brought more voter intimidation lawsuits under Section 11(b) than nearly every other lawyer in the United States. That isn't saying much because there have been so few. The danger in lowering the standard of what is prohibited voter intimidation is that these expansions eventually intrude on free speech, the right to petition and free association rights. Section 11(b) of the Voting Rights Act currently contains a very workable standard where someone who deliberately seeks to threaten, intimidate or coerce someone from voting or registering to vote violates the statute. It requires objective real threats, intimidation or coercion, and that is a workable and rather sound statutory *status quo.*

I have experienced the danger of lowering the standard firsthand. My organization, the Public Interest Legal Foundation, published reports accurately linking to government documents which we obtained from state election officials. The government documents plainly stated that thousands of registrations had been cancelled as "declared non-citizen." These documents were

obtained in public records requests pursuant to the Nation Voter Registration Act. We linked to these documents in a report and drew reasonable inferences from these documents – namely that the Motor Voter citizenship verification checkbox was ineffective and that those who registered to vote and voted as noncitizens were committing federal felonies. The former was our opinion, the later a fact. At no time prior to publication of this report was there any indication that the Commonwealth of Virginia had bungled list maintence and removed some valid registrations as badly as they did. A subsequent report contained all statewide data – namely the complete list of cancellations of those "declared noncitizen" and reasonable inferences about the cancellations. State officials confirmed that that list of "declared noncitizen" registration cancellations was accurate and did not include the names of any registrants who subsequently reregistered to vote as citizens. Nevertheless, our report on the statewide lists of cancellation included the view that if the state improperly cancelled citizens, such an act was as "appalling" as allowing noncitizens to register and vote. Again, we published government records and made reasonable inferences about them. Lastly, we also sued the Commonwealth of Virginia for improperly removing citizen registrants from the rolls and publishing error filled voter registration data under the NVRA.

Nevertheless, a group brought a Section 11(b) claim *against our organization and me for publishing these reports*. These groups are attempting to misuse Section 11(b) to impair citizen efforts to obtain and publish government data about voter roll maintence. It is an effort to silence those with whom they disagree. My organization brought an action against the Commonwealth of Virginia for improperly removing voters as noncitizens who were in fact citizens; the plaintiffs did not. The plaintiffs didn't take *any action against election officials who improperly removed voters from the rolls and published false election records. Only we* were targeted, and indeed, *only we* have taken action against election officials for improperly removing voters.

If Section 11(b) reaches the truthful publication of government election records – data which this Congress made public under Section 8 of the National Voter Registration Act – and making statements that draw reasonable inferences about that data, then it would be a dangerous thing to further lower the standards of what constitutes voter intimidation under federal law. Indeed, such a warped view of "voter intimidation" in this lawsuit is a warning to this Congress about lowering the standard of what constitutes "voter intimidation" even further. Intimidation and threats should mean intimidation and threats, real ones. Civil rights statutes should not be used to target those with whom you disagree.

"Hindering" and "interfering" with someone who is trying to vote or register is a terribly low standard, and you cannot predict what behavior currently employed as standard electioneering by all parties may be caught up in it. A variety of perfectly legal and everyday activity could "hinder" someone from voting, such enforcing state requirements for polling place check in. It could put election officials at risk of harassment and threats of prosecution. The use of the term – "under color of law" only amplifies this concern.

Recommended Amendments

1. Explicitly Extend Section 2 of the Voting Rights Act to Territories.

I recently won a voting rights lawsuit against the territory of Guam for violating the 15th Amendment for engaging in voting discrimination with a racially discriminatory intent.[4] The victory was based on a finding under the 15th Amendment. The plaintiff was a retired Air Force officer who was ineligible to register to vote in a status plebiscite because he did not have the preferred bloodline. While the plaintiff alleged a violation of Section 2 of the Voting Rights Act,

[4] See https://www.cir-usa.org/2017/03/federal-judge-strike-down-race-based-guam-plebiscite/.

the court never reached that statutory question. If Congress is seeking to shore up possible gaps – albeit ones which the plaintiff did not believe existed - in the Voting Rights Act, explicitly bringing territories within the scope of Section 2 would be a worthwhile change.

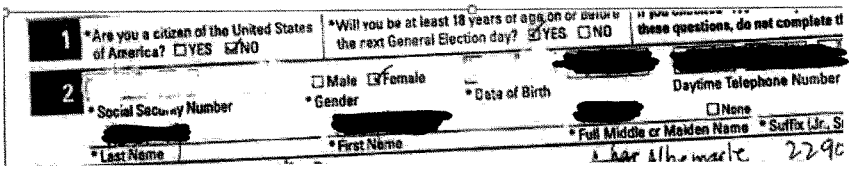
2. Allow states to verify the citizenship of registrants.

The federal voter registration form enacted pursuant to the National Voter Registration Act of 1993 has been a failure. The form contains a checkbox where applicants need affirm that they are a citizen. States which have sought to verify citizenship have faced attacks in the courtroom.[5] That's too bad, because the noncitizens who are finding their way onto the voter rolls are unwittingly the victims of a broken Motor Voter system. Some have even gone to jail because they registered to vote. Large numbers of noncitizens face threats to their naturalization because they have registered to vote under this broken Motor Voter checkbox.

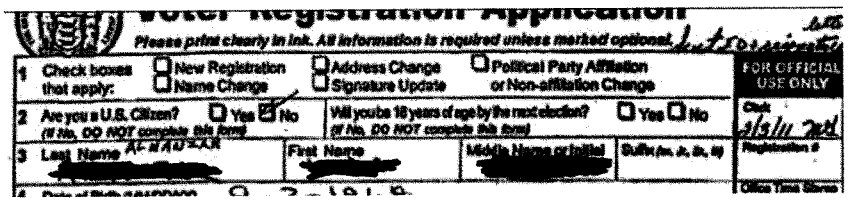
The solution is for states to be allowed explicitly to validate citizenship at the registration stage before green card holders can jeopardize their status by registering to vote. And if you don't think they are registering to vote, then you aren't paying attention or don't want to know. Glitches in state DMV systems, and failures to conduct citizenship verification, have led to alien voter registrations in places that we have documented such as Pennsylvania, California, New Jersey, Florida, Michigan and Texas, among other states.[6] Some states are registering voters who mark the checkbox "NO" I am not a citizen. Here are some examples we have collected from around the country. These aliens **were registered to vote despite marking the citizen checkbox no**:

[5] See eg. League of Women Voters, et al. v. Newby, et al., United States District Court for the District of Columbia, Case No. 16-236-RJL.
[6] https://publicinterestlegal.org/blog/steeling-the-vote-allegheny-county-reveals-how-citizenship-verification-protects-citizens-and-immigrants-alike/

From Virginia -


1 *Are you a citizen of the United States of America? ☐YES ☑NO
*Will you be at least 18 years of age on or before the next General Election day? ☑YES ☐NO
these questions, do not complete t
2 * Social Security Number
☐Male ☑Female
* Gender
* Date of Birth
Daytime Telephone Number
☐None
* Last Name
* First Name
* Full Middle or Maiden Name
* Suffix (Jr., S
2290

From New Jersey[7] –


Voter Registration Application
Please print clearly in ink. All information is required unless marked optional.
1 Check boxes that apply: ☐ New Registration ☐ Name Change ☐ Address Change ☐ Signature Update ☐ Political Party Affiliation or Non-affiliation Change
FOR OFFICIAL USE ONLY
2 Are you a U.S. Citizen? ☐ Yes ☑ No (If No, DO NOT complete this form)
Will you be 18 years of age by the next election? ☐ Yes ☐ No (If No, DO NOT complete this form)
3 Last Name
First Name
Middle Name or Initial
Suffix
Registration #

Again, **they were registered to vote.** These are but two of hundreds of examples we have found from just a small sample of American jurisdictions.

H.R.1 should include a provision that allows election officials to verify the citizenship of registrants because the citizen checkbox mandated by the NVRA has proven to be a failure in keeping non-citizens off of the voter rolls.

Thank you for the opportunity to testify about this important matter.

Date: January 29, 2019.

Respectfully submitted,
J. Christian Adams

[7] https://publicinterestlegal.org/blog/garden-state-gotcha-how-opponents-of-citizenship-verification-for-voting-are-putting-new-jerseys-noncitizens-at-risk-of-deportation/

Chairman NADLER. Thank you.
Mr. von Spakovsky.

TESTIMONY OF HANS VON SPAKOVSKY

Mr. VON SPAKOVSKY. Chairman Nadler and Ranking Member Collins—Chairman Nadler and Ranking Member Collins, H.R. 1 covers everything from voter registration, elections, to campaign finance, judicial ethics, and lobbying. My testimony today is only limited to those provisions over which the Judiciary Committee has jurisdiction and not those subject to other committees.

In summary, many of the provisions of H.R. 1 are clearly unconstitutional. Others are redundant and unnecessary, covering areas that existing federal law already covers. Many are just bad policy that will neither help voters nor election officials in administering a fair and secure voter registration and election process.

It also interferes with the ability of states to determine the qualifications of their voters, to secure the integrity of the election process, and to determine the districts and boundary lines of their congressional representatives.

Overall, it federalizes and micromanages the election process and imposes unnecessary, unwise, and, in some cases, unconstitutional mandates on the states.

I can't cover an almost 600-page bill in five minutes so I will just point out a few of these problems. For example, Section 1071 prohibits corruptly preventing another person from registering to vote. Well, federal law already prohibits such behavior.

It is a criminal violation of the NVRA to prevent someone from registering to vote or voting or attempting to register to vote, and punishment includes not only a fine but up to five years in prison. It is also a criminal violation of Section 11(b) of the VRA to threaten, intimidate, or coerce any person for voting or attempting to vote.

Section 1201 prohibits election officials from using the Postal Service's national change of address system to verify the address of registered voters. Nothing about this verification process is either sinister or suspect.

Instead, the National Voter Registration Act, which this Congress passed, expressly sanctions this activity. Congress previously determined, quite correctly, that the Postal Service database would help election officials indentify registered voters who have moved out of their district.

Section 1401 forces the states to restore the ability of felons to vote the moment they are released from prison. This provision is, clearly, unconstitutional. The issue isn't whether this is good state—good public policy.

The point is that Congress cannot override the Constitution with a federal statute, and the Fourteenth Amendment explicitly gives the states the right to take away the abilities of felons to vote in both state and federal elections and decide when to restore the right. If Congress wants to do this, you have to pass a constitutional amendment.

Section 2400 forces states to establish independent redistricting commissions and, alternatively, gives a federal court the authority to draw such districts if the commission does not adopt a plan.

This unfairly interferes with the rights of the citizens of the 50 states to make their own decisions either through a referendum process, as the citizens of Arizona did, or through their elected state representatives on the best way to choose members of Congress.

This is an anti-democratic measure because you are mandating to the states that they replace their elected state representatives with appointed members of the commission, members who are unaccountable to voters in elections if they don't like the kind of plans that are drawn up.

Section 7001 requires the Judicial Conference to establish a mandatory code of conduct for the Supreme Court. Article 3 of the Constitution states that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish.

All of the inferior courts—the Courts of Appeals, the federal district courts—were created by you, by Congress, and therefore you can impose a code of conduct on them. But the Supreme Court was not created by Congress. It is an independent co-equal branch. In the same way that the justices can't dictate what ethics rules apply to you, you cannot dictate what ethics rule apply to them.

Section 7301 would ban political appointees of a president from involvement in any matter in which that president is a party. This would apply to any litigation against a president's policies, programs, executive orders, or his enforcement of a particular federal statute that names the president.

It would prevent the president's political subordinates such as the attorney general from participating in, directing the defense of, or assisting in any matter in which the president has been named as a party. If this provision had been in the law when Barack Obama was president, the states challenging Obama's DAPA program could have easily named Obama as a specific party. Then, neither Attorney General Loretta Lynch nor DHS Secretary Jeh Johnson could have participated in the defense of the lawsuit.

This violates separation of powers and prevents a president from being able to rely on his own appointees and carry out his constitutional duty to see what the—that laws are faithfully executed.

Sometimes legislation proposed by Congress is bad policy, sometimes it is unnecessary, and sometimes it is unconstitutional. H.R. 1 is all three.

Thank you.

[The statement of Mr. von Spakovsky follows:]

CONGRESSIONAL TESTIMONY

H.R. 1, the "For the People Act of 2019"

Testimony before
Committee on the Judiciary

United States House of Representatives

January 29, 2019

Hans A. von Spakovsky
Senior Legal Fellow
Center for Legal and Judicial Studies
The Heritage Foundation

Introduction

My name is Hans A. von Spakovsky.[1] I appreciate the invitation to be here today. The views I express in this testimony are my own, and should not be construed as representing any official position of the Heritage Foundation or any other organization.

[1] The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2017, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2017 income came from the following sources:

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Foundations 9%
Corporations 4%
Program revenue and other income 16%

The top five corporate givers provided The Heritage Foundation with 3.0% of its 2017 income. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify as individuals discussing their own independent research. The views expressed here are my own and do not reflect an institutional position for The Heritage Foundation or its board of trustees.

I am a Senior Legal Fellow in the Center for Legal and Judicial Studies at The Heritage Foundation. Prior to joining The Heritage Foundation, I was a Commissioner on the U.S. Federal Election Commission for two years. Before that I spent four years at the U.S. Department of Justice as a career civil service lawyer in the Civil Rights Division, where I received three Meritorious Service Awards (2003, 2004, and 2005). I began my tenure at the Justice Department as a trial attorney in 2001 and was promoted to be Counsel to the Assistant Attorney General for Civil Rights (2002-2005), where I helped coordinate the enforcement of federal voting rights laws, including the Voting Rights Act ("VRA"), the National Voter Registration Act ("NVRA"), the Help America Vote Act ("HAVA"), and the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA").[2]

H.R. 1 – A Combination of Unconstitutional, Redundant and Unwise Policy Mandates

H.R. 1 is a very long, very complex bill that has provisions pertaining to a wide range of subjects, from voter registration and elections to campaign finance, judicial ethics, and lobbying. My testimony today will be limited to only those provisions of H.R. 1 over which the Judiciary Committee has jurisdiction, and not those that are subject to the jurisdiction of other committees within the House of Representatives such as the House Administration Committee.

In summary, many of the provisions of H.R. 1 are clearly unconstitutional. Others are redundant and unnecessary, covering areas and issues where existing federal law is more than sufficient to protect voters. Many of the provisions are just bad policy that will neither help voters nor election officials in administering a fair and secure voter registration and election process.

H.R. 1 interferes with the ability of states to determine the qualifications of their voters, to secure the integrity of the election process, and to determine the districts and boundary lines of their representatives. Overall, H.R. 1 is an attempt to federalize and micromanage the election process and impose unnecessary, unwise and in some cases unconstitutional mandates on the states, reversing the decentralization of the American election process that our Founders believed was essential to preserving liberty and freedom.

As the U.S. Supreme Court recently explained, the "allocation of authority" over elections between state governments and the federal government that is provided in the Constitution "sprang from the Framers' aversion to concentrated power."[3] Existing federal laws such as the VRA, NVRA, HAVA and UOCAVA already provide the protection that Americans need to be able to easily practice their franchise without discrimination, intimidation, or fear.

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[2] I was also a member of the first Board of Advisors of the U.S. Election Assistance Commission. I spent five years in Atlanta, Georgia, on the Fulton County Board of Registration and Elections, which is responsible for administering elections in the largest county in Georgia. In Virginia, I served for three years as the Vice Chairman of the Fairfax County Electoral Board, which administers elections in the largest county in that state. I formerly served on the Virginia Advisory Board to the U.S. Commission on Civil Rights. I am a 1984 graduate of the Vanderbilt University School of Law and received a B.S. from the Massachusetts Institute of Technology in 1981. I am the coauthor of *Who's Counting? How Fraudsters and Bureaucrats Put Your Vote at Risk* (2012) and *Obama's Enforcer – Eric Holder's Justice Department* (2014).

[3] *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S.Ct. 2247, 2258 (2013).

H.R. 1 Provisions Under the Jurisdiction of the Judiciary Committee

Title I, Subtitle A, Part 7, Sec. 1071 of H.R. 1 prohibits "corruptly" hindering, interfering, or preventing another person from registering to vote or hindering, interfering or preventing another person from aiding someone else in registering to vote. This is an unnecessary, redundant, and repetitive provision.

Federal law *already* prohibits such behavior. It is a criminal violation of the NVRA to intimidate, threaten or coerce any person for "registering to vote, or voting, or attempting to register to vote" or "urging or aiding any person to register to vote, to vote, or to attempt to register or vote."[4] Punishment includes not only a fine, but up to five years in prison. The Justice Department has never indicated that the language of this provision is somehow insufficient to prosecute this type of behavior.

Additionally, it is a criminal violation of Section 11 of the VRA to "threaten, intimidate, or coerce" any person for "voting or attempting to vote."[5]

Title I, Subtitle C, Sec. 1201 of H.R. 1 prohibits what some advocates refer to as "vote caging," which the bill in essence defines as election officials using the United States Postal Service's (USPS) national change of address (NCOA) system to verify the address of registered voters. Nothing about this verification process, however, is either sinister or suspect. Indeed, federal law (specifically, the NVRA) *expressly* sanctions this activity. Congress previously determined – quite correctly – that the NCOA database, which consists of change-of-address requests submitted by individuals to the USPS when moving, would help election officials identify registered voters who have moved out of their district.[6]

The proposed change would directly interfere with the ability of states to maintain accurate, up-to-date voter registration lists. Moreover, voters are in no way harmed by the current law. Under the NVRA, even if election officials receive notice from the NCOA system that a voter has moved, the voter cannot be removed from the registration roll unless he/she (i) confirms in writing that he/she has moved or (ii) fails to respond to the notice and then does not vote in either of the two consecutive federal elections following the notice.[7]

This provision of the NVRA was upheld by the U.S. Supreme Court in *Husted v. A. Philip Randolph Institute*, a decision that pointed out how very unreliable and inaccurate voter rolls are in this country.[8] As the Court said, it is estimated that "24 million voter registrations in the United States – about one in eight – are either invalid or significantly registration inaccurate. And about

[4] 52 U.S.C. § 20511(1).
[5] 52 U.S.C. § 20307.
[6] 52 U.S.C. § 20507(c).
[7] 52 U.S.C. § 20507(d).
[8] *Husted v. A. Philip Randolph Institute*, 138 S.Ct. 1833 (2018).

2.75 million people are said to be registered in more than one state."[9]

In its definition of prohibited list matching, the proposed bill also attempts to ban states from participating in both the Interstate Voter Registration Crosscheck ("IVRC) and the Electronic Voter Registration Center ("ERIC") programs. IVRC launched in 2005 as a bipartisan effort by several secretaries of states, including former Kansas Secretary of State Ron Thornburg (R) and former Missouri Sectary of State Robin Carnahan (D). ERIC was formed in 2012 with assistance from the non-partisan Pew Charitable Trust. Both programs, which are managed by the states, compare the voter registration lists of states that voluntarily join the consortium to help identify individuals who are registered in more than one state.

Importantly, no voter whose name happens to appear on multiple states' voter registration lists is *automatically* removed from any such list. Rather, overlapping entries simply trigger an individual investigation by election officials to verify the accuracy of the match and to determine in which state the individual actually resides and should be registered. It is difficult to conceive how that is objectionable. Meanwhile, interfering with the states' ability to participate in these types of cooperative agreements will not only make it more difficult to maintain the accuracy of voter registration rolls, but it is also likely unconstitutional. After all, the constitutional rights, powers, and privileges of establishing voter qualifications – including voter registration and residency requirements – are key components of state sovereignty protected by Article I, Section 2 of the Constitution, the Tenth Amendment, and the Seventeenth Amendment.[10] The Supreme Court has said that it "would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications."[11]

This provision of H.R. 1 additionally imposes federal restrictions and procedural rules on the ability of individual voters to challenge the eligibility of another voter who they believe is not qualified to vote, including imposing a criminal penalty. The procedures for such challenges are strictly within the province of state law since they deal with the qualification of a voter; as long as the challenges are not being done in a racially discriminatory manner that would violate the VRA, the federal government does not have the constitutional authority to dictate to the states the procedural rules used for determining the qualifications of a voter.

Title I, Subtitle D, Section 1301 of H.R. 1, which addresses purportedly "deceptive practices and voter intimidation," is so redundant and so vague in many of its terms that it would violate the First Amendment. This provision makes it a criminal offense to provide "materially false" information that will "impede or prevent" an individual from voting. Included in the criminally prohibited conduct are false statements about an "endorsement." In any event, current law (Section 11 of the VRA) already proscribes the type of conduct the bill is intended to reach – preventing an individual from registering to vote or voting.

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[9] *Husted*, 138 S.Ct. at 1838 (citing Pew Center on the States, *Election Initiatives Issue Brief* (Feb. 2012)).
[10] Article I, Section 2, Clause 1 and Seventeenth Amendment. *See also* Article II, Section 1, Clause 1 ("Each State shall appoint, in such Manner as the Legislature thereof may direct," presidential electors).
[11] *Inter Tribal Council of Arizona, Inc.*, 133 S.Ct. at 2258-2259.

H.R. 1 adds the terms "hinder" or "interfere with" to the actions prohibited by the VRA's Section 11 but provides no legal definition for either term. They are so vague that they could easily cover a vast range of perfectly legal activity (e.g., political advertisements that urge individuals not to go to the polls and vote for particular candidates). Furthermore, the "materially false" information standard with regard to political "endorsements" is an attempt to criminalize the ordinary and everyday political activity that happens in campaigns. It would make it extremely risky for any political candidate, citizen, association, or nonprofit to make an endorsement, or even to tell anyone about an endorsement, such as the association's own members. Any mistake could subject the communicators to federal prosecution where they would have to defend themselves by trying to prove that their conduct was not knowing. This provision criminalizes First Amendment activity.

Lest one think that prosecutorial discretion might avoid excessive enforcement, the proposed bill contains a private right of action with the ability to obtain an injunction and restraining order. This provision is certain to, in fact is intended to, usher in a wave of new litigation in the weeks and months prior to an election. Fortunately, political endorsements and other types of political speech are core First Amendment activity and the Supreme Court views any system of prior restraint on political speech as "bearing a heavy presumption against its constitutional validity."[12] In short, this invasion into the area of political speech is unnecessary and unwise. The VRA and the NVRA already adequately protect the ability of individuals to register and vote.

Title I, Subtitle E, Section 1401 of H.R. 1 mandates that states that take away the right of a criminal to vote when he/she is convicted of a felony restore that ability to vote the moment the felon is released from a "correctional institution or facility." This provision is clearly unconstitutional. The issue is not whether it is good public policy to restore the right of a felon to vote after release from prison, or only after the felon has finished probation and paid any ordered fines or restitution to victims, or only after a waiting period in which the felon proves that he/she has turned over a new leaf. The issue here is that Congress cannot override the Constitution with a federal statute.

The Fourteenth Amendment was one of the key post-Civil War, Reconstruction amendments sponsored and passed by Republicans – the party of Abraham Lincoln and abolition – to help secure the rights of black Americans. These same members of Congress deliberately protected the rights of states to withhold the right to vote from citizens who are convicted of serious crimes against their fellow citizens. Section 2 of the amendment specifically provides that states may abridge the right to vote "for participation in rebellion or other crime." By doing so, Congress recognized a process that goes back to ancient Greece and Rome. Such restrictions were adopted by states after the American Revolution; by the beginning of the Civil War, 70% of states had statutes barring felons from voting.[13]

It is true that a handful of states tried to use this provision during Reconstruction and afterward to disenfranchise black voters. However, all those laws have been amended, as they had

[12] *Bantam Books v. Sullivan*, 372 U.S. 58, 70 (1963).
[13] Hans A. von Spakovsky and Roger Clegg, "*Felon Voting and Unconstitutional Overreach*," The Heritage Foundation, Legal Memorandum No. 145 (Feb. 11, 2015).

to be in order to avoid being struck down as discriminatory, as the U.S. Supreme Court did in 1985 with Alabama's law in *Hunter v. Underwood*.[14]

The bottom line is that states have the ability under the Fourteenth Amendment to take away the ability of felons to vote in both state and federal elections. Furthermore, states have the constitutional authority to decide when or if to restore that right, as long as they do so in a manner that is not racially discriminatory under the Constitution.

As the Supreme Court has said, "[p]rescribing voting qualifications...'forms no part of the power to be conferred upon the national government'" by the Elections Clause of the Constitution.[15] The only way that Congress could force states to automatically restore the right of felons to vote as soon as they are out of prison is by passing a constitutional amendment that is then also approved by three-fourths of the states under the procedures outlined in Article V of the Constitution.

Title I, Subtitle L Section 1811 of H.R. 1 adds a private right of action to the Help America Vote Act of 2002.[16] As the members of this Committee should be aware, HAVA was a bipartisan bill passed by Congress after the 2000 presidential election contest in Florida. It was intended to improve election administration in the states, in part by providing them with federal funding for the first time in history. To minimize future litigation fights such as *Bush v. Gore*, Congress made the informed decision at that time not to place a private right of action into HAVA, but instead to place the responsibility to enforce its provisions with the U.S. Justice Department.

The Justice Department has filed 12 lawsuits to enforce HAVA and entered into two settlement agreements.[17] Almost all those enforcement actions were in the first few years after the law became effective in 2002 when state election officials were in a learning curve over the new requirements of this federal statute. Nor can one suggest that the minimal enforcement activity is tied to partisan politics. Indeed, only one enforcement action was filed by the Department of Justice during the eight years of the Obama administration.

There is no evidence that the Justice Department has failed to carry out its enforcement duty under Section 401 of HAVA.[18] There is also no evidence calling into question the decision in 2002 of Democratic and Republican leaders and members of Congress that a private right of action was not needed and would undermine election officials' ability to administer elections and ensure that all eligible citizens are able to vote and have their vote counted fairly and accurately.

Title II, Subtitle E, Section 2400 et seq. of H.R. 1 forces states to establish independent

[14] *Hunter v. Underwood*, 471 U.S. 222 (1985). This case involved Alabama's 1901 Constitution, which disenfranchised persons convicted not just of felonies, but of misdemeanors "involving moral turpitude," a catch-all phrase that was used by state officials specifically to target black Alabamians.
[15] *Inter Tribal Council of Arizona, Inc.*, 133 S.Ct at 2258 (citing The Federalist No. 60, at 371 (A. Hamilton)).
[16] 52 U.S.C. § 20901 et seq.
[17] See "Cases Raising Claims Under the Help America Vote Act (HAVA)," U.S. Dept. of Justice, Civil Rights Division, Voting Section, https://www.justice.gov/crt/voting-section-litigation.
[18] 52 U.S.C. § 21111.

redistricting commissions to draw the boundaries of congressional districts and alternatively gives a three-judge court of the U.S. District of the District of Columbia the authority to draw such districts if the plan of the commission is not enacted into law. This provision is an unfair and unwise interference into the right of the voters and citizens of particular states to make their own decisions, either through the referendum process[19] or through their elected representatives in the state legislatures, on what is the best way of choosing members of Congress from their state. It is potentially unconstitutional, too.

We are a federal system, one in which we have a federal government and fifty independent and sovereign state governments. The forms of state governments vary across the nation, from the organization and operation of state legislatures, the selection of judges, the election or appointment of state officials, the rules that govern election campaigns, and the duties of different state executive officers. This system was deliberately and intentionally chosen by our Founders when they wrote our Constitution and it has been a stable system that has carried us through civil war, two world wars and other conflicts, and both good and bad economic times.

The citizens of different states, for example, have made different choices about how to draw legislative districts, with many leaving it to their state legislatures and others, such as California and Arizona, establishing independent commissions. H.R. 1 would take away the ability of voters to make their own choice about how congressional districts should be drawn. This obviously anti-democratic measure would replace elected state representatives with unelected, appointed members of a commission – members who are unaccountable to the voters in elections.

In states where the legislature draws districts, the regular political process influences redistricting as it does other political issues. Citizens can vote out of office legislators whose redistricting decisions they don't like. If a state's own electorate – either directly through a referendum process or indirectly through its elected legislators – opts for a redistricting commission, so be it. But where an unelected commission has been thrust upon voters via federal law, citizens have no recourse to alter the process or the results since H.R. 1's Section 2412 dictates all the details of the commissions.

As if this was not bad enough, the second part of Section 2402 of the bill potentially punts redistricting decisions to unelected federal judges in Washington, D.C. The real problem here, though, is not political. The problem is that conferring such power on federal courts to draw redistricting plans is a stark violation of the U.S. Constitution's separation of powers. Federal courts get involved in drawing redistricting plans only if the plan drawn by a state legislature or a commission is discriminatory and violates either the VRA or the "one person, one vote" standard of the Fourteenth Amendment's Equal Protection Clause.[20]

This bill would give the judicial branch established under Article III of the Constitution the right to draw the boundaries of legislative districts not only when there has been a violation of the

[19] *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652 (2015).
[20] *Reynolds v. Sims*, 377 U.S. 533 (1964).

law, but also when an independent commission has not adopted a plan by a particular date or a commission has not been established. That is an entirely different circumstance. In so doing, the bill transfers to the *judiciary* a power that the Elections Clause of the Constitution exclusively gives to the legislative branch. That violates basic separation of powers principles as well as the delegation doctrine. It is antidemocratic and unconstitutional.

Title VII, Subtitle A, Section 7001 of H.R. 1 requires the Judicial Conference of the United States, which is chaired by the Chief Justice, to establish a mandatory "code of conduct" (ethics rules) for the justices of the U.S. Supreme Court. This is potentially unconstitutional as a violation of the separation of powers principle of the Constitution.

Article III states that the "judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as Congress may from time to time ordain and establish." Three such inferior courts exist today – the U.S. District Courts, the U.S. Courts of Appeal, and the U.S. Court of International Trade. Congress can mandate that these courts follow codes of judicial conduct and ethics rules because Congress created those courts.

The Constitution, not Congress, created the Supreme Court. It is an independent, co-equal branch. In the same way that the Justices cannot dictate what ethics rules apply to members of Congress or the president, it is highly questionable whether Congress can dictate the ethics rules that apply to the Supreme Court.

As Chief Justice John Roberts explained in his "2011 Year-End Report on the Federal Judiciary," the current Code of Conduct for federal judges applies only to lower federal court judges because there is "a fundamental difference between the Supreme Court and the other federal courts" under Article III.[21] Since the Judicial Conference was established by Congress "for the benefit of the courts it created" and is "an instrument for the management of the lower federal courts, its committees have no mandate to prescribe rules or standards for any other body."[22]

According to the Chief Justice, the Justices use the current Code of Conduct for the lower courts as guidance, as well as "a wide variety of other authorities to resolve specific ethics issues." He points out that while Congress has "directed Justices and judges to comply with both financial reporting requirements and limitations on the receipt of gifts and outside earned income," the Supreme Court has "never addressed whether Congress may impose those requirements on the Supreme Court." This is a very subtle way for the Chief Justice to point out that there may be a serious constitutional problem under Article III with Congress trying to impose such mandates on the justices, although they comply with the current provisions voluntarily.[23]

Title VII, Subtitle B, Section 7101 of H.R. 1 establishes a special unit within the National Security Division of the Justice Department for enforcement of the Foreign Agents Registration Act

[21] https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf.
[22] *Id.*
[23] https://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf., pages 3-6.

of 1938 ("FARA"), and it imposes large civil penalties (up to $200,000) based on a "preponderance of the evidence" standard.

This is a textbook example of Congress trying to micromanage the prosecutorial functions of the Justice Department and the executive branch. The head of the National Security Division of Justice is in the best position to determine the resources and staffing necessary to enforce FARA based on the enforcement and compliance experience of the division – and there is no evidence that the division has had insufficient resources for enforcement.

Furthermore, applying the "preponderance of evidence" standard, rather than the criminal "beyond a reasonable doubt" standard, to civil violations that have such large potential civil penalties seems inconsistent with due process principles. It gives too much power to Justice Department prosecutors at the expense of the public and the protections the Constitution and the Bill of Rights provide to those accused of wrongdoing by the government.

Any who doubt such protections are needed or that there is no risk that government prosecutors will abuse their authority in either the civil or criminal area should remember the prosecution of former Sen. Ted Stevens. Judge Emmett Sullivan castigated the Justice Department, saying that in 25 years on the bench, he had never seen "anything approaching the mishandling and misconduct" of Justice Department prosecutors in that case.[24] Or they should review the 129-page order released in 2013 in another prosecution in New Orleans in which the federal judge concluded that Justice Department prosecutors engaged in "grotesque prosecutorial abuse," "skullduggery," and "perfidy" in their unethical and unprofessional behavior.[25]

The new $200,000 penalty would apply to violations as simple as failing to correct a defect in the foreign agent registration form within 60 days, an amount that seems grossly out of proportion to a paper work issue. This proposal is also at odds with the push in Congress, as shown by the bipartisan "First Step Act" that was just enacted into law, to reverse the trend of overcriminalization and prohibitive civil penalties present throughout federal law.[26]

Title VII. Subtitle C, Section 7201 of H.R. 1, which expands the definition of "lobbyists" who must register is an expansion of the law that is unnecessary, unwise, and potentially unconstitutional as too broad and too vague to pass scrutiny under the First Amendment.

This section would expand the definition of a lobbyist to anyone who provides "legislative, political, and strategic counseling services" to another individual who actually contacts and lobbies government officials even if those counselors do not themselves engage in any contacts or lobbying activities of any kind with government officials. Members should be reminded that what we label as

[24] Anna Stolleu Persky, "*A Cautionary Tale: The Ted Stevens Prosecution*," Washington Lawyer (Oct. 2009), https://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/october-2009-ted-stevens.cfm.
[25] U.S. v. Bowen, 969 F.Supp. 2d 546 (E.D. LA. 2013), *affirmed and remanded for new trial*, 799 F.3d 336 (5th Cir. 2015).
[26] German Lopez, "Congress just passed the most significant criminal justice reform bill in decades," Vox.com (Dec. 20. 2018).

"lobbying" today, which is often soundly criticized, is an important constitutional right under the Bill of Rights. The First Amendment protects the rights of all citizens – whether they are "counselors" or paid professionals – to "petition the Government for a redress of grievances."

There is no bar to Congress requiring professional lobbyists to register, as long as those registration requirements are not so burdensome as to violate core First Amendment protections by restricting the ability to petition the government. But H.R. 1, by expanding this restriction to anyone who provides so-called "counseling," even when that person is not involved in any actual contacts with government officials, is so broad that it may infringe on First Amendment protections and restrict political speech and activity.

"Counseling" is such an expansive and undefined term that it could cover almost any activity, including simple conversations at cocktail parties, making it difficult for an individual to determine whether his/her activity or speech brings him/her within the statute and the registration requirement. That will chill protected speech and participation in the political arena.

The difficulty in understanding what actions could trigger the registration requirements of this proposal stand in sharp contrast to the current law, which explicitly defines a lobbying contact as an "oral or written communication" with a government official. The proposed amendment is unneeded. Rather than providing a benefit to the public, it could – and likely would – unfairly and unconstitutionally impede the public's ability and willingness to engage in First Amendment activity.

Title VII, Subtitle D, Section 7301 of H.R. 1 would ban political appointees of a president from any involvement in any matter – including litigation – in which the president (or his spouse) is a party and includes any entity in which the president or his spouse has a "substantial interest." It transfers responsibility for that matter to a "career appointee in the agency." This is an unconstitutional provision that violates the principle of separation of powers and directly interferes with the president's constitutional duties.

Article II, Section 3 provides the duty of the president to "take Care that the Laws be faithfully executed." This provision would apply to any litigation against a president's policies, programs, executive orders, or his enforcement of a particular federal statute that names the president. It would prevent the president's political subordinates, such as the Attorney General or the Secretary of the Department of Homeland Security, from participating in, directing the defense of, or assisting in any matter in which the president has been named as a party.

If this provision had been the law when Barack Obama was president, the parties challenging Obama's Deferred Action for Parents of Childhood Arrivals program in the litigation filed by Texas and 25 other states could have easily named Obama as a specific party. Then neither Attorney General Loretta Lynch nor DHS Secretary Jeh Johnson could have participated in the defense of the lawsuit.

Similarly, President Donald Trump's attorney general and DHS secretary would have been

barred from participating in the defense of the president's executive orders restricting the entry of aliens from certain terrorist safe havens since he was a named party in *Trump v. Hawaii*, the litigation in which the Supreme Court upheld those executive orders.[27]

This proposed amendment to federal law violates the Constitution and tries to prevent a president from being able to rely on his own appointees in defending his "faithful" execution of the law and in implementing his policies and programs.

Conclusion

My testimony has only covered the portions of H.R. 1 under the jurisdiction of the Judiciary Committee. As I have explained, many of these provisions are clearly unconstitutional, redundant of federal laws already in place, and simply bad public policy. Many of the provisions I have not covered that affect federal campaign finance law seem intended to protect incumbents, discourage challengers, make it more difficult for the public to participate in politics by chilling political speech and activity, and impose onerous compliance costs. Other provisions on elections come at the expense of federalism and appear intended to nationalize and micromanage the election process, interfere with the right of states to administer elections and determine the qualifications of the electorate, and damage the integrity and security of the election system.

Sometimes legislation proposed by Congress is bad policy; sometimes it is unnecessary; and sometimes it is unconstitutional. H.R. 1 is all three.

[27] 585 U.S. ------ (2018).

Chairman NADLER. Thank you, Mr. von Spakowsky.

Mr. Noti.

TESTIMONY OF ADAV NOTI

Mr. NOTI. Mr. Chairman, Ranking Member Collins, Members of the Committee, thank you for the opportunity to testify today in support of H.R. 1.

My name is Adav Noti. I am senior director of Trial Litigation and chief of staff with the Campaign Legal Center, which is a nonpartisan 501(c)(3) organization dedicated to advancing democracy through law.

Before I joined the Campaign Legal Center, I served as associate general counsel of the Federal Election Commission and held a number of other nonpartisan legal positions within that agency.

In my written testimony, I explain our support for four particular provisions of H.R. 1 that are within the jurisdiction of the Committee. What all of these provisions have in common and what makes them important is that they each advance the right of every American citizen to a government that is accountable and responsive to voters.

Campaign finance laws do that by protecting the individual First Amendment rights of ordinary citizens to meaningfully participate in the democratic process without having their voices drowned out by wealthy corporations that hold special interests.

Ethics and lobbying disclosure advance responsiveness by ensuring that government officials, whether they are elected or appointed, act in the interests of the people rather than in their own interests. Disclosure gives citizens, journalists, watchdog groups, and law enforcement agencies the tools to detect and deter governmental misconduct, undue influence, and corruption.

For purposes of my oral testimony today, I would like to focus on two particular democracy-enhancing provisions of H.R. 1, which are the congressional findings regarding Citizens United and the amendments to the Foreign Agents Registration Act.

First, regarding Citizens United, the bill does an excellent job of laying out exactly how the Supreme Court has completely inverted the First Amendment to deny individual Americans the constitutional right to meaningfully participate in the democratic process.

In a nutshell, as the findings in the bill accurately explain, 100 years of statutory law enacted by Congress had protected ordinary American citizens from having their voices drowned out by corporations—corporations which, of course, are not voters.

In 2010, the Supreme Court stripped Americans of that protection, ruling that the First Amendment actually prohibits Congress from ensuring the democratic speech rights of individuals in the face of overwhelming corporate spending. That ruling in Citizens United v. FEC, on which I personally served as a member of the litigation team, has had catastrophic effects on the campaign system, as every member here today knows well.

Ordinary Americans simply cannot compete with the flood of corporate money that is being funneled into the campaign system through super PACs, dark money entities, and other—and other forms to take advantage of the Supreme Court's misguided foray into political policymaking.

These spenders are utterly unrepresentative of the American public and so their domination of the campaign system is increasingly rendering our government unresponsive, unaccountable, and unworthy of our great nation.

Second, as to H.R. 1's proposed amendments to FARA, it is important to note that the statute was passed 80 years ago to cover Nazi propaganda in the lead-up to World War II. No serious observer questions that preventing the secret dissemination of propaganda to American policymakers is an important measure for our national security. The question is how to enforce that measure.

H.R. 1 would fix two longstanding enforcement challenges. First, it would give FARA a dedicated home and appropriation within the Department of Justice. That is not in any way a criticism of the DOJ staff who currently handle that matter. It is simply an acknowledgement that creating this dedicated home and appropriation for enforcement will inevitably help enforcement.

Second, H.R. 1 would provide a mechanism for civil enforcement of FARA, which would fix the problem that under existing law the only way to seek remedies—penalties for violations of FARA is through criminal prosecution, which has been problematic for a number of reasons including that criminal prosecutions are resource intensive and they require fairly intrusive investigations. It is simply not realistic to conduct felony criminal proceedings over every disclosure violation.

H.R. 1 would fix this by establishing a civil penalty mechanism that would allow DOJ to appropriately allocate its resources between violations that can be punished and deterred through civil penalties and ones that require more serious criminal action, and in my written testimony I address and support two additional provisions in H.R. 1, which are the amendments to the Lobbying Disclosure Act and 18 U.S.C. 208.

Thank you for the opportunity to testify today in support of this milestone bill.

[The statement of Mr. Noti follows:]

Statement of Adav Noti
Senior Director, Trial Litigation & Chief of Staff
Campaign Legal Center

Before the Committee on the Judiciary
United States House of Representatives
January 29, 2019

Chairman Nadler, Ranking Member Collins, and Members of the Committee:

Thank you for the opportunity to testify today regarding HR 1. My name is Adav Noti. I am Senior Director of Trial Litigation and Chief of Staff of the Campaign Legal Center, a nonpartisan 501(c)(3) organization dedicated to advancing American democracy through law. Before joining the Campaign Legal Center, I served as Associate General Counsel of the Federal Election Commission, and in a number of other nonpartisan legal positions within that agency.

HR 1 is a milestone bill. Among its many improvements,[1] the bill would make our system of financing campaigns for federal office more transparent,

[1] *See* Paul Smith, *Protecting Voices of All Voters Is Critical to Free and Fair Elections*, THE HILL (Jan. 8, 2019), https://thehill.com/opinion/judiciary/424381-protecting-voices-of-all-voters-is-critical-to-free-and-fair-elections.

accountable, and responsive to ordinary Americans by multiplying the power of small donors and requiring greater disclosure of campaign spending.

In this testimony, I will focus on four parts of HR 1 that are within the Committee's jurisdiction: (1) legislative findings regarding the Supreme Court's decision in *Citizens United v. FEC*, 558 U.S. 310 (2010); (2) enforcement of the Foreign Agents Registration Act (FARA); (3) closing loopholes in lobbying registration laws; and (4) recusal of Presidential appointees. These provisions independently and collectively advance the right of every American citizen to a government that is responsive and accountable to *voters*. Campaign finance laws protect the First Amendment rights of ordinary citizens by ensuring they can participate in the political process without having their voices drowned out by wealthy corporations and individuals that hold special interests. And disclosure of campaign spending provides the public with essential information about the sources of financial support for candidates seeking public office. Ethics and lobbying disclosure laws promote responsiveness by ensuring that government officials, whether elected or appointed, act in the interests of the public rather than the officials' own private interests. More broadly, disclosure laws in each of these contexts give citizens, journalists, watchdog groups, and law enforcement agencies the information and tools needed to detect and deter governmental misconduct, undue influence, and corruption.

Before turning to these provisions, however, it is critical to note that HR 1's small-dollar matching provisions would broaden the spectrum of Americans who

engage in the political process by increasing average citizens' ability to participate in the funding of campaigns. As federal elections have become increasingly dominated by a handful of wealthy donors,[2] small-dollar matching offers a means to advance the First Amendment right of ordinary citizens to have a voice in the political process. A campaign finance system that meaningfully incorporates small-dollar donors can reorient our elections by reducing opportunities for corruption, encouraging citizens to seek public office, and broadening political participation among the public at large.[3] The funding of elections is an important means of engagement in our democratic process, and small-dollar matching can help make this form of engagement more inclusive and representative of our Nation as a whole.

I. Findings Regarding *Citizens United v. FEC*

In addition to provisions that would make democracy more transparent, accessible, and accountable, HR 1 includes key legislative findings regarding one fundamental source of our current democratic dysfunction. The bill accurately describes how the Supreme Court's misguided *Citizens United* decision has

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[2] In 2016, half of all campaign contributions to federal candidates came from only 15,810 individuals. By comparison, in 2000, 73,926 individuals accounted for half of all contributions. *See* Nathaniel Persily, Robert F. Bauer, & Benjamin L. Ginsberg, *Campaign Finance in the United States: Assessing an Era of Fundamental Change* 22, BIPARTISAN POLICY CTR. (Jan. 2018), https://bipartisanpolicy.org/wp-content/uploads/2018/01/BPC-Democracy-Campaign-Finance-in-the-United-States.pdf.

[3] For example, in its first election cycle, Seattle's groundbreaking new democracy voucher program generated a record number of city residents contributing to local candidates. *See* Seattle Ethics & Elections Comm'n, *Democracy Voucher Program Biennial Report 2017* (2018), http://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final%20-%20Biennial%20report%20-%2003_15_2018.pdf.

empowered wealthy corporate entities to dominate election spending, thereby drowning out the voices of ordinary citizens and depriving individual Americans of their constitutional right to participate in the political process. The findings illustrate how *Citizens United* flipped the First Amendment on its head by overruling one hundred years of legislation enacted to protect the constitutional rights of individual citizens, replacing that system with a new regime of unlimited and frequently undisclosed corporate political spending. The findings include jaw-dropping statistics: campaign spending by corporations and other outside groups increased by nearly *900 percent* between the 2008 and 2016 Presidential election years; and well-funded special-interest groups spent over $5,000,000,000 on the 2018 midterm elections.

"[T]he First Amendment serves to ensure that the individual citizen can *effectively* participate in and contribute to our republican system of self-government." *Globe Newspaper Co. v. Superior Court for Norfolk Cty.*, 457 U.S. 596, 604 (1982) (emphasis added).[4] What the Court in *Citizens United* failed to recognize is that its embrace of unlimited corporate campaign spending would allow spenders with the deepest pockets to so overwhelm the voices of ordinary voters as to effectively deprive those citizens of the ability to participate in the campaign process in any meaningful way. That result defies the First Amendment's key purpose of protecting "uninhibited, robust, and wide-open" public debate. *New York*

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[4] *Cf. Reynolds v. Sims*, 377 U.S. 533, 565 (1964) (explaining that our "representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to *full and effective* participation in the political processes of his State's legislative bodies") (emphasis added).

Times v. Sullivan, 376 U.S. 254, 270 (1964). This, in turn, leads to the problem, recognized in HR 1, of a national political agenda that prioritizes the policy preferences of our Nation's wealthiest corporations and individuals, whose views on a wide range of issues — such as taxes and healthcare — often depart dramatically from those of average Americans.

Citizens United also hinges on two faulty assumptions that reality has proven to be utterly wrong. First, the opinion mistakenly predicted that it would create a new campaign finance system "that pairs corporate campaign spending with effective disclosure," hypothesizing that "modern technology" would lead to "rapid and informative" campaign finance disclosure. 558 U.S. at 370. In fact, a report just released by the nonpartisan nonprofit organization Issue One found that in the years since *Citizens United*, at least $960 million in dark money spending — in which corporations and other entities[5] are used to disguise the true sources of the money — has been documented.[6] This tremendous spending was not just stealthy, it was also extremely concentrated: the top 15 dark money groups collectively spent about $730 million between January 2010 and December 2018, accounting for more

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[5] In March 2010, a few months after the Supreme Court decided *Citizens United*, the U.S. Court of Appeals for the D.C. Circuit issued an opinion in *Speechnow.org v. FEC*, 599 F.3d 686 (2010) (en banc), in which the court relied on *Citizens United* to strike down contribution limits as applied to political committees that make only independent expenditures. The decision opened the door to a new type of political committee — the "super PAC."

[6] *See* Michael Beckel, *In 2018 Midterms, Liberal Dark Money Groups Outspent Conservative Ones for the First Time Since* Citizens United*: Total Dark Money Spending Since Citizens United Nears $1 Billion* (Jan. 2019), https://www.issueone.org/wp-content/uploads/2019/01/Post-CU-Dark-Money-Mini-Report.pdf.

than 75 percent of all dark money spending during that time.[7] And, as explained in a 2017 Campaign Legal Center report, these amounts are almost certainly understated because they omit a substantial amount of secret spending that is *never* reported to the Federal Election Commission.[8] Thus, far from ushering in a system of "effective disclosure," *Citizens United* created a new mechanism for wealthy donors to hide their massive campaign spending from the public by funneling the money through corporations.

The second faulty assumption that undermines *Citizens United* is its declaration that unlimited corporate campaign spending would pose no threat of corruption or the appearance of corruption because it would be "independent." In reality, the independence of much of this spending is farcical. The public record is replete with shocking examples of what passes as "independent" spending post-*Citizens United*. One of the most glaring examples occurred in the run-up to the 2016 presidential primaries, when supporters of presidential candidate Carly Fiorina set up a super PAC called "CARLY for America," a name that was easily confused with that of Fiorina's authorized campaign committee, "Carly for President." CARLY for America had an active presence at most of Fiorina's campaign events and served functions traditionally filled by campaign staff. As the *Atlantic* described:

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[7] *See id.* This problem is not unique to any one political party: although conservative dark money groups have historically outspent progressive ones, progressive dark money groups accounted for about 54 percent of the $150 million in dark money spent during the 2018 election cycle. *See id.*

[8] Campaign Legal Ctr., *Dark Money Matters* (June 12, 2017), https://campaignlegal.org/sites/default/files/Dark%20Money%20Issue%20Brief.pdf.

> At a typical Fiorina campaign stop, a CARLY For America staffer was stationed at a table outside of the event space to sign up attendees for the super PAC's email list. Another staffer handed out CARLY For America stickers to attendees as they arrived. When Fiorina and her staff entered the event, they were usually met by a room covered in red "CARLY" signs and tables covered in pro-Fiorina literature, all produced by CARLY For America.[9]

While this overlap between the campaign and super PAC was brazen, CARLY for America's obvious and unpunished coordination with the candidate that it "independently" supported is not an outlier. This pervasive practice illustrates a central flaw in the *Citizens United* majority's legal analysis, which is premised on the erroneous assumption that the massive spending unleashed by the decision would be truly "independent."

In sum, the *Citizens United* decision consists of an irredeemably flawed constitutional analysis that disregards the fundamental purpose of the First Amendment and relies on mistaken factual assumptions that have compounded the harm that the decision has caused to our democracy. HR 1's legislative findings take an important first step towards addressing this harm, by accurately describing both its causes and effects.

II. Enforcement of the Foreign Agents Registration Act

The Foreign Agents Registration Act (FARA), 22 U.S.C. § 611 *et seq.*, requires that agents of foreign political principals disclose their relationships with, payments from, and activities on behalf of the foreign principals. These disclosures enable

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[9] Emma Roller, *When a Super PAC Acts Like a Campaign*, ATLANTIC (Sept. 10, 2015), https://www.theatlantic.com/politics/archive/2015/09/when-a-super-pac-acts-like-a-campaign/455679/.

officials and the American people to evaluate the statements and activities of such individuals in light of their role as foreign agents.

FARA was originally passed in 1938 to address concerns about Nazi propaganda in the years leading up to World War II. Although FARA's importance is not subject to any serious dispute, historically, enforcement of FARA has been rare.[10] In 2016, the Justice Department's Inspector General found that 62 percent of initial FARA registrations were filed between 7 and 343 days late, and 50 percent of FARA registrants filed supplemental statements late.[11] Further, 15 percent of active FARA registrants "had ceased filing altogether or were over six months delinquent."[12] Registered foreign agents, who were presumably familiar with the law, routinely disregarded their reporting obligations — 57 percent of existing foreign agents were late in filing registrations disclosing that they were lobbying for a new client.[13] Despite such rampant noncompliance, only seven criminal FARA cases were brought between 1966 and 2015.[14] Even in cases where registrants appeared to ignore direct requests to file supplemental statements, violators faced no repercussions.[15]

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[10] Office of the Inspector Gen., U.S. Dep't of Justice, *Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act* 21-22 (Sept. 2016), https://oig.justice.gov/reports/2016/a1624.pdf.

[11] *Id.* at ii, 13-15.

[12] *Id.* at 13, 14.

[13] *Id.* at 15.

[14] *Id.* at i.

[15] *Id.* at 12.

To be clear, we do not note these statistics to criticize Department of Justice staff. As the Inspector General acknowledged, the Department's FARA Unit has limited resources to handle considerable responsibilities, and may have reasonably elected to focus those resources on encouraging registration rather than prosecuting violations.[16] But the statistics underscore the seriousness of the enforcement problem to which HR 1 is responding.

The bill would enhance FARA enforcement by creating a dedicated home and appropriation for FARA investigation and enforcement within the Department of Justice. This creation and funding of a specific FARA enforcement unit would inevitably improve enforcement.

HR 1 would also allow the Justice Department to pursue civil penalties for FARA violations. While FARA currently allows for civil *injunctive* remedies, the only avenue to pursue penalties for FARA violations under existing law is through *criminal* prosecution. The absence of civil monetary enforcement has proven to be problematic for a number of reasons, including that criminal prosecutions are resource-intensive and require fairly intrusive investigations. It is simply not realistic to pursue felony criminal proceedings over every disclosure violation. HR 1 responds to this problem by establishing a civil penalty mechanism that would allow the Department of Justice to allocate its resources appropriately between violations that can be punished and deterred with civil monetary penalties and those that require more serious criminal action.

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[16] *Id.* at i.

III. Closing the "Strategic Counseling" Loophole

Another important way that HR 1 promotes transparency and responsiveness is by implementing a bipartisan American Bar Association recommendation to treat the provision of strategic advice in support of lobbyists as lobbying.[17]

Lobbying disclosure requirements ensure that the American people are able to learn who is seeking to influence policymakers and how. But existing disclosure laws contain a loophole: They do not apply to individuals who conduct their lobbying through other people. Specifically, lobbying entities exploit this loophole by hiring outside consultants to provide registered lobbyists with "strategic advice" on how to influence governmental action, and the registered lobbyists then go on to use this "strategic advice" in their direct contacts with government officials. Such outside consultants are therefore simply lobbyists by another name. But because these shadow lobbyists — sometimes known as "strategic counselors," "policy advisors," or "government relations professionals" — influence government officials indirectly, through business associates, current law does not require disclosure of their activity.[18]

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[17] *See* Am. Bar Ass'n Task Force on Fed. Lobbying Laws, *Lobbying Law in the Spotlight: Challenges and Proposed Improvements* 17 (Jan. 3, 2011), http://www.campaignlegalcenter.org/sites/default/files/ABA_Task_Force_Reprt_-_Lobbying_Law_in_the_Spotlight_-_Challenges_and_Proposed_Improvements.pdf (reporting bipartisan ABA Task Force's findings and recommendations, including recommendation to define provision of strategic advice as "lobbying support").

[18] *See* Lee Fang, Opinion, *Michael Cohen and the Felony Taking Over Washington*, N.Y. TIMES (June 18, 2018), https://www.nytimes.com/2018/06/18/opinion/michael-cohen-shadow-lobbying-trump.html.

Shadow lobbying allows special interests to avoid disclosing the total amount they actually spend influencing public policy, thereby undermining one of the primary goals of lobbying disclosure. For example, a former Speaker of the House of Representatives was paid $1.6 million for his work for Freddie Mac; after initially characterizing his services as that of a "historian," the former Speaker later described his work as "strategic advice."[19] Such circumvention also allows former members of the legislative and executive branches to evade post-employment revolving door restrictions. For example, former members of Congress and their senior staff are barred for one year from lobbying their former colleagues, and former Senators are subject to a two-year ban. But former public officials can sidestep the ban by acting as shadow lobbyists providing "strategic advice" to paying clients.[20]

These stories are part of a larger pattern. The number of registered lobbyists has steadily declined in recent years,[21] and it appears that shadow lobbyists have taken their place. According to a 2014 report, the number of registered lobbyists in 2013 was 12,281; the actual number of lobbyists, including shadow lobbyists, was

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19 *See id.*

20 *See* Michael Hiltzik, *The Revolving Door Spins Faster: Ex-Congressmen Become 'Stealth Lobbyists'*, L.A. TIMES (Jan. 06, 2015), https://www.latimes.com/business/hiltzik/la-fi-mh-the-revolving-door-20150106-column.html.

21 *See* Ctr. for Responsive Politics, *Lobbying Database*, https://www.opensecrets.org/lobby.

closer to 100,000.[22] Official spending on lobbying that year was $3.2 billion; actual spending was closer to $9 billion.[23]

HR 1 responds to this loophole by appropriately classifying "strategic counseling services" in support of lobbying as lobbying, thereby helping ensure that the public has accurate information about who is actually lobbying and how much is being spent on such efforts.

IV. Recusal of Presidential Appointees

HR 1's ethics provisions devote significant attention to the timely detection and prevention of conflicts of interest. Such attention is appropriate because this is one of the most important functions of a successful governmental ethics program. Preventing conflicts of interest is especially vital within the executive branch, where presidential appointees are entrusted with tremendous power and there may be temptations to use that power for personal gain.

The primary criminal conflict-of-interest statute, 18 U.S.C. § 208, prohibits executive branch employees from participating personally and substantially in any particular matters in which they know they have financial interests directly and predictably affected by those matters. This prohibition, its implementing regulations, and equivalent agency-specific rules are important safeguards for preventing conflicts of interest and ensuring that public servants are working for the public's interests. But as HR 1 recognizes, other types of identifiable conflicts

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[22] *See* Lee Fang, *Where Have All the Lobbyists Gone?*, NATION (Feb. 19, 2014), https://www.thenation.com/article/shadow-lobbying-complex.

[23] *See id.*

exist that could jeopardize the impartiality and integrity of a presidential appointee's government service. These conflicts might not fit neatly under the existing criminal conflict-of-interest law or regulations, but they are too serious to ignore. HR 1 takes important steps toward identifying new categories of conflicts of interest and demanding higher ethical standards from those at the top echelons of our government.

* * *

HR 1 would bring ambitious, comprehensive, and much-needed improvements to our democratic process and governance. Together with the bill's provisions that protect the First Amendment rights of small donors, provide greater disclosure of political spending, improve access to voting, and curb partisan gerrymandering, the four provisions discussed above are critical to a more transparent, responsive, and accountable government. In particular, HR 1's formal recognition of the constitutional and factual deficiencies of the *Citizens United* decision, as well as the harms the decision has caused to our campaign finance system, is a key first step to addressing those harms. Enacting all of these provisions would mark a major step toward achieving a democracy that is transparent, responsive, accountable, and worthy of our great Nation.

Chairman NADLER. Thank you, Mr. Noti.

We will now proceed under the five-minute rule with questions for the witnesses. I will begin by recognizing myself for five minutes.

I will ask Ms. Gupta first. Since the Shelby County decision, Section 2 of the Voting Rights Act has been the main statutory vehicle for protecting minority voting rights. Have you seen evidence of intent by lawmakers to use voting restrictions to suppress the vote of minority communities and how has Section 2 worked? I mean, how effectively has Section 2, in the absence of Section 5, worked?

Ms. GUPTA. So Section 2 of the Voting Rights Act is—thank you for the question—Section 2 of the Voting Rights Act remains the law of the land but is a woefully inadequate substitute for the powers that Section 5 gave the federal government and federal courts to prevent racially discriminatory voting changes in states that have longstanding well-documented histories of racial discrimination.

Section 2 cases are expensive. They take years to be developed. They are filed after elections take place when voters have already been disenfranchised, whereas the Section 5 pre-clearance regime really permitted the federal government to have notice of changes being made, small and big, to voting in local jurisdictions that have this longstanding history and it was these changes that would get kind of fixed before elections would take place. They were numerous and created a quite extensive record—that was before the 2006 Congress that ultimately reauthorized the Voting Rights Act—of present-day discrimination.

Section 2 litigation—while I was at the Justice Department, we filed litigation against statewide ID laws in North Carolina and Texas, for example, that created incredible restrictions.

In North Carolina it was known as the monster voter suppression law, making limits to creating long lines, closures of poll sites, racial discrimination in access to the polls, and that litigation took years to actually work itself through the courts. They are a woeful substitute to Section 5, which would actually put us in a much better place as a democracy.

Chairman NADLER. Thank you. In other words, we saw after the 1957, 1960, and 1964 Civil Rights Acts that the registration rates for African Americans in some of the Southern states were still 2, 3, 4, 5 percent and they only really went up to reasonable rates—reasonable levels after the passage of Section 5. Is that correct?

Ms. GUPTA. That is right.

Chairman NADLER. Thank you.

Let me ask, I suppose, Mr. Adams. In 2006, Mr. Chabot, who was seated here a few minutes ago, as then chairman of the Constitution Subcommittee and I as then ranking member of the Constitution Subcommittee, presided over hearings. I don't know how many hundreds of hours.

We have compiled a 15,000-page record as the basis for renewal of the Voting Rights Act in 2006. The renewal of the Voting Rights Act including extension of Section 5 passed in the Senate 98 to nothing and in the House 390 to 33. It was not controversial. Republicans, Democrats, almost everybody supported it.

Since the Shelby County decision, which invited us to pass a new section—a new section reinvigorating Section 5 that would substitute for the old Section 4 a new test as to which jurisdictions were covered, the Supreme Court said we could do that. We have been unable to have the political support do that. We hope to change that now.

What do you think changed why it was universally recognized and understood that we needed pre-clearance in order to prevent local interference with voting rights as we had seen since the Civil War for a hundred years, and today when people don't seem to recognize that and seem to think that states' rights are more important than people being able to vote?

Mr. ADAMS. Right. And we have had a number of hearings, you will recall, Chairman Nadler, when you were on the ranking member in the last couple of years on this. I think what has changed is the puzzle of the triggers.

In other words, the Supreme Court held very clearly that you have to have triggers that meet current circumstances and nobody has been able to develop a trigger that has had the requisite will. If you use the triggers that were in the '06 reauthorization, there would be one state covered. That would be Hawaii. And so I——

Chairman NADLER. Well, the 2006 reauthorization was ruled unconstitutional because the triggers were based on things prior to 1964 and the court said we have to do it on a more current basis and—go ahead.

Mr. ADAMS. So if you use the triggers from more recent presidential elections to make it contemporaneous like the Supreme Court required, you would have the puzzle that only Hawaii would be covered. So everywhere else there is a large turnout in presidential elections.

So I think what changed is a recognition that the Supreme Court set limits on the power of Congress in this area and there hasn't been a political coalescence of the majority to pass something that has satisfactory triggers.

Chairman NADLER. Well, since we have seen any number of very clear voter suppression tactics—I won't get into voter ID, which—of which there is a political division as to whether it is in fact a voter suppression technique. I think it is. You think it isn't. But there are clearly—we saw one rather well-publicized incident before the last election—I think it was in Kansas—where a polling place was moved from a local college to someplace where you couldn't get to in the middle of the desert away from bus stops.

We saw another in North Dakota, I think it was, where people on Indian reservations were told they had to—they could only vote if they had a street address and there were no street addresses. These are very clearly—I don't think anybody could quibble that they were in fact intended to stop people from voting. How would you deal with that?

Mr. ADAMS. Well, the problem in Kansas—and I think you are referring to the Dodge City case—the judge found that there was not a problem and it wasn't a desert. It was moving a polling place a few miles——

Chairman NADLER. Well, how would you—regardless of that, how would you deal with local efforts that are clear to deprive people of voting rights?

Mr. ADAMS. Right, and there are a couple of ways. One, the Voting Rights Act still has a pre-clearance catch. In other words, in Texas, the Justice Department asked that Texas be put under this provision under Section 4 that if you are found to have violated the Voting Rights Act you are subject to pre-clearance obligations. So there is that still in the Voting Rights Act and the Justice Department has used that in the Texas case.

I think another way——

Chairman NADLER. How many times since Shelby County has that been used?

Mr. ADAMS. Well, part of the problem is there hasn't——

Chairman NADLER. How many times?

Mr. ADAMS. Well, there has been two cases filed by the Justice Department under Section 2 that has been won.

Chairman NADLER. Two cases filed and won—okay. Thank you. My time is well over. So I am sorry I have to interrupt you.

Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

Again, a lot of this conversation today I think is—I think there is not a doubt we need to vote, everyone that wants to vote be a part of voting. I think the issue is how do we come about this, and some of the issues have been brought up.

I do want to find one—I always like to try and maybe find one point of agreement that we can have on this. So that, you know, there are so many sides. Again, Ms. Turberville, you brought this up, and I would like for you to take for just a moment because some may not understand—I know for the attorneys who are used to dealing with ethics and judges—and explain a little bit more about the Supreme Court, you know, encourage them to put that together.

Because that is something I think we can find agreement on, and I would like to hear you express a little bit more about that.

Ms. TURBERVILLE. Sure, thank you, Ranking Member Collins.

There is this ethics framework that governs all judges in the lower courts, for example, and that is both a code of conduct that has been promulgated by the Judicial Conference of the United States. That is also the Judicial Conduct and Disability Act of 1980 that sets up a mechanism, a process whereby complaints can be dealt with relative to the conduct of lower court judges.

Neither of those mechanisms apply to the United States Supreme Court. And so what we propose is a code of conduct applicable to the United States Supreme Court that would be promulgated by the Judicial Conference, of which the Chief Justice is the head, and so that also, I believe, addresses some constitutional issues that have been raised here.

I would also like to respond a bit to the assertion that Congress cannot impose a code of conduct on the Supreme Court because of separation of powers concerns, and I think that, you know, there are a number of instances where this body has, under the necessary and proper clause found in Article I, passed laws to govern the function of the Supreme Court. Going back to 1869, the Con-

gress actually determines the size of the Court and said that there will be eight Associate Justices and one Chief Justice of the U.S. Supreme Court.

This body passed the Ethics in Government Act in 1978, which actually imposes criminal and civil penalties on Justices, as well as other members of—other Federal officials for failure to file specific financial disclosure obligations. And then also this body set out recusal standards that are found in 28 U.S.C. 455 that also govern the conduct of Supreme Court Justices.

So it would be my view that there are plenty of precedent here to support the idea that the Congress can, at minimum, require the Judicial Conference to promulgate a code of conduct that specifically applies to our Nation's highest court.

Mr. COLLINS. Thank you.

With that, look, there has been a lot said and also Ms. Ifill has brought up the State of Georgia, of course, my home State. And one of the issues that was brought up, and I think we need to be—I have no problem discussing issues and how we do it. I do—but when the implication is a malfeasance or something denoting something not there, the question would come.

Is it not true—and I just read in my opening statement so you can go back to it—the issue of sending out cards and using the mail system and then also responding by lack of voting has been upheld by the Supreme Court? Is that not true?

Ms. IFILL. If you are referring to the Husted decision from the Supreme Court term regarding voter purges——

Mr. COLLINS. Yes.

Ms. IFILL [continuing]. And the ability to begin a purge process using the return of those cards, yes, that was upheld by the Supreme Court in Ohio.

Mr. COLLINS. Okay. Okay. So, and again, in these cases, that was brought in to the—so, again, we can disagree with how we want to maintain voter rolls, but it is also the implication to say that something was illegal or was not done properly is doing a disservice, frankly, as you look at these discussions as we move forward.

I think the interesting is, is that, you know, there was mentioned Georgia has 3½ weeks of early voting. We discussed the long lines all day. That actually should be applauded. We have long lines because a lot of people wanted to vote.

I think there are also issues in the State of Georgia especially and many other States where locals handle which polling stations are open and which stations are closed and how many voting precincts that they put at those locations. Not the secretary of state, by the way, in the State of Georgia, has no determination on which places go where.

The interesting issue of the purging of rolls, though, is something, and I think we get back into this. The question comes is when we deal in these issues and these long processes, and you even brought up one in the State of Florida, which I am glad you brought it up. The State of Florida had an issue and decided that, you know, re-enfranchising, if you would, those, that is the way it should be.

Why would we want to continue again from a perspective that is not found constitutional by even the liberal, the more liberal Supreme Court Justices? Why would we want to insert into that when it is clearly nonconstitutional?

Ms. IFILL. So I would have to disagree with you about whether it is constitutional or not. And I think it goes back to——

Mr. COLLINS. Well, excuse me. But it wouldn't actually be me you are disagreeing with.

Ms. IFILL. I understand.

Mr. COLLINS. It is the Supreme Court you are disagreeing with.

Ms. IFILL. Well, it is your interpretation of the Supreme Court's decision. So I will give mine.

Mr. COLLINS. Your reading.

Ms. IFILL. I think the problem we have is that, you know, when we begin talking about the powers between the Federal and the State government as it relates to elections, it is, of course, critical that we look to the Constitution and that we look to the articles of the Constitution that govern elections. But what we have left out of the conversation, at least to this moment, is the reordering of the relationship between the Federal and State government that came with the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments.

The Fourteenth and Fifteenth Amendments, in particular the Fourteenth Amendment guaranteeing equal protection of laws and the Fifteenth Amendment prohibiting the denial of the right to vote based on race, national origin, includes enforcement clauses that gives this body, the United States Congress, the power to enforce the rights that are articulated in those amendments to the Constitution.

And it is those amendments to the Constitution that provided this body the right, for example, to pass laws like the Voting Rights Act of 1965, for which all the same arguments that are being made today about the power of the States, about interference, about what the Federal Government is allowed to do and not allowed to do were raised and overcome.

So the Federal Government actually does have the power, when there is evidence and when they are enforcing the rights under the Fourteenth and Fifteenth Amendments, to actually—your word would be interfere, but to engage robustly in the protection of the voting rights of racial minorities.

With regard to the felon disenfranchisement issue, I think it is a fascinating question that you are raising about the constitutionality. Because if we look at Section 2 of the Fourteenth Amendment to the Constitution, it does mention people who have been convicted of a crime, but it is mentioning it as part of the punishment scheme for rebellious States that would deny people the right to vote, deny black men the right to vote.

And it mentions that provision about having been convicted of a crime within the context of when that punishment scheme could be used, and the punishment scheme is to reduce the number of representatives of that particular State.

So it is not clear to me that what that provision is saying is that the Federal Government cannot or this Congress cannot, as is set

out under H.R. 1, determine that in Federal elections those who have been convicted of crimes can participate.

Mr. COLLINS. Ms. IFILL, I——

Chairman NADLER. The time of the gentleman has expired.

Before I yield to Ms. Lofgren, I ask unanimous consent to insert into the record statements from Public Citizen and from a number of other public interest groups and coalitions.

Without objection, they will be entered into the record.

Chairman NADLER. Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

And I was going to ask that the Brennan Center statement, if that has already been included?

Chairman NADLER. Without objection, that will also be entered into the record if it hasn't already been.

[The information follows:]

MR. NADLER FOR THE OFFICIAL RECORD

215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

Jan. 29, 2019

The Hon. Jerrold Nadler, Chairman
The Hon. Doug Collins, Ranking Member
House Committee on the Judiciary
2138 Rayburn House Office Bldg.
Washington, D.C. 20515

Public Citizen Statement for the Record in Support of H.R. 1

Dear Members of the Committee:

On behalf of Public Citizen's 500,000 members and supporters, we write to express our wholehearted support for the sweeping ethics, campaign finance and voting rights reforms offered by the For the People Act (H.R. 1), which you are moving through the hearing process in your committee.

In November, the American people went to the polls and resoundingly cast their ballots in support of candidates and officeholders committed to cleaning up corruption and holding government accountable. H.R. 1 embodies these principles and constitutes your promise to the nation to ensure that public officials work for the people.

This sweeping legislative package addresses three key buckets of reforms which are essential to make our government work effectively and fairly. The legislation provides:

- Comprehensive campaign finance reforms that would end dark money and reduce the alarming influence of special interest and corporate money over our elections.
- Desperately-needed governmental ethics reforms to slow the revolving door between public service and powerful business interests, and strengthening oversight and enforcement of ethics laws and rules.
- Voting and electoral reforms that would end gerrymandering and reaffirm the principle of one person, one vote.

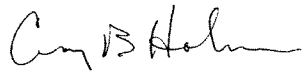
In 2016, many voters believed in the campaign pledge to "drain the swamp," only to be sorely disappointed by the growing power of wealthy special interests over all levers of government in Washington DC. And voters responded in 2018.

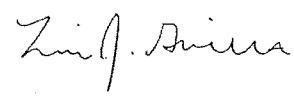
These key issues took front and center of the political dialogue in the last election, and will once again emerge as the most important factors affecting voting choices in the 2020 elections. A new

class of representatives has been ushered into the 116th Congress and will be judged by voters on how well that promise is kept.

Carry through with that promise by doing everything you can to advance H.R. 1 into law.

Sincerely,





Craig Holman, Ph.D.
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Public Citizen's Congress Watch division
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Lisa Gilbert
Vice president of legislative affairs
Public Citizen
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END CITIZENS UNITED
ACTION FUND

January 29, 2019

The Honorable Jerrold Nadler
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler,

Thank you for your decades of steadfast leadership and commitment to creating a government that's open, accountable, and responsive to the needs of the American people.

On behalf of End Citizens United Action Fund and our more than four million members around the country, we are proud to support the For the People Act (HR 1), a once-in-a-generation government reform bill that will restore the promise of our democracy.

Far too many Americans believe that their government no longer works for them. They see wealthy special interests dictating policy, politicians setting the rules for their own elections while making it harder to vote, and too many officials profiting off the public interest. The For the People Act is critical to restoring the public's faith in our democratic institutions and ensuring everyone's voice and vote is heard, counted, and protected.

The For the People Act is a comprehensive set of democracy reforms aimed at addressing three critical needs:

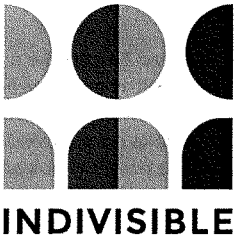
- Ending the dominance of big money in politics by empowering small donors, requiring transparency for dark money groups, and strengthening oversight of our campaign finance laws;
- Making it easier, not harder to vote by improving access to the ballot box and promoting and advancing election integrity and security;
- Ensuring officials are working in the public interest by updating and expanding federal ethics and conflict-of-interest rules for members of Congress and administration officials.

We look forward to working with you to restore power to the American people by passing the most sweeping package of reforms since Watergate. Thank you for holding this critical hearing on this vital legislation.

Sincerely,

Tiffany Muller
President

cc: The Honorable Doug Collins
Ranking Member, Committee on the Judiciary



STATEMENT OF THE INDIVISIBLE PROJECT

In support of H.R. 1, For the People Act of 2019

Submitted to the House Judiciary Committee

January 29, 2019

Chairman Nadler, Ranking Member Collins, and Members of the Committee,

Indivisible is a movement of more than 5,000 local groups across the country organizing locally to resist the Trump agenda. We write in strong support of H.R. 1, and urge you to advance the For the People Act quickly as a bold, comprehensive package.

Our movement emerged out of the chaos and fear surrounding Donald Trump's election in 2016. But even as we continue to organize against Trump's agenda, we turn to an even greater task: defeating the forces that gave rise to Trumpism in the first place.

A healthy democracy would have rejected Trump like a healthy body rejects a virus. But that didn't happen, because the wealthy and powerful have spent decades rigging the system to consolidate their power by discouraging, disempowering and disenfranchising the electorate. And make no mistake: the same communities that are disproportionately affected by these power grabs are the same communities most attacked by the bigotry of the Trump agenda.

But we have a historic opportunity to change course. A mass grassroots movement, including many in the Indivisible movement, built a Blue Wave that carried a new Democratic majority into the House of Representatives. We are a young movement, and are still learning about what excites and sustains our field. But when we surveyed our thousands of groups on policy issues for the first time last fall, we discovered that democracy reform — voting rights, getting big money out of politics, and eliminating corruption from all levels of government — easily topped every other issue.

Perhaps this is why, on Jan. 3, we saw the largest-ever single day of action in our movement thus far. On the first day of the new Congress, our groups all over the country showed up in front of their Representatives' district offices to rally in support of H.R. 1's passage, and to demand that its reforms not be weakened or divided in the process.[1]

---

[1] See e.g.: "Schuykill Indivisible Holds a Rally for Democracy," *PA Homepage*, Jan. 3, 2019, https://www.pahomepage.com/news/schuylkill-indivisible-holds-a-rally-for-democracy/1685882152; "Activists Call on Re. Delgado to Support Democracy Reform," *WAMC*, Jan. 3, 2019, https://www.wamc.org/post/activists-call-rep-delgado-support-democracy-reform; "Nevada Protesters Urge Reform as Congress Begins New Session," *Public News Service*, Jan. 3, 2019, https://www.publicnewsservice.org/2019-01-03/civic-engagement/nevada-protesters-urge-reform-as-congress-begins-new-session/a65110-1; "Progressives Rally in Kingston for Democratic Reform Bill," *Mid-Hudson News*, Jan. 3, 2019, http://www.midhudsonnews.com/News/2019/January/04/prog_rally_King-04Jan19.html; "Activists Rally for House Ethics Bill Across the County and In Upstate NY," *Spectrum Local News*, Jan. 3, 2019, https://spectrumlocalnews.com/nys/binghamton/politics/2019/01/03/hr1-rallies-in-upstate-ny; "Coalition Group Calling on Congress to Pass Democracy Reform Bill," *WWLP*, Jan. 3, 2019, https://www.wwlp.com/news/state-politics/coalition-group-calling-on-new-congress-to-pass-democracy-reform-bill/1685752029; "Protesters Demand Action from Roseville Congressman as New Lawmakers Sworn In," *Fox 40*, Jan. 3, 2019,

Instinctively, our movement knows that leading with a bold and comprehensive package of democracy reforms is an essential first step in the work ahead. Unless we have a democracy that includes and represents all of us, we cannot secure relief for immigrant families, ensure access to affordable health care, end gun violence, tackle climate change, or accomplish any of our other goals.

Additionally, we must not merely signal a nominal commitment to protecting our democracy, but must use this opportunity to coalesce support behind the boldest solutions imaginable, and advance them as a single vehicle of holistic, interdependent reforms.

We look now to the House to follow through in advancing this landmark legislation. We urge you to move quickly to meet the demand that we have seen clearly from the voters, by keeping H.R. 1 intact and strong. This moment requires bold action to lay the foundation for a democracy that truly includes and represents us all.

Please don't hesitate to reach out to our Associate Policy Director Elizabeth Beavers at elizabeth@indivisible.org if we can offer further support.

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https://fox40.com/2019/01/03/protesters-demand-action-from-roseville-congressman-as-new-lawmakers-sworn-in/; "Indivisible Rochester Sends Messages to Rep. Hagedorn," *KIMT News*, Jan. 3, 2019, https://www.kimt.com/content/news/Indivisible-Rochester-making-their-voices-heard-all-the-way-in-Washington-DC-503886891.html; "Group Pushes Congress to Pass Anti-Corruption Bill," *ABC 10 News*, Jan. 3, 2019, https://www.10news.com/news/local-news/group-pushes-congress-to-pass-anti-corruption-bill; "Start the Year at Congressman Hill's Office, Urging Political Reform," *Arkansas Times*, Dec. 29, 2018, https://www.arktimes.com/ArkansasBlog/archives/2018/12/29/start-the-new-year-at-congressman-hills-office-urging-political-reform; "Indivisible Somerville Co-Hosts Rally for Democracy Reform as Congress Re-opes," *Wicked Local Boston*, Jan. 3, 2019, http://northofboston.wickedlocal.com/news/20190103/indivisible-somerville-co-hosts-rally-for-democracy-reform-as-congress-re-opens; "As New Congress Sworn In, Residents Rally at Hunter's Temecula Office," *San Diego Tribune*, Jan. 3, 2019, https://www.sandiegouniontribune.com/news/politics/sd-me-indivisible-new-congress-20190103-story.html; "Indivisible Monroe to Rally at Rep. Smith's Office for Democracy Reform," *Monroe Now*, Dec. 31, 2018, https://www.monroenow.com/indivisible-of-monroe-to-rally-at-rep-smith-s-office/article_5f094958-0d26-11e9-b223-23d19d85a045.html

Statement for the Record

In Support of H.R. 1, For the People Act of 2019

On behalf of the Franciscan Action Network

January 29, 2019

Submitted to the House Committee on the Judiciary

Dear Chairman Nadler, Ranking Member Collins, and Members of the Committee,

Inspired by the Gospel of Jesus, and the example of Saints Francis and Clare, the Franciscan Action Network (FAN) is a collective Franciscan voice seeking to transform United States public policy related to peace making, care for creation, poverty, and human rights. We are an advocacy voice for over 50 different Franciscan institutions across the United States.

The Franciscan Action Network sees the interconnectedness of all creation and the common origin of humanity as rooted in God's loving design for the earth and all people. Recognizing this fundamental goodness of God through the act of creation, FAN counters the social sinfulness that persistently compromises God's hopes, through a clarion call to conversion. It is through continual conversion that the cry of the earth and the cry of the poor can be heard in their authenticity and understood in a way that leads us to re-discover our original goodness, both personally and collectively. Through this process of continual conversion, we discover ourselves as co-creators, with God and others, thereby realizing a world where people and plant cherish a common inherent dignity, encourage social goodness, and live in just prosperity.

With this vision in mind, FAN has taken the lead on an interfaith coalition, "Faithful Democracy" looking at the issue of money in politics. The coalition looks at this issue from both a faith and legislative perspective, using the issues of the environment, gun violence prevention, and immigration/private prisons as catalysts.

The Gospel of Matthew tells us that we must not serve God and money. It is imperative that for a fully functioning and representative government of all Americans that we institute reforms in the areas of campaign finance, voting rights, and good governance. As Pope Francis reminds us to "meddle in politics" we're reminded that that means that all Americans must have an equal say in the public square.

Our faith teaches us that we must recognize each person as a gift from God, and that we must emphasize the importance of the essential humanity and dignity of each person.

We know that we cannot fix the issues that we advocate with those on the margins such as poverty, immigration, the environment, and gun violence until we fix our democracy.

Therefore, we call on the House of Representatives pass HR1 without delay or obstruction.

HR1 is an essential reform for our democracy that will help to ensure that all Americans have an equal say in our government. As advocates for justice we applaud HR1 and look forward to its passage.

Sincerely,

Franciscan Action Network
PO BOX 29106, Washington, D.C. 20017
info@franciscanaction.org
(202) 527-7575

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Washington, DC 20005

CALL: 202.216.9723
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29 January 2019

The Honorable Jerrold Nadler
Chairman
House Judiciary Committee
2132 Rayburn Building
Washington, DC 20515

The Honorable Doug Collins
Ranking Member
House Judiciary Committee
1504 Longworth House Office Building
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Collins:

Truman National Security Project is a nationwide, membership organization of policy professionals, political leaders, veterans, and frontline civilians who advocate for a strong, smart, and progressive vision of American leadership in the world. On behalf of Truman Project, I write to you today in favor of H.R. 1, also known as the For the People Act.

As a generation of leaders who came into our careers through the post-9/11 landscape, the Truman community has a whole-of-government approach to national security. While military hardware and readiness are essential to our being safe at home and a leader in the world, we recognize that having a functioning and transparent democracy is equally important—both for crafting policy outcomes that make us safe and ensuring that we set a strong moral example for our allies and partners abroad.

Truman understands H.R. 1 as an essential piece of legislation because American democracy is in disrepair. From the pervasive influence of money in politics to regressive policies designed to disenfranchise specific groups of voters, we face a crisis that requires urgent attention. Moreover, there must be no mistake that this crisis has implications for our national security.

Our national security is at risk when dark money super PACs can be funded by anyone inside or outside of the United States with no accountability. Our national security is at risk when election security infrastructure across the nation is underfunded and not subjected to appropriate oversight. And our national security is at risk when digital media platforms, which are

increasingly used for political advertisements, are not required to disclose the amount of money spent on those ads or identify the spenders themselves.

Our broken system has made us a target of rivals and adversaries abroad, who seek to exploit our vulnerabilities and influence our politics and policies. There is no disputing the risk of such foreign interference: It is, after all, the unanimous and public judgement of the U.S. intelligence community that Russia intervened in the 2016 presidential election to the benefit of then-candidate Trump. We know Russia was active in the 2018 midterms as well, and in the absence of meaningful pushback from this administration, will likely be so again in 2020 and beyond.

H.R. 1 is the package of democracy reform measures that we need to shore up these vulnerabilities. But beyond these specific fixes, Truman recognizes that any effort at democracy reform that drives power to citizens, increases transparency, and pushes back against corruption is one that will ultimately strengthen our nation. Accordingly, we are grateful to the committee for making this legislation a top priority and look forward to further legislative action on this critical bill. Truman Project stands ready to continue fighting for a more robust democracy so that America can protect our institutions at home and continue to lead with our values abroad.

Very Respectfully,

Bishop Garrison
Interim Executive Director
Truman National Security Project

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

January 29, 2019

Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I write concerning H.R. 1, the "For the People Act of 2019," on which your committee has announced a hearing today, January 29, 2019. The bill addresses a broad range of issues related to voting, campaign finance, and ethics, most of which do not directly affect the Federal Judiciary. Although the Federal Judiciary has not yet had an opportunity to study fully all provisions of the bill, and the Judicial Conference has not taken a position on this specific bill (but has opposed certain language in it that appears in previous bills), there are three areas of concern in the bill that we would like to bring to your attention in the hope that you would consider modifying the bill accordingly. I respectfully request that you include this letter in the hearing record.

Judicial Code of Conduct

Section 7001 directs the Judicial Conference to issue a code of conduct which applies to each justice and judge of the United States. This language is identical to Section 201 of H.R. 6755, which was introduced last September in the 115th Congress. A code of conduct already exists for federal judges and to that extent this provision is redundant. Moreover, it would not be appropriate for the Judicial Conference to design or administer such a code for justices; the Judicial Conference does not oversee the Supreme Court and does not have expertise to craft a code for their use. For these reasons, in 2018, the Judicial Conference of the United States opposed identical language in Section 201 of H.R. 6755, or similar legislation, to the extent it requires the Judicial Conference to issue a code of conduct for each justice and judge of the United States.

Regarding the application of a code of conduct to the Supreme Court, Chief Justice Roberts in his 2011 Year-End Report on the Federal Judiciary stated clearly that "[a]ll Members of the Court do in fact consult the Code of Conduct [for United States

Judges] in assessing their ethical obligations. In this way, the Code plays the same role for the Justices as it does for all other federal judges...."

Notification of Restoration of Voting Rights

Section 1404 establishes the requirement and process for notifying certain individuals of their right to register and to vote in certain elections. Subsection (b)(2)(A)(i) designates notification "by the Assistant Director for the Office of Probation and Pretrial Services of the Administrative Office of the United States Courts." This position does not currently exist within the Administrative Office of the U.S. Courts (AO). Moreover, because of the way federal probation offices are organized within the judicial branch, we are doubtful that any other AO official would be the best repository for this responsibility. We would be pleased to work with Committee staff to draft suitable alternative language for this subsection. One possibility would be to require notification by the chief probation officer for the district in which the individual is received for supervision, or his or her designee, on the date on which the individual is first required to report to the probation office after sentencing.

Redistricting Reform

Subtitle E of Title II of H.R. 1 would create new requirements for congressional redistricting, including a mandate for the development of a redistricting plan by the United States District Court for the District of Columbia for any state that fails to satisfy new requirements. The Judicial Conference has not had the opportunity to analyze fully the proposed legislation nor to study the challenges of its implementation or operational impact. After an initial review, however, we can identify several preliminary concerns.

A jurisdictional ambiguity in section 2432 raises concern. Subsection (a) provides for a civil enforcement action filed "in an appropriate district court" by the attorney general or a citizen for appropriate relief. Subsection (b), however, under the heading of "Expedited Consideration," provides that any action under the "section" (rather than the "subsection") must be filed in the District Court for the District of Columbia.

The Judicial Conference generally has objected to the creation of specialized courts or the concentration of certain subject matter review in one court, recommending that judicial review be provided by a court in the appropriate geographic region. If Subtitle E requires review of all objections to state redistricting plans throughout the country, as well as the original development of a plan upon state failure to develop one, in the District Court for the District of Columbia, it would conflict with the Judicial Conference's general position on judicial review within the appropriate geographic region.

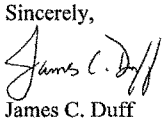
A jurisdictional grant to the District Court for the District of Columbia to develop redistricting plans for any state that fails to do so also appears to raise federalism concerns as it removes jurisdiction over redistricting from the relevant geographic region, particularly since the proposed criteria for development of redistricting plans under section 2413 are distinctly local in procedure and substance.

Finally, there is a concern that the proposed legislation may require the District Court of the District of Columbia to act outside its jurisdictional grant under the Constitution. It is difficult to identify an Article III "case or controversy" that would exist in the situations where H.R. 1 would trigger the court's responsibility to develop a state redistricting. Placing such responsibility on a federal court in the manner proposed in H.R. 1 might also raise federalism concerns as a usurpation of the states' traditional legislative function. At a minimum, such questions about constitutionality could result in complicating litigation that would run counter to the drafters' apparent interest in expedited proceedings.

To the extent H.R. 1 would require the Judiciary to undertake any of the aforementioned new responsibilities, additional staffing and resources would be needed to support those new operations.

Thank you for considering our preliminary views on this legislation. We may communicate again with Congress regarding this legislation after the Conference is able to give it more thorough study. If we may be of further assistance to you in this or any other matter, please do not hesitate to contact me or the Office of Legislative Affairs, Administrative Office of the U.S. Courts, at (202) 502-1700.

Sincerely,



James C. Duff
Secretary

Identical letter sent to: Honorable Doug Collins

Statement for the Record

In Support of H.R. 1, For the People Act of 2019

January 29, 2019

Submitted to the House Committee on the Judiciary

Dear Chairman Nadler, Ranking Member Collins, and Members of the Committee,

Our organizations represent a diverse set of interests and have differing mandates and areas of focus, but we coalesce together around a shared goal of swiftly advancing the For the People Act, H.R. 1, as a bold and comprehensive package. We welcome the opportunity to offer our support before this committee.

We are members of the Declaration for American Democracy coalition, which seeks fundamental democracy reforms to create a government that is reflective, responsive and accountable. Our organizations applaud the committee for quickly turning its attention to this landmark legislation.

We believe it is essential for the House to act quickly to pass bold democracy reforms and to demonstrate a holistic approach in addressing a series of fundamental problems facing our democracy. We also believe the House must ensure that H.R. 1 is not weakened or divided in the process, and that it pass as a strong, comprehensive package of reforms.

The Declaration for American Democracy coalition believes:

- A strong democracy is one where voting is a fundamental right and a civic responsibility.
- A strong democracy serves the people rather than the private interests of public officials and wealthy political donors.
- A strong democracy is one where our influence is based on the force of ideas, not the size of our wallets.
- A strong democracy is one where people know who is trying to gain influence over our representatives, who is trying to influence our votes, and how and why policy is being made.
- A strong democracy works to respond to the needs of all people and their communities, building trust in governance and equity.

H.R.1 includes reforms essential to fixing our political system, including voting rights, money-in-politics, redistricting and government ethics reforms. These reforms are

interdependent on one another and must be addressed holistically if we are to truly address the threats to democracy.

Further, passing H.R. 1 as a bold and comprehensive package as the first order of business unlocks further potential to advance other legislative items in the session. By demonstrating that creating a democracy that is inclusive of and responsive to every American is the top priority, the House can help to shore up support for subsequent reforms.

A *Wall Street Journal/NBC News* poll[1] in advance of the 2018 midterm elections found that 77 percent of surveyed registered voters agreed that "Reducing the influence of special interests and corruption in Washington" is either the most important or a very important issue facing the country.

This was reflected by the views of 47 newly-elected Members who were among 107 Democratic challengers to write[2] during the campaign urging that sweeping reforms "be the very first item Congress addresses." Many successful midterm campaigns centered the importance of bold democracy reforms, and voters who ushered in the new Congress now expect that the House deliver on those promises.

The American people know that Washington is not representing their best interests when millions of eligible voters cannot vote because they are not properly registered, when voting laws are used to disenfranchise millions of Americans, and when citizens are improperly purged from voter rolls. They recognize that specific communities are disproportionately targeted for voter suppression, including young people, communities of color, and LGBTQ+ individuals.

The American people know that Washington is not representing their best interests when wealthy Americans give huge contributions to Super PACs and dark money groups to influence our elections and to buy influence over government policies, at the great expense of ordinary Americans who are not empowered in the political process.

The American people know that Washington is not representing their best interests when congressional districts are drawn to achieve highly partisan results at the expense of fair representation – when representatives choose their voters rather than voters choosing their representatives.

The American people know that Washington is not representing their best interests when government ethics rules have major flaws that allow public office to be used for private gain, when they permit there to be a revolving door between government

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[1] "Corruption in Washington is a Top Concern for Voters, WSJ/NBC News Poll Shows," *Wall Street Journal*, Sept. 24, 2018, https://www.wsj.com/livecoverage/campaign-wire-2018-midterms/card/1537810213.

[2] http://endcitizensunited.org/wp-content/uploads/2018/10/A-Letter-for-Reform.pdf

positions and private interests and when ethics rules are not subject to proper oversight and enforcement.

And the American people know that these problems result in a rigged system in Washington that is blocking substantive policies of great importance to ordinary Americans, such as more affordable healthcare, lower prescription drug prices, a fairer tax system and the like.

We call on you to quickly advance H.R. 1 as a strong and holistic package.

The 116th Congress has a historic opportunity to repair our broken political system and strengthen the integrity of our democracy, and we strongly urge the House to seize this moment.

Sincerely,

American Oversight

Blue Future + the Youth Progressive Action Catalyst

Brave New Films

Campaign for Accountability

Center for American Progress

Clean Elections Texas

Coalition to Preserve, Protect & Defend

Common Cause

Communications Workers of America (CWA)

Democracy 21

Democracy Matters

End Citizens United Action Fund

Every Voice

Franciscan Action Network

Indivisible

League of Conservation Voters

League of Women Voters

Let America Vote

MAYDAY America

MomsRising

National Association of Social Workers (NASW)

National Council of Jewish Women

National Redistricting Action Fund

NETWORK Lobby for Catholic Social Justice

Network of Spiritual Progressives

Our Revolution

Patriotic Millionaires

People For the American Way

People's Action Institute

Progressive Turnout Project

Public Citizen

Sierra Club

Stand Up America

Tikkun

Truman National Security Project

Union of Concerned Scientists

Unitarian Universalist Association

URGE: Unite for Reproductive and Gender Equity

Voices for Progress

MS. LOFGREN FOR THE OFFICIAL RECORD

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The Honorable Jerrold Nadler
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Doug Collins
Ranking Member
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Collins:

On behalf of the Brennan Center for Justice at New York University School of Law, a non-partisan law and policy institute that works to improve our nation's systems of democracy and justice, we write in strong support of the For the People Act of 2019 (the "Act"), which the Committee is considering today. [1] The Act represents a much needed, and long overdue, effort to improve our nation's democracy, including provisions to protect and expand voting rights, end partisan gerrymandering, fix our nation's system for funding political campaigns, and strengthen ethics laws aimed at curbing government corruption.

The Brennan Center strongly supports the entire Act. In addition to the measures that are the subject of today's hearing, the Act contains many other vitally important reforms, including automatic and same-day voter registration,[2] nationwide early voting,[3] a small donor matching system and other important campaign finance reforms, [4] and much-needed election security enhancements.[5] We look forward to the opportunity to expand on our support for these and other critical provisions at the appropriate time.

This submission focuses on the provisions that are the subject of today's hearing: the clear commitment to restore the full protections of the Voting Rights Act (Title II, Subtitle A); the

[1] This letter does not purport to convey the views, if any, of the New York University School of Law.
[2] According to the nonpartisan hotline Election Protection, voter registration problems were the second most common reported issue in both 2018 and 2016. *See* Laura Grace and Morgan Conley, *Election Protection 2018 Midterm Elections Preliminary Report*, Lawyers' Committee for Civil Rights Under Law, 2018, 4, https://lawyerscommittee.org/wp-content/uploads/2018/12/Election-Protection-Preliminary-Report-on-the-2018-Midterm-Elections.pdf. *See also* Wendy Weiser and Alicia Bannon, *Democracy: An Election Agenda for Candidates, Activists, and Legislators*, Brennan Center for Justice, 2018, 6, *at* https://www.brennancenter.org/sites/default/files/publications/2018_05_Agendas_DEmocracy_FINALpdf.pdf; Walter Shapiro, "Election Day Registration Could Cut Through many of the Arguments in the Voting Wars," *Brennan Center for Justice*, Oct. 16, 2018, https://www.brennancenter.org/blog/election-day-registration-could-cut-through-many-arguments-voting-wars.
[3] *See* Weiser and Bannon, *Democracy*, 7.
[4] *See* Weiser and Bannon, *Democracy*, 20, 23, 25.
[5] *See* Weiser and Bannon, *Democracy*, 15.

Deceptive Practices and Voter Intimidation Act of 2019 (Title I, Subtitle D); the Democracy Restoration Act of 2019 (Title I, Subtitle E); the Redistricting Reform Act of 2019 (Title II, Subtitle E); the commitment to reverse the Supreme Court's evisceration of campaign finance laws in *Citizens United* (Title V, Subtitle A); and several provisions designed to strengthen government ethics (Title VII). All of these measures deserve to be top priorities for Congress. We address each briefly in turn:

Restoring and Updating the Voting Rights Act

As recent experience makes clear, there is a critical need for Congress to restore the full protections of the Voting Rights Act ("VRA"). The VRA is the single most effective piece of civil rights legislation in our nation's history. As recently as 2006 it won reauthorization with overwhelming bipartisan support. For nearly five decades, the linchpin of the VRA's success was the Section 5 pre-clearance provision, which required certain states with a history of discriminatory voting practices to obtain pre-implementation approval from the federal government for any voting rules changes. In 2013, however, the U.S. Supreme Court eviscerated this provision in *Shelby County v. Holder*, by striking down the "coverage formula" that determined which states were subject to pre-clearance.[6]

That decision resulted in a predictable flood of discriminatory voting rules, contributing to a now decade-long trend in the states of restrictive voting laws, which the Brennan Center has documented extensively.[7] Within hours of the Court's decision, Texas announced that it would implement what was then the nation's strictest voter identification law—a law that had previously been denied preclearance because of its discriminatory impact.[8] Shortly afterward, several additional states moved forward with restrictive voting changes.[9] In the years since, federal courts have repeatedly found that new laws passed after *Shelby* made it harder for minorities to vote, some intentionally so.[10] Our research regarding last year's election confirmed the persistence and pliability of voter suppression. States and counties undertook a variety of measures, from new restrictions on registration to reductions in early voting opportunities to

[6] Shelby County v. Holder, 570 U.S. 529 (2013).
[7] *See* Wendy R. Weiser and Lawrence Norden, *Voting Law Changes in 2012*, Brennan Center for Justice, 2011, *at* http://www.brennancenter.org/publication/voting-law-changes-2012; Wendy R. Weiser and Max Feldman, *The State of Voting 2018*, Brennan Center for Justice, 2018, *at* http://www.brennancenter.org/publication/state-voting-2018; "New Voting Restrictions in America," Brennan Center for Justice, accessed Jan. 1, 2019, https://www.brennancenter.org/new-voting-restrictions-america; "Voting Laws Roundup 2019," Brennan Center for Justice, last modified Jan. 23, 2019, https://www.brennancenter.org/analysis/voting-laws-roundup-2019.
[8] *See generally* "Texas NAACP v. Steen (consolidated with Veasey v. Abbott)," Brennan Center for Justice, last modified Sept. 21, 2018, https://www.brennancenter.org/legal-work/naacp-v-steen. In the past week, the Texas Secretary of State and Attorney General have suggested that there is widespread voter and voter registration fraud in their state, based on a match between their driver's license database and their voter rolls. Texas officials have regularly invoked the specter of voter fraud to support more restrictive voting laws. These new claims should be treated with serious suspicion. Several states have previously made similar allegations of large-scale voter fraud, with great fanfare, only for the subsequent investigation to show that such fraud was nearly non-existent.
[9] Tomas Lopez, "'Shelby County': One Year Later," *Brennan Center for Justice*, June 24, 2014, https://www.brennancenter.org/analysis/shelby-county-one-year-later.
[10] *See* Danielle Lang & J. Gerald Hebert, "A Post-*Shelby* Strategy: Exposing Discriminatory Intent in Voting Rights Litigation," *Yale Law Journal Forum* 127 (2017 – 2018): 780 n.4. For example, the Fourth Circuit Court of Appeals found that a 2013 voting law passed by North Carolina targeted African-American voters with "surgical precision." N. Carolina State Conference of NAACP v. McCrory, 831 F.3d 204, 214 (4th Cir. 2016).

large-scale purges of the voter rolls, that made it more difficult for voters to cast a ballot and especially targeted voters of color.[11]

Congress has the power to address these problems, by updating the VRA's coverage formula, examining its coverage, and restoring the VRA to its full power. As this Committee recognizes, any new coverage formula must be supported by a thorough legislative record. We commend the commitment to restoring the VRA reflected in the Act, and we urge Congress to make development of this record and passage of a renewed VRA a top priority.

Combatting Deceptive Practices

Some of the most pernicious attempts to undermine the right to vote do not involve legal changes to the voting process, but rather deception about elections and intimidation at the polls. Unfortunately, these practices are all too widespread. Over the course of multiple election cycles, the Brennan Center has documented numerous instances of deception and intimidation.[12] In 2016, for example, memes bearing Hillary Clinton's image and encouraging people to vote from home by text circulated on Twitter. In the 2017 special election in Alabama, voters in Jefferson County—home to the predominantly Black city of Birmingham—received text messages falsely indicating that their polling site had changed. And we identified multiple incidents of misleading information provided to voters and intimidation of voters at the polls during the 2018 elections.[13] In an analysis for the Brennan Center, for example, University of Wisconsin Professor Young Mie Kim documented hundreds of messages on Facebook and Twitter designed to discourage or prevent people from voting in the 2018 election.[14] These incidents are likely to become even more frequent and widespread in light of the rise of social media, which allows for mass dissemination of deceptive information and more accurate targeting of voters.

The Deceptive Practices and Voter Intimidation Prevention Act of 2019 would ameliorate these problems. This title prohibits attempts to impede or prevent a person from voting or registering to vote—including by making false and misleading statements for that purpose. It provides for additional criminal consequences and empowers citizens to go to court to stop voter deception. Perhaps most importantly, the bill includes innovative provisions to ensure that affected voters receive timely information correcting deceptive information so that it does not prevent them from properly voting. If state and local election officials do not adequately correct the misinformation, this legislation requires the Attorney General to do so. At a time when it is

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[11] *See* Zachary Roth and Wendy R. Weiser, "This Is the Worst Voter Suppression We've Seen in the Modern Era," *Brennan Center for Justice*, Nov. 2, 2018, http://www.brennancenter.org/blog/worst-voter-suppression-weve-seen-modern-era; Rebecca Ayala, "Voting Problems 2018," *Brennan Center for Justice*, Nov. 5, 2018, https://www.brennancenter.org/blog/voting-problems-2018; Weiser and Feldman, *State of Voting 2018*.

[12] *See, e.g.*, Wendy Weiser and Vishal Agraharkar, *Ballot Security and Voter Suppression: What It Is And What the Law Says*, Brennan Center for Justice, 2012, at https://www.brennancenter.org/publication/ballot-security-and-voter-suppression.

[13] *See* Ayala, "Voting Problems 2018"; Sean Morales-Doyle and Sidni Frederick, "Intentionally Deceiving Voters Should Be a Crime," *The Hill*, Aug. 8, 2018, https://thehill.com/opinion/civil-rights/400941-intentionally-deceiving-voters-should-be-a-crime; Wendy R. Weiser and Adam Gitlin, *Dangers of "Ballot Security" Operations: Preventing Intimidation, Discrimination, and Disruption*, Brennan Center for Justice, 2016, *at* https://www.brennancenter.org/sites/default/files/analysis/Briefing_Memo_Ballot_Security_Voter_Intimidation.pdf.

[14] Young Mie Kim, "Voter Suppression Has Gone Digital," *Brennan Center for Justice*, Nov. 20, 2018, https://www.brennancenter.org/blog/voter-suppression-has-gone-digital.

increasingly easy to disseminate false information to prevent citizens from voting, these targeted measures are needed both to stem these voter suppression tactics and to counter their negative effects. The Brennan Center urges Congress to enact them.

Voting Rights Restoration

The Brennan Center also urges Congress to enact the Democracy Restoration Act of 2019 and restore the right to vote to millions of Americans who are excluded from our democratic process because of criminal disenfranchisement laws. Thirty-four states disenfranchise at least some citizens with past criminal convictions, who are living and working in our communities.[15] This policy of disenfranchisement is a brutal and discriminatory relic of the Jim Crow era and a sorry stain on the national conscience.[16] In addition to diminishing our democracy, these laws undermine public safety by making it harder to reintegrate citizens into the community.[17]

Increasingly, Americans across the political spectrum are recognizing the harm caused by these laws and are supporting reform. Over the past two decades, a dozen states have restored voting rights to people with past criminal convictions.[18] Perhaps most dramatically, this past November, Florida voters passed a ballot initiative restoring voting rights to 1.4 million of their fellow residents, with a massive groundswell of bipartisan support—about 65 percent of Florida voters cast a ballot in favor of the measure.[19]

The Democracy Restoration Act builds on this momentum, recognizing that those who have fully paid their debt to society have earned back their right to vote. The legislation adopts a simple and fair rule: if you are out of prison and living in the community, you get to vote. It also requires that states provide written notice to individuals with criminal convictions when their voting rights are restored. These measures offer a second chance at citizenship to Americans who are transitioning back into their communities. The legislation improves our democracy by expanding the franchise to adult citizens living in our communities, advances civil rights by dismantling a discriminatory disenfranchisement system, aids law enforcement by encouraging individuals to participate in civic and community life, and facilitates election administration by reducing the risk of erroneous voter purges.[20] The Brennan Center strongly supports this legislation.

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[15] "Criminal Disenfranchisement Laws Across the United States," Brennan Center for Justice, last modified Dec. 7, 2018, https://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states.

[16] See, e.g., Weiser and Bannon, Democracy, 10; Erika Wood, *Florida: An Outlier in Denying Voting Rights*, Brennan Center for Justice, 2016, *at* https://www.brennancenter.org/publication/florida-outlier-denying-voting-rights.

[17] See, e.g., "About the Law Enforcement & Criminal Justice Advisory Council," *Brennan Center for Justice*, May 1, 2017, https://www.brennancenter.org/analysis/about-law-enforcement-criminal-justice-advisory-council; Carl Wicklund, "Felon voting rights make us all safer," *Lexington Herald Leader*, Mar. 6, 2014, https://www.kentucky.com/opinion/op-ed/article44475018.html. A Florida government study, for example, found that people released from prison whose voting rights were restored were three times less likely to return to the criminal justice system. See Weiser and Bannon, *Democracy*, 10.

[18] Weiser and Bannon, Democracy, 10.

[19] Myrna Pérez, "What Victory in Florida Means to Me," Brennan Center for Justice, Nov. 7, 2018, https://www.brennancenter.org/blog/what-victory-florida-means-me.

[20] *See* Erika Wood, *Restoring the Right to Vote*, Brennan Center for Justice, 2009, *at* https://www.brennancenter.org/sites/default/files/legacy/Democracy/Restoring%20the%20Right%20to%20Vote.pdf.

Redistricting Reform

The Brennan Center also encourages Congress to enact the Redistricting Reform Act of 2019. The need for redistricting reform is urgent. While gerrymandering is not a new phenomenon, the Brennan Center's analyses of this decade's maps has shown that the gerrymanders of this decade are much more extreme and durable than those of the past, locking in outsized advantages for the party in charge that are so unbreakable that not even an unprecedented wave election like 2018 was enough to upend them.[21] In most of the country there has been no judicial or other mechanism to rein these gerrymanders in. Without reform, the problem will only get worse as more sophisticated data and technology come to be used in drawing maps. Furthermore, beyond record levels of extreme partisan bias, this decade's maps have also revealed the limitations of the existing protections of the VRA and the Supreme Court's racial gerrymandering doctrine to protect communities of color.[22]

This legislation effectively combines best redistricting practices to ensure fair, effective, and accountable representation. It would require every state with more than one congressional district to use an independent citizen commission to draw district boundaries. In crafting district maps, these commissions would be required to follow a clear and prioritized set of criteria that put community interests first. And the legislation's transparency and public accountability measures would open up a process that has too often been characterized by backroom deals.

Combatting Citizens United

We also support the Act's findings with respect to *Citizens United*. In a narrow 5-4 vote, *Citizens United* upended a century of precedent to sweep away limits on corporate and union campaign spending.[23] As the Brennan Center has documented, the Court's jurisprudence in this area is at odds with the history and purpose of the First Amendment, and has too often been predicated on unsupported and erroneous factual assumptions.[24] The Court's faulty reasoning has been used to eliminate almost all limits for outside groups, ushering in the super PAC era in which elections are increasingly dominated by a tiny class of the very wealthiest donors.[25] In the 2018 election cycle alone, the 100 top donors to super PACs gave approximately $1 billion.[26] This amplifies both the risk and appearance of corruption in government and the feeling among ordinary citizens that their voices do not matter.

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[21] *See* Laura Royden and Michael Li, *Extreme Maps*, Brennan Center for Justice, 2017, *at* https://www.brennancenter.org/sites/default/files/publications/Extreme%20Maps%205.16.pdf.
[22] *See* Guy-Uriel E. Charles and Luis E. Fuentes-Rohwer, "Race and Representation Revisited: The New Racial Gerrymandering Cases and Section 2 of the VRA," *William and Mary Law Review* 59 (2017): 1559.
[23] Daniel I. Weiner, Citizens United *Five Years Later*, Brennan Center for Justice, 2015, 3, *at* https://www.brennancenter.org/sites/default/files/analysis/Citzens_United_%20Five_Years_Later.pdf.
[24] *See* Daniel I. Weiner and Benjamin T. Brickner, "Electoral Integrity in Campaign Finance Law," *New York University Journal of Legislation and Public Policy* 20 (2017): 101; Lawrence Norden and Iris Zhang, "Fact Check: What the Supreme Court Got Wrong in its Money in Politics Decisions," *Brennan Center for Justice*, Jan. 30, 2017, https://www.brennancenter.org/analysis/scotus-fact-check.
[25] Weiner, Citizens United, 5-6.
[26] "Super PACs: How Many Donors Give," *OpenSecrets.org*, accessed Jan. 9, 2019, https://www.opensecrets.org/outside-spending/donor-stats.

While *Citizens United* has done considerable damage, it is important to remember that many viable campaign finance reforms remain on the table. Small donor matching and the Act's other critical campaign finance reforms will go a long way toward curbing the worst effects of the Court's misguided jurisprudence, and we applaud their inclusion in this historic package of reforms.

Strengthening Government Ethics

Finally, we also support the ethics reforms in the Act, including those in Title VII. The values that undergird our system of representative government are being tested like never before. Ethical constraints on self-dealing at the highest levels of government are eroding.[27] To reverse this process, Congress must put forward bold reforms to help ensure that officials act for the public good rather than private gain. The reforms proposed in the Act are an important first step.[28]

Of particular note, we strongly support the Act's proposal to require the Judicial Conference of the United States to issue a code of conduct applicable to the justices of the Supreme Court. This is a long-overdue, common-sense change.

The Supreme Court is a vital and powerful institution in our democracy, often providing the final word on legal questions of great consequence and serving as a symbol of our democracy's adherence to the rule of law. Public trust in the Court's fairness and legitimacy is central to its authority, but that trust has declined steadily over the last two decades.[29] During this period, nearly every recent justice has received attention for alleged ethical missteps, including participation in partisan events, accepting gifts and travel, or refusing to step aside from cases in which they had significant financial interests.[30] Several of these incidents likely would have been prohibited by the Code of Conduct for United States Judges, which compels other federal judges to avoid conflicts of interest but does not apply to Supreme Court justices.

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[27] Preet Bharara, Christine Todd Whitman, et al., *Proposals for Reform*, National Task Force on Rule of Law and Democracy, 2018, 4-5, *at* https://www.brennancenter.org/sites/default/files/publications/TaskForceReport_2018_09_.pdf.

[28] We urge Congress to build on the reforms included in the Act by taking up other measures at the appropriate time, including stronger protections against presidential conflicts of interest, reforms to ethics transparency rules, codification of the safeguards in the Foreign and Domestic Emoluments clauses, and creation of a special process for uncovering potential conflicts of interest related to national security. *See* Bharara, Whitman, et al., *Proposals*, 2; Daniel I. Weiner, *Strengthening Presidential Ethics Law*, Brennan Center for Justice, 2017, 2, *at* https://www.brennancenter.org/sites/default/files/publications/Strengthening%20Presidential%20Ethics%20Law.%20Daniel%20Weiner.pdf.

[29] Justin McCarthy, "Women's Approval of SCOTUS Matches 13-Year Low Point," *Gallup*, Sept. 28, 2018, https://news.gallup.com/poll/243266/women-approval-scotus-matches-year-low-point.aspx.

[30] *See*, e.g., "The Justice's Junkets," *Washington Post*, Feb 20, 2011, http://www.washingtonpost.com/wp-dyn/content/article/2011/02/20/AR2011022002961.html; Adam Liptak, "Justices Disclose Privately Paid Trips and Gifts," *New York Times*, Jun. 22, 2016, https://www.nytimes.com/2016/06/23/us/politics/justices-disclose-privately-paid-trips-and-gifts.html; Elizabeth Warren, "The Supreme Court Has An Ethics Problem," *Politico*, Nov. 1, 2017, https://www.politico.com/magazine/story/2017/11/01/supreme-court-ethics-problem-elizabeth-warren-opinion-215772.

Requiring the Judicial Conference to develop a code of conduct applicable to Supreme Court justices is a modest step that is consistent with past exercises of congressional power.[31] We also agree that deference to the Judicial Conference regarding the substance of new ethics rules and the mechanisms for enforcing them is appropriate.[32]

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Taken together, the measures the Committee is considering today, coupled with the other provisions of the Act, have the potential to transform American democracy. The Brennan Center strongly supports these reforms and encourages Congress to enact them as expeditiously as possible.

Respectfully submitted,

/s/ Wendy R. Weiser__

Wendy R. Weiser, *Director, Democracy Program*
Myrna Pérez, *Deputy Director, Democracy Program*
Daniel I. Weiner, *Senior Counsel, Democracy Program*
Max Feldman, *Counsel, Democracy Program*
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[31] Supreme Court justices are already subject to several statutory ethics rules, including requirements that they step aside from cases in which they may not appear impartial, and restrictions on outside employment, honoraria and gifts. *See* 28 U.S.C. § 455; 5 U.S.C. § 7353(a)(2). A justice's failure to file annual financial disclosures can result in civil or criminal penalties. *See* 5 U.S.C. app. 4 § 104.

[32] We emphasize that the judicial branch need not wait for congressional action to adopt ethics rules, nor is it limited to Section 7001's provision extending the code of conduct to Supreme Court justices. We hope the Judicial Conference and the Court will take this opportunity to not only extend the code of conduct but also take additional steps to preserve the public's confidence in the Supreme Court, including requiring independent consideration of motions for justices to recuse themselves from cases, and providing transparency as to the reasons for the denial of recusal motions. *See* Matthew Menendez and Dorothy Samuels, *Judicial Recusal Reform: Toward Independent Consideration of Disqualification*, Brennan Center for Justice, 2016, https://www.brennancenter.org/sites/default/files/publications/Judicial_Recusal_Reform.pdf.

Ms. LOFGREN. Okay, very good. Thank you very much.

I think this is an important hearing. You know, the American people feel that the political system is rigged against them and that their vote doesn't count or might not matter. And there is nothing more destructive to our democracy than that sense.

And H.R. 1 is intended to make serious reforms so people don't have to believe that, and it also will not be true. And as we think through how we are going to proceed, there are parts of this act that are within the jurisdiction of the Judiciary Committee; some in the jurisdiction of the House Administration Committee, which I chair; also the Homeland Security Committee. So we are all working very hard to have hearings and to refine the act.

It has been interesting to listen to the testimony relative to our constitutional authority, and I really thought about our jurisdiction in two ways. One, to protect the rights of minorities under the Fourteenth Amendment, but also Article I, Section 4 of the Constitution, which is jurisdiction that has rarely been exercised, frankly, which says this. "The times, places, and manner of holding elections for Senators and representatives shall be prescribed in each State by the legislature thereof. But the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators," which, obviously, has now been obviated by the change in choosing Senators.

So we have, I mean, a substantial grant of authority, and it is not instead of. I mean, the Voting Rights Act protects voting rights whether you are voting for city council or school board. But as to Federal elections, we have really substantial authority, and I think there are reasons beyond the issue of protecting minority rights to exercise this authority.

I mean, we already have a situation because of the way our Constitution is set up, that the voters in California, when they cast their vote for Senator, their vote is worth way less than the vote of somebody in, you know, Vermont or Wyoming. So that is just part of the Constitution.

But when it comes to representation in the House, to further enhance disparity between the voting rights of individual American citizens to elect their own representatives by, for example, making it harder to register in one State than another or limiting how you can stay registered through purges, I mean, that really just has to do with disparity and the rights of Americans. And it is important that each one of us here in the House of Representatives has one vote. We go to the floor.

So we want to make sure to the maximum extent possible that each American when they vote for whoever their representative is has the same opportunity to cast that vote. So I think that is an independent basis. We are doing the Voting Rights Act hearings. We are having a number of hearings, both in the Judiciary Committee and House Administration, on the need for the Voting Rights Act to be updated, but there is this independent obligation that we have.

I am wondering, Ms. Gupta, if you—apparently—and he will correct me, I am sure, if I have misread his statement. But Mr. von Spakovsky seems to say in his testimony that the Fourteenth

Amendment limits Article 1, Section 4 authority. Do you agree with that?

Ms. GUPTA. The constitutional bases for Congress' jurisdiction to ensure democratic participation and voting rights is clear as to those two provisions that you just mentioned. I think it is really crucial to remember, and Mr.—two of my colleagues at this panel made a lot about this—the fact that they believe H.R. 1 is inappropriately federalizing elections. This is, as Ms. Ifill has said, part of a long line that is used often with the enactment of civil rights legislation.

It has been used to try to advocate against the Voting Rights Act, the Fair Housing Act, and the like. The reality actually is that H.R. 1 is bringing together a lot of laws and policies that States have actually enacted and experimented with, red and blue, from automatic voter registration to Election Day registration and the like.

And the reality is H.R. 1 actually recognizes the need to support State and local election officials as they conduct their elections. It is not federalizing elections. There is actually appropriations to try to give them the resources to build the kinds of 21st century systems that we deserve. And H.R. 1 is rooted, as you said, in the two constitutional provisions. Congress has clear authority to ensure that the Fourteenth Amendment is not violated and to ensure through Article I and Section 4 that everyone's vote can be counted.

There is—there are over 13,000 election jurisdictions in our country, and elections can be run in a multitude of ways. But it is clear that Congress has the authority to make sure that civil rights are not violated in the course of running these elections and that there are equitable national standards to guide how this is done, and that is exactly what H.R. 1 does.

Ms. LOFGREN. Thank you. My time has expired.

Chairman NADLER. I thank the gentlelady.

Before I recognize Mr. Gohmert, I recognize the ranking member for a unanimous consent request.

Mr. COLLINS. Thank you, Mr. Chairman.

I just want to enter into the record the Supreme Court case Arizona v. Inter Tribal Council. Because I don't believe that Ginsburg, Breyer, Sotomayor, or Kagan would have ignored Thirteenth, Fourteenth, and Fifteenth Amendment.

Chairman NADLER. You are asking unanimous consent to——

Mr. COLLINS. Enter into the record.

Chairman NADLER. Without objection, so ordered.

[The information follows:]

MR. COLLINS FOR THE OFFICIAL RECORD

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ARIZONA ET AL. *v.* INTER TRIBAL COUNCIL OF ARIZONA, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12–71. Argued March 18, 2013—Decided June 17, 2013

The National Voter Registration Act of 1993 (NVRA) requires States to "accept and use" a uniform federal form to register voters for federal elections. 42 U. S. C. §1973gg–4(a)(1). That "Federal Form," developed by the federal Election Assistance Commission (EAC), requires only that an applicant aver, under penalty of perjury, that he is a citizen. Arizona law, however, requires voter-registration officials to "reject" any application for registration, including a Federal Form, that is not accompanied by documentary evidence of citizenship. Respondents, a group of individual Arizona residents and a group of nonprofit organizations, sought to enjoin that Arizona law. Ultimately, the District Court granted Arizona summary judgment on respondents' claim that the NVRA pre-empts Arizona's requirement. The Ninth Circuit affirmed in part but reversed as relevant here, holding that the state law's documentary-proof-of-citizenship requirement is pre-empted by the NVRA.

Held: Arizona's evidence-of-citizenship requirement, as applied to Federal Form applicants, is pre-empted by the NVRA's mandate that States "accept and use" the Federal Form. Pp. 4–18.

(a) The Elections Clause imposes on States the duty to prescribe the time, place, and manner of electing Representatives and Senators, but it confers on Congress the power to alter those regulations or supplant them altogether. See *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 804–805. This Court has said that the terms "Times, Places, and Manner" "embrace authority to provide a complete code for congressional elections," including regulations relating to "registration." *Smiley* v. *Holm*, 285 U. S. 355, 366. Pp. 4–6.

(b) Because "accept and use" are words "that can have more than

one meaning," they "are given content . . . by their surroundings." *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 466. Reading "accept" merely to denote willing receipt seems out of place in the context of an official mandate to accept and use something for a given purpose. The implication of such a mandate is that its object is to be accepted as sufficient for the requirement it is meant to satisfy. Arizona's reading is also difficult to reconcile with neighboring NVRA provisions, such as §1973gg–6(a)(1)(B) and §1973gg–4(a)(2).

Arizona's appeal to the presumption against pre-emption invoked in this Court's Supremacy Clause cases is inapposite. The power the Elections Clause confers is none other than the power to pre-empt. Because Congress, when it acts under this Clause, is always on notice that its legislation will displace some element of a pre-existing legal regime erected by the States, the reasonable assumption is that the text of Elections Clause legislation accurately communicates the scope of Congress's pre-emptive intent.

Nonetheless, while the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form, it does not preclude States from "deny[ing] registration based on information in their possession establishing the applicant's ineligibility." Pp. 6–13.

(c) Arizona is correct that the Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them. The latter is the province of the States. See U. S. Const., Art. I, §2, cl. 1; Amdt. 17. It would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications. The NVRA can be read to avoid such a conflict, however. Section 1973gg–7(b)(1) permits the EAC to include on the Federal Form information "necessary to enable the appropriate State election official to assess the eligibility of the applicant." That validly conferred discretionary executive authority is properly exercised (as the Government has proposed) to require the inclusion of Arizona's concrete-evidence requirement if such evidence is necessary to enable Arizona to enforce its citizenship qualification.

The NVRA permits a State to request the EAC to include state-specific instructions on the Federal Form, see 42 U. S. C. §1973gg–7(a)(2), and a State may challenge the EAC's rejection of that request (or failure to act on it) in a suit under the Administrative Procedure Act. That alternative means of enforcing its constitutional power to determine voting qualifications remains open to Arizona here. Should the EAC reject or decline to act on a renewed request, Arizona would have the opportunity to establish in a reviewing court that a mere oath will not suffice to effectuate its citizenship requirement and that the EAC is therefore under a nondiscretionary duty to in-

clude Arizona's concrete-evidence requirement on the Federal Form. Pp. 13–17.

677 F. 3d 383, affirmed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined, and in which KENNEDY, J., joined in part. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment. THOMAS, J., and ALITO, J., filed dissenting opinions.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 12–71

ARIZONA, ET AL., PETITIONERS *v.* THE INTER TRIBAL COUNCIL OF ARIZONA, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 17, 2013]

JUSTICE SCALIA delivered the opinion of the Court.

The National Voter Registration Act requires States to "accept and use" a uniform federal form to register voters for federal elections. The contents of that form (colloquially known as the Federal Form) are prescribed by a federal agency, the Election Assistance Commission. The Federal Form developed by the EAC does not require documentary evidence of citizenship; rather, it requires only that an applicant aver, under penalty of perjury, that he is a citizen. Arizona law requires voter-registration officials to "reject" any application for registration, including a Federal Form, that is not accompanied by concrete evidence of citizenship. The question is whether Arizona's evidence-of-citizenship requirement, as applied to Federal Form applicants, is pre-empted by the Act's mandate that States "accept and use" the Federal Form.

I

Over the past two decades, Congress has erected a complex superstructure of federal regulation atop state voter-registration systems. The National Voter Registration Act of 1993 (NVRA), 107 Stat. 77, as amended, 42

U. S. C. §1973gg *et seq.,* "requires States to provide simplified systems for registering to vote in *federal* elections." *Young* v. *Fordice,* 520 U. S. 273, 275 (1997). The Act requires each State to permit prospective voters to "register to vote in elections for Federal office" by any of three methods: simultaneously with a driver's license application, in person, or by mail. §1973gg–2(a).

This case concerns registration by mail. Section 1973gg–2(a)(2) of the Act requires a State to establish procedures for registering to vote in federal elections "by mail application pursuant to section 1973gg–4 of this title." Section 1973gg–4, in turn, requires States to "accept and use" a standard federal registration form. §1973gg–4(a)(1). The Election Assistance Commission is invested with rulemaking authority to prescribe the contents of that Federal Form. §1973gg–7(a)(1); see §15329.[1] The EAC is explicitly instructed, however, to develop the Federal Form "in consultation with the chief election officers of the States." §1973gg–7(a)(2). The Federal Form thus contains a number of state-specific instructions, which tell residents of each State what additional information they must provide and where they must submit the form. See National Mail Voter Registration Form, pp. 3–20, online at http://www.eac.gov (all Internet materials as visited June 11, 2013, and available in Clerk of Court's case file); 11 CFR §9428.3 (2012). Each state-specific instruction must be approved by the EAC before it is included on the Federal Form.

To be eligible to vote under Arizona law, a person must be a citizen of the United States. Ariz. Const., Art. VII, §2; Ariz. Rev. Stat. Ann. §16–101(A) (West 2006). This case concerns Arizona's efforts to enforce that qualification. In

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[1]The Help America Vote Act of 2002 transferred this function from the Federal Election Commission to the EAC. See §802, 116 Stat. 1726, codified at 42 U. S. C. §§15532, 1973gg–7(a).

2004, Arizona voters adopted Proposition 200, a ballot initiative designed in part "to combat voter fraud by requiring voters to present proof of citizenship when they register to vote and to present identification when they vote on election day." *Purcell* v. *Gonzalez*, 549 U. S. 1, 2 (2006) (*per curiam*).[2] Proposition 200 amended the State's election code to require county recorders to "reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship." Ariz. Rev. Stat. Ann. §16–166(F) (West Supp. 2012). The proof-of-citizenship requirement is satisfied by (1) a photocopy of the applicant's passport or birth certificate, (2) a driver's license number, if the license states that the issuing authority verified the holder's U. S. citizenship, (3) evidence of naturalization, (4) tribal identification, or (5) "[o]ther documents or methods of proof . . . established pursuant to the Immigration Reform and Control Act of 1986." *Ibid.* The EAC did not grant Arizona's request to include this new requirement among the state-specific instructions for Arizona on the Federal Form. App. 225. Consequently, the Federal Form includes a statutorily required attestation, subscribed to under penalty of perjury, that an Arizona applicant meets the State's voting requirements (including the citizenship requirement), see §1973gg–7(b)(2), but does not require concrete evidence of citizenship.

The two groups of plaintiffs represented here—a group of individual Arizona residents (dubbed the Gonzalez plaintiffs, after lead plaintiff Jesus Gonzalez) and a group of nonprofit organizations led by the Inter Tribal Council of Arizona (ITCA)—filed separate suits seeking to enjoin the voting provisions of Proposition 200. The District

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[2] In May 2005, the United States Attorney General precleared under §5 of the Voting Rights Act of 1965 the procedures Arizona adopted to implement Proposition 200. *Purcell,* 549 U. S., at 3.

Court consolidated the cases and denied the plaintiffs' motions for a preliminary injunction. App. to Pet. for Cert. 1g. A two-judge motions panel of the Court of Appeals for the Ninth Circuit then enjoined Proposition 200 pending appeal. *Purcell,* 549 U. S., at 3. We vacated that order and allowed the impending 2006 election to proceed with the new rules in place. *Id.,* at 5–6. On remand, the Court of Appeals affirmed the District Court's initial denial of a preliminary injunction as to respondents' claim that the NVRA pre-empts Proposition 200's registration rules. *Gonzales* v. *Arizona,* 485 F. 3d 1041, 1050–1051 (2007). The District Court then granted Arizona's motion for summary judgment as to that claim. App. to Pet. for Cert. 1e, 3e. A panel of the Ninth Circuit affirmed in part but reversed as relevant here, holding that "Proposition 200's documentary proof of citizenship requirement conflicts with the NVRA's text, structure, and purpose." *Gonzales* v. *Arizona,* 624 F. 3d 1162, 1181 (2010). The en banc Court of Appeals agreed. *Gonzalez* v. *Arizona,* 677 F. 3d 383, 403 (2012). We granted certiorari. 568 U. S. ___ (2012).

II

The Elections Clause, Art. I, §4, cl. 1, provides:

> "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators."

The Clause empowers Congress to pre-empt state regulations governing the "Times, Places and Manner" of holding congressional elections. The question here is whether the federal statutory requirement that States "accept and use" the Federal Form pre-empts Arizona's state-law require-

ment that officials "reject" the application of a prospective voter who submits a completed Federal Form unaccompanied by documentary evidence of citizenship.

A

The Elections Clause has two functions. Upon the States it imposes the duty ("*shall* be prescribed") to prescribe the time, place, and manner of electing Representatives and Senators; upon Congress it confers the power to alter those regulations or supplant them altogether. See *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 804–805 (1995); *id.*, at 862 (THOMAS, J., dissenting). This grant of congressional power was the Framers' insurance against the possibility that a State would refuse to provide for the election of representatives to the Federal Congress. "[E]very government ought to contain in itself the means of its own preservation," and "an exclusive power of regulating elections for the national government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it by neglecting to provide for the choice of persons to administer its affairs." The Federalist No. 59, pp. 362–363 (C. Rossiter ed. 1961) (A. Hamilton) (emphasis deleted). That prospect seems fanciful today, but the widespread, vociferous opposition to the proposed Constitution made it a very real concern in the founding era.

The Clause's substantive scope is broad. "Times, Places, and Manner," we have written, are "comprehensive words," which "embrace authority to provide a complete code for congressional elections," including, as relevant here and as petitioners do not contest, regulations relating to "registration." *Smiley* v. *Holm*, 285 U. S. 355, 366 (1932); see also *Roudebush* v. *Hartke*, 405 U. S. 15, 24–25 (1972) (recounts); *United States* v. *Classic*, 313 U. S. 299, 320 (1941) (primaries). In practice, the Clause functions as "a default provision; it invests the States with responsi-

bility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices." *Foster* v. *Love,* 522 U. S. 67, 69 (1997) (citation omitted). The power of Congress over the "Times, Places and Manner" of congressional elections "is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith." *Ex parte Siebold,* 100 U. S. 371, 392 (1880).

B

The straightforward textual question here is whether Ariz. Rev. Stat. Ann. §16–166(F), which requires state officials to "reject" a Federal Form unaccompanied by documentary evidence of citizenship, conflicts with the NVRA's mandate that Arizona "accept and use" the Federal Form. If so, the state law, "so far as the conflict extends, ceases to be operative." *Siebold, supra,* at 384. In Arizona's view, these seemingly incompatible obligations can be read to operate harmoniously: The NVRA, it contends, requires merely that a State receive the Federal Form willingly and use that form as one element in its (perhaps lengthy) transaction with a prospective voter.

Taken in isolation, the mandate that a State "accept and use" the Federal Form is fairly susceptible of two interpretations. It might mean that a State must accept the Federal Form as a complete and sufficient registration application; or it might mean that the State is merely required to receive the form willingly and use it *somehow* in its voter registration process. Both readings—"receive willingly" and "accept as sufficient"—are compatible with the plain meaning of the word "accept." See 1 Oxford English Dictionary 70 (2d ed. 1989) ("To take or receive (a thing offered) willingly"; "To receive as sufficient or adequate"); Webster's New International Dictionary 14 (2d ed. 1954)

("To receive (a thing offered to or thrust upon one) with a consenting mind"; "To receive with favor; to approve"). And we take it as self-evident that the "elastic" verb "use," read in isolation, is broad enough to encompass Arizona's preferred construction. *Smith* v. *United States*, 508 U. S. 223, 241 (1993) (SCALIA, J., dissenting). In common parlance, one might say that a restaurant accepts and uses credit cards even though it requires customers to show matching identification when making a purchase. See also Brief for State Petitioners 40 ("An airline may advertise that it 'accepts and uses' e-tickets . . . , yet may still require photo identification before one could board the airplane").

"Words that can have more than one meaning are given content, however, by their surroundings." *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 466 (2001); see also *Smith, supra,* at 241 (SCALIA, J., dissenting). And reading "accept" merely to denote willing receipt seems out of place in the context of an official mandate to accept and use something for a given purpose. The implication of such a mandate is that its object is to be accepted *as sufficient* for the requirement it is meant to satisfy. For example, a government *diktat* that "civil servants shall accept government IOUs for payment of salaries" does not invite the response, "sure, we'll accept IOUs—if you pay us a ten percent down payment in cash." Many federal statutes contain similarly phrased commands, and they contemplate more than mere willing receipt. See, *e.g.,* 5 U. S. C. §8332(b), (m)(3) ("The Office [of Personnel Management] shall accept the certification of" various officials concerning creditable service toward civilian-employee retirement); 12 U. S. C. A. §2605(*l*)(2) (Supp. 2013) ("A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage"); 16 U. S. C. §1536(p) (Endangered Species Committee "shall accept the determinations of the

President" with respect to whether a major disaster warrants an exception to the Endangered Species Act's requirements); §4026(b)(2), 118 Stat. 3725, note following 22 U. S. C. §2751, p. 925 (FAA Administrator "shall accept the certification of the Department of Homeland Security that a missile defense system is effective and functional to defend commercial aircraft against" man-portable surface-to-air missiles); 25 U. S. C. §1300h–6(a) ("For the purpose of proceeding with the per capita distribution" of certain funds, "the Secretary of the Interior shall accept the tribe's certification of enrolled membership"); 30 U. S. C. §923(b) (the Secretary of Labor "shall accept a board certified or board eligible radiologist's interpretation" of a chest X ray used to diagnose black lung disease); 42 U. S. C. §1395w–21(e)(6)(A) ("[A] Medicare+Choice organization . . . shall accept elections or changes to elections during" specified periods).[3]

Arizona's reading is also difficult to reconcile with neighboring provisions of the NVRA. Section 1973gg–6(a)(1)(B) provides that a State shall "ensure that any eligible applicant is registered to vote in an election . . . if the *valid voter registration form* of the applicant is postmarked" not later than a specified number of days before the election. (Emphasis added.) Yet Arizona reads the phrase "accept and use" in §1973gg–4(a)(1) as permitting it to *reject* a completed Federal Form if the applicant does not submit additional information required by state law. That reading can be squared with Arizona's obligation

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[3]The dissent accepts that a State may not impose additional requirements that render the Federal Form *entirely* superfluous; it would require that the State "us[e] the form as a meaningful part of the registration process." *Post,* at 7 (opinion of ALITO, J.). The dissent does not tell us precisely how large a role for the Federal Form suffices to make it "meaningful": One step out of two? Three? Ten? There is no easy answer, for the dissent's "meaningful part" standard is as indeterminate as it is atextual.

under §1973gg–6(a)(1) only if a completed Federal Form is not a "valid voter registration form," which seems unlikely. The statute empowers the EAC to create the Federal Form, §1973gg–7(a), requires the EAC to prescribe its contents within specified limits, §1973gg–7(b), and requires States to "accept and use" it, §1973gg–4(a)(1). It is improbable that the statute envisions a completed copy of the form it takes such pains to create as being anything less than "valid."

The Act also authorizes States, "*[i]n addition to* accepting and using the" Federal Form, to create their own, state-specific voter-registration forms, which can be used to register voters in both state and federal elections. §1973gg–4(a)(2) (emphasis added). These state-developed forms may require information the Federal Form does not. (For example, unlike the Federal Form, Arizona's registration form includes Proposition 200's proof-of-citizenship requirement. See Arizona Voter Registration Form, p. 1, online at http://www.azsos.gov.) This permission works in tandem with the requirement that States "accept and use" the Federal Form. States retain the flexibility to design and use their own registration forms, but the Federal Form provides a backstop: No matter what procedural hurdles a State's own form imposes, the Federal Form guarantees that a simple means of registering to vote in federal elections will be available.[4] Arizona's reading

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[4]In the face of this straightforward explanation, the dissent maintains that it would be "nonsensical" for a less demanding federal form to exist alongside a more demanding state form. *Post,* at 9 (opinion of ALITO, J.). But it is the dissent's alternative explanation for §1973gg–4(a)(2) that makes no sense. The "purpose" of the Federal Form, it claims, is "to facilitate interstate voter registration drives. Thanks to the federal form, volunteers distributing voter registration materials at a shopping mall in Yuma can give a copy of the same form to every person they meet without attempting to distinguish between residents of Arizona and California." *Post,* at 9. But in the dissent's world, a volunteer in Yuma would have to give every prospective voter not only

would permit a State to demand of Federal Form applicants every additional piece of information the State requires on its state-specific form. If that is so, the Federal Form ceases to perform any meaningful function, and would be a feeble means of "increas[ing] the number of eligible citizens who register to vote in elections for Federal office." §1973gg(b).

Finally, Arizona appeals to the presumption against pre-emption sometimes invoked in our Supremacy Clause cases. See, *e.g., Gregory* v. *Ashcroft,* 501 U. S. 452, 460–461 (1991). Where it applies, "we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice* v. *Santa Fe Elevator Corp.,* 331 U. S. 218, 230 (1947). That rule of construction rests on an assumption about congressional intent: that "Congress does not exercise lightly" the "extraordinary power" to "legislate in areas traditionally regulated by the States." *Gregory, supra,* at 460. We have never mentioned such a principle in our Elections Clause cases.[5] *Siebold,* for example, simply said that Elections

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a Federal Form, but also a separate set of either Arizona- or California-specific instructions detailing the additional information the applicant must submit to the State. In ours, every eligible voter can be assured that if he does what the Federal Form says, he will be registered. The dissent therefore provides yet another compelling reason to interpret the statute our way.

[5] *United States* v. *Gradwell,* 243 U. S. 476 (1917), on which the dissent relies, see *post,* at 3–4 (opinion of ALITO, J.), is not to the contrary—indeed, it was not even a pre-emption case. In *Gradwell,* we held that a statute making it a federal crime "to defraud the United States" did not reach election fraud. 243 U. S., at 480, 483. The Court noted that the provision at issue was adopted in a tax-enforcement bill, and that Congress had enacted but then repealed *other* criminal statutes specifically covering election fraud. *Id.,* at 481–483.

The dissent cherry-picks some language from a sentence in *Gradwell,* see *post,* at 3–4, but the full sentence reveals its irrelevance to our case:

Clause legislation, "so far as it extends and conflicts with the regulations of the State, necessarily supersedes them." 100 U. S., at 384. There is good reason for treating Elections Clause legislation differently: The assumption that Congress is reluctant to pre-empt does not hold when Congress acts under that constitutional provision, which empowers Congress to "make or alter" state election regulations. Art. I, §4, cl. 1. When Congress legislates with respect to the "Times, Places and Manner" of holding congressional elections, it *necessarily* displaces some element of a pre-existing legal regime erected by the States.[6] Because the power the Elections Clause confers is

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> "With it thus clearly established that the policy of Congress for so great a part of our constitutional life has been, and now is, to leave the conduct of the election of its members to state laws, administered by state officers, and that whenever it has assumed to regulate such elections it has done so by positive and clear statutes, such as were enacted in 1870, it would be a strained and unreasonable construction to apply to such elections this §37, originally a law for the protection of the revenue and for now fifty years confined in its application to 'Offenses against the Operations of the Government' as distinguished from the processes by which men are selected to conduct such operations." 243 U. S., at 485.

Gradwell says nothing at all about pre-emption, or about how to construe statutes (like the NVRA) in which Congress has *indisputably* undertaken "to regulate such elections." *Ibid.*

[6]The dissent counters that this is so "whenever Congress legislates in an area of concurrent state and federal power." *Post,* at 5 (opinion of ALITO, J.). True, but irrelevant: Elections Clause legislation is unique precisely because it *always* falls within an area of concurrent state and federal power. Put differently, *all* action under the Elections Clause displaces some element of a pre-existing state regulatory regime, because the text of the Clause confers the power to do exactly (and only) that. By contrast, even laws enacted under the Commerce Clause (arguably the other enumerated power whose exercise is most likely to trench on state regulatory authority) will not always implicate concurrent state power—a prohibition on the interstate transport of a commodity, for example.

none other than the power to pre-empt, the reasonable assumption is that the statutory text accurately communicates the scope of Congress's pre-emptive intent. Moreover, the federalism concerns underlying the presumption in the Supremacy Clause context are somewhat weaker here. Unlike the States' "historic police powers," *Rice, supra,* at 230, the States' role in regulating congressional elections—while weighty and worthy of respect—has always existed subject to the express qualification that it "terminates according to federal law." *Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U.S. 341, 347 (2001). In sum, there is no compelling reason not to read Elections Clause legislation simply to mean what it says.

We conclude that the fairest reading of the statute is that a state-imposed requirement of evidence of citizenship not required by the Federal Form is "inconsistent with" the NVRA's mandate that States "accept and use" the Federal Form. *Siebold, supra,* at 397. If this reading prevails, the Elections Clause requires that Arizona's rule give way.

We note, however, that while the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form, it does not preclude States from "deny[ing] registration based on information in their possession establishing the applicant's ineligibility."[7] Brief for United States as *Amicus Curiae* 24. The NVRA clearly contemplates that not every submitted Federal Form will result in registration. See

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[7]The dissent seems to think this position of ours incompatible with our reading of §1973gg–6(a)(1)(B), which requires a State to "ensure that any eligible applicant is registered to vote in an election . . . if the valid voter registration form of the applicant is postmarked" by a certain date. See *post,* at 9–10 (opinion of ALITO, J.). What the dissent overlooks is that §1973gg–6(a)(1)(B) only requires a State to register an "*eligible* applicant" who submits a timely Federal Form. (Emphasis added.)

§1973gg–7(b)(1) (Federal Form "may require only" information "necessary to enable the appropriate State election official to *assess the eligibility of the applicant*" (emphasis added)); §1973gg–6(a)(2) (States must require election officials to "send notice to each applicant of the disposition of the application").

III

Arizona contends, however, that its construction of the phrase "accept and use" is necessary to avoid a conflict between the NVRA and Arizona's constitutional authority to establish qualifications (such as citizenship) for voting. Arizona is correct that the Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them. The Constitution prescribes a straightforward rule for the composition of the federal electorate. Article I, §2, cl. 1, provides that electors in each State for the House of Representatives "shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature," and the Seventeenth Amendment adopts the same criterion for senatorial elections. Cf. also Art. II, §1, cl. 2 ("Each State shall appoint, in such Manner as the Legislature thereof may direct," presidential electors). One cannot read the Elections Clause as treating implicitly what these other constitutional provisions regulate explicitly. "It is difficult to see how words could be clearer in stating what Congress can control and what it cannot control. Surely nothing in these provisions lends itself to the view that voting qualifications in federal elections are to be set by Congress." *Oregon* v. *Mitchell*, 400 U. S. 112, 210 (1970) (Harlan, J., concurring in part and dissenting in part); see also *U. S. Term Limits*, 514 U. S., at 833–834; *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 231–232 (1986) (Ste-

vens, J., dissenting).[8]

Prescribing voting qualifications, therefore, "forms no part of the power to be conferred upon the national government" by the Elections Clause, which is "expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections." The Federalist No. 60, at 371 (A. Hamilton); see also *id.*, No. 52, at 326 (J. Madison). This allocation of authority sprang from the Framers' aversion to concentrated power. A Congress empowered to regulate the qualifications of its own electorate, Madison warned, could "by degrees subvert the Constitution." 2 Records of the Federal Convention of 1787, p. 250 (M. Farrand rev. 1966). At the same time, by tying the federal franchise to the state franchise instead of simply placing it within the unfettered discretion of state legislatures, the Framers avoided "render[ing] too dependent on the State governments that branch of the federal govern-

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[8]In *Mitchell*, the judgment of the Court was that Congress could compel the States to permit 18-year-olds to vote in federal elections. Of the five Justices who concurred in that outcome, only Justice Black was of the view that congressional power to prescribe this age qualification derived from the Elections Clause, 400 U. S., at 119–125, while four Justices relied on the Fourteenth Amendment, *id.*, at 144 (opinion of Douglas, J.), 231 (joint opinion of Brennan, White, and Marshall, JJ.). That result, which lacked a majority rationale, is of minimal precedential value here. See *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 66 (1996); *Nichols* v. *United States*, 511 U. S. 738, 746 (1994); H. Black, Handbook on the Law of Judicial Precedents 135–136 (1912). Five Justices took the position that the Elections Clause did *not* confer upon Congress the power to regulate voter qualifications in federal elections. *Mitchell, supra,* at 143 (opinion of Douglas, J.), 210 (opinion of Harlan, J.), 288 (opinion of Stewart, J., joined by Burger, C. J., and Blackmun, J.). (Justices Brennan, White, and Marshall did not address the Elections Clause.) This last view, which commanded a majority in *Mitchell*, underlies our analysis here. See also *U. S. Term Limits*, 514 U. S., at 833. Five Justices also agreed that the Fourteenth Amendment did not empower Congress to impose the 18-year-old-voting mandate. See *Mitchell, supra,* at 124–130 (opinion of Black, J.), 155 (opinion of Harlan, J.), 293–294 (opinion of Stewart, J.).

ment which ought to be dependent on the people alone." The Federalist No. 52, at 326 (J. Madison).

Since the power to establish voting requirements is of little value without the power to enforce those requirements, Arizona is correct that it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications.[9] If, but for Arizona's interpretation of the "accept and use" provision, the State would be precluded from obtaining information necessary for enforcement, we would have to determine whether Arizona's interpretation, though plainly not the best reading, is at least a possible one. Cf. *Crowell* v. *Benson*, 285 U. S. 22, 62 (1932) (the Court will "ascertain whether a construction of the statute *is fairly possible* by which the [constitutional] question may be avoided" (emphasis added)). Happily, we are spared that necessity, since the statute provides another means by which Arizona may obtain information needed for enforcement.

Section 1973gg–7(b)(1) of the Act provides that the Federal Form "may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process." At oral argument,

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[9] In their reply brief, petitioners suggest for the first time that "registration is itself a qualification to vote." Reply Brief for State Petitioners 24 (emphasis deleted); see also *post,* at 1, 16 (opinion of THOMAS, J.); cf. *Voting Rights Coalition* v. *Wilson*, 60 F. 3d 1411, 1413, and n. 1 (CA9 1995), cert. denied, 516 U. S. 1093 (1996); *Association of Community Organizations for Reform Now (ACORN)* v. *Edgar*, 56 F. 3d 791, 793 (CA7 1995). We resolve this case on the theory on which it has hitherto been litigated: that *citizenship* (not registration) is the voter qualification Arizona seeks to enforce. See Brief for State Petitioners 50.

the United States expressed the view that the phrase "may require only" in §1973gg–7(b)(1) means that the EAC "*shall require* information that's necessary, but may only require that information." Tr. of Oral Arg. 52 (emphasis added); see also Brief for ITCA Respondents 46; Tr. of Oral Arg. 37–39 (ITCA Respondents' counsel). That is to say, §1973gg–7(b)(1) acts as both a ceiling and a floor with respect to the contents of the Federal Form. We need not consider the Government's contention that despite the statute's statement that the EAC "may" require on the Federal Form information "necessary to enable the appropriate State election official to assess the eligibility of the applicant," other provisions of the Act indicate that such action is statutorily required. That is because we think that—by analogy to the rule of statutory interpretation that avoids questionable constitutionality—validly conferred discretionary executive authority is properly exercised (as the Government has proposed) to avoid serious constitutional doubt. That is to say, it is surely permissible if not requisite for the Government to say that necessary information which *may* be required *will* be required.

Since, pursuant to the Government's concession, a State may request that the EAC alter the Federal Form to include information the State deems necessary to determine eligibility, see §1973gg–7(a)(2); Tr. of Oral Arg. 55 (United States), and may challenge the EAC's rejection of that request in a suit under the Administrative Procedure Act, see 5 U. S. C. §701–706, no constitutional doubt is raised by giving the "accept and use" provision of the NVRA its fairest reading. That alternative means of enforcing its constitutional power to determine voting qualifications remains open to Arizona here. In 2005, the EAC divided 2-to-2 on the request by Arizona to include the evidence-of-citizenship requirement among the state-specific instructions on the Federal Form, App. 225, which meant that no action could be taken, see 42 U. S. C. §15328 ("Any action

which the Commission is authorized to carry out under this chapter may be carried out only with the approval of at least three of its members"). Arizona did not challenge that agency action (or rather inaction) by seeking APA review in federal court, see Tr. of Oral Arg. 11–12 (Arizona), but we are aware of nothing that prevents Arizona from renewing its request.[10] Should the EAC's inaction persist, Arizona would have the opportunity to establish in a reviewing court that a mere oath will not suffice to effectuate its citizenship requirement and that the EAC is therefore under a nondiscretionary duty to include Arizona's concrete evidence requirement on the Federal Form. See 5 U. S. C. §706(1). Arizona might also assert (as it has argued here) that it would be arbitrary for the EAC to refuse to include Arizona's instruction when it has accepted a similar instruction requested by Louisiana.[11]

* * *

We hold that 42 U. S. C. §1973gg–4 precludes Arizona

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[10] We are aware of no rule promulgated by the EAC preventing a renewed request. Indeed, the whole request process appears to be entirely informal, Arizona's prior request having been submitted by e-mail. See App. 181.

The EAC currently lacks a quorum—indeed, the Commission has not a single active Commissioner. If the EAC proves unable to act on a renewed request, Arizona would be free to seek a writ of mandamus to "compel agency action unlawfully withheld or unreasonably delayed." 5 U. S. C. §706(1). It is a nice point, which we need not resolve here, whether a court can compel agency action that the agency itself, for lack of the statutorily required quorum, is incapable of taking. If the answer to that is no, Arizona might then be in a position to assert a constitutional right to demand concrete evidence of citizenship apart from the Federal Form.

[11] The EAC recently approved a state-specific instruction for Louisiana requiring applicants who lack a Louisiana driver's license, ID card, or Social Security number to attach additional documentation to the completed Federal Form. See National Mail Voter Registration Form, p. 9; Tr. of Oral Arg. 57 (United States).

from requiring a Federal Form applicant to submit information beyond that required by the form itself. Arizona may, however, request anew that the EAC include such a requirement among the Federal Form's state-specific instructions, and may seek judicial review of the EAC's decision under the Administrative Procedure Act.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 12–71

ARIZONA, ET AL., PETITIONERS *v.* THE INTER TRIBAL COUNCIL OF ARIZONA, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 17, 2013]

JUSTICE KENNEDY, concurring in part and concurring in the judgment.

The opinion for the Court insists on stating a proposition that, in my respectful view, is unnecessary for the proper disposition of the case and is incorrect in any event. The Court concludes that the normal "starting presumption that Congress does not intend to supplant state law," *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 654 (1995), does not apply here because the source of congressional power is the Elections Clause and not some other provision of the Constitution. See *ante,* at 10–12.

There is no sound basis for the Court to rule, for the first time, that there exists a hierarchy of federal powers so that some statutes pre-empting state law must be interpreted by different rules than others, all depending upon which power Congress has exercised. If the Court is skeptical of the basic idea of a presumption against pre-emption as a helpful instrument of construction in express pre-emption cases, see *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 545 (1992) (SCALIA, J., concurring in judgment in part and dissenting in part), it should say so and apply that skepticism across the board.

There are numerous instances in which Congress, in the undoubted exercise of its enumerated powers, has stated

its express purpose and intent to pre-empt state law. But the Court has nonetheless recognized that "when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption.'" *Altria Group, Inc.* v. *Good,* 555 U. S. 70, 77 (2008) (quoting *Bates* v. *Dow Agrosciences LLC,* 544 U. S. 431, 449 (2005)). This principle is best understood, perhaps, not as a presumption but as a cautionary principle to ensure that pre-emption does not go beyond the strict requirements of the statutory command. The principle has two dimensions: Courts must be careful not to give an unduly broad interpretation to ambiguous or imprecise language Congress uses. And they must confine their opinions to avoid overextending a federal statute's pre-emptive reach. Error on either front may put at risk the validity and effectiveness of laws that Congress did not intend to disturb and that a State has deemed important to its scheme of governance. That concern is the same regardless of the power Congress invokes, whether it is, say, the commerce power, the war power, the bankruptcy power, or the power to regulate federal elections under Article I, §4.

Whether the federal statute concerns congressional regulation of elections or any other subject proper for Congress to address, a court must not lightly infer a congressional directive to negate the States' otherwise proper exercise of their sovereign power. This case illustrates the point. The separate States have a continuing, essential interest in the integrity and accuracy of the process used to select both state and federal officials. The States pay the costs of holding these elections, which for practical reasons often overlap so that the two sets of officials are selected at the same time, on the same ballots, by the same voters. It seems most doubtful to me to suggest that States have some lesser concern when what is involved is their own historic role in the conduct of elections. As

already noted, it may be that a presumption against pre-emption is not the best formulation of this principle, but in all events the State's undoubted interest in the regulation and conduct of elections must be taken into account and ought not to be deemed by this Court to be a subject of secondary importance.

Here, in my view, the Court is correct to conclude that the National Voter Registration Act of 1993 is unambiguous in its pre-emption of Arizona's statute. For this reason, I concur in the judgment and join all of the Court's opinion except its discussion of the presumption against pre-emption. See *ante,* at 10–12.

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 17, 2013]

JUSTICE THOMAS, dissenting.

This case involves the federal requirement that States "accept and use," 42 U. S. C. §1973gg–4(a)(1), the federal voter registration form created pursuant to the National Voter Registration Act (NVRA). The Court interprets "accept and use," with minor exceptions, to require States to register any individual who completes and submits the federal form. It, therefore, holds that §1973gg–4(a)(1) preempts an Arizona law requiring additional information to register. As the majority recognizes, *ante*, at 13–15, its decision implicates a serious constitutional issue—whether Congress has power to set qualifications for those who vote in elections for federal office.

I do not agree, and I think that both the plain text and the history of the Voter Qualifications Clause, U. S. Const., Art. I, §2, cl. 1, and the Seventeenth Amendment authorize States to determine the qualifications of voters in federal elections, which necessarily includes the related power to determine whether those qualifications are satisfied. To avoid substantial constitutional problems created by interpreting §1973gg–4(a)(1) to permit Congress to effectively countermand this authority, I would construe the law as only requiring Arizona to accept and use the form as part of its voter registration process, leaving the State free to request whatever additional information it

determines is necessary to ensure that voters meet the qualifications it has the constitutional authority to establish. Under this interpretation, Arizona did "accept and use" the federal form. Accordingly, there is no conflict between Ariz. Rev. Stat. Ann. §16–166(F) (West Cum. Supp. 2012) and §1973gg–4(a)(1) and, thus, no pre-emption.

I

In 2002, Congress created the Election Assistance Commission (EAC), 42 U. S. C. §15321 *et seq.*, and gave it the ongoing responsibility of "develop[ing] a mail voter registration application form for elections for Federal office" "in consultation with the chief election officers of the States." §1973gg–7(a)(2). Under the NVRA, "[e]ach State shall accept and use the mail voter registration application form" the EAC develops. §1973gg–4(a)(1). The NVRA also states in a subsequent provision that "[i]n addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form . . . for the registration of voters in elections for Federal office" so long as it satisfies the same criteria as the federal form. §1973gg–4(a)(2).

Section 1973gg–7(b) enumerates the criteria for the federal form. The form "may require only such identifying information . . . and other information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant." §1973gg–7(b)(1). The federal form must also "specif[y] each eligibility requirement (including citizenship)," "contai[n] an attestation that the applicant meets each such requirement," and "requir[e] the signature of the applicant, under penalty of perjury." §§1973gg–7(b)(2)(A)–(C). Insofar as citizenship is concerned, the standard federal form contains the bare statutory requirements; individuals seeking to vote need only attest that they are citizens and sign under penalty of

perjury.

Arizona has had a citizenship requirement for voting since it became a State in 1912. See Ariz. Const., Art. VII, §2. In 2004, Arizona citizens enacted Proposition 200, the law at issue in this case. Proposition 200 provides that "[t]he county recorder shall reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship." Ariz. Rev. Stat. Ann. §16–166(F). The law sets forth several examples of satisfactory evidence, including driver's license number, birth certificate, U. S. passport, naturalization documents, and various tribal identification documents for Indians. §16–166(F)(1)–(6).

Respondents, joined by the United States, allege that these state requirements are pre-empted by the NVRA's mandate that all States "accept and use" the federal form promulgated by the EAC. §1973gg–4(a)(1). They contend that the phrase "accept and use" requires a State presented with a completed federal form to register the individual to vote without requiring any additional information.

Arizona advances an alternative interpretation. It argues that §1973gg–4(a)(1) is satisfied so long as the State "accepts and use[s]" the federal form as *part* of its voter qualification process. For example, a State "accepts and use[s]" the federal form by allowing individuals to file it, even if the State requires additional identifying information to establish citizenship. In Arizona's view, it "accepts and uses" the federal form in the same way that an airline "accepts and uses" electronic tickets but also requires an individual seeking to board a plane to demonstrate that he is the person named on the ticket. Brief for State Petitioners 40. See also 677 F. 3d 383, 446 (CA9 2012) (Rawlinson, J., concurring in part and dissenting in part) ("[M]erchants may accept and use credit cards, but a customer's production of a credit card in and of itself may not be sufficient. The customer must sign and may have

to provide photo identification to verify that the customer is eligible to use the credit card").

JUSTICE ALITO makes a compelling case that Arizona's interpretation is superior to respondents'. See *post,* at 6–10 (dissenting opinion). At a minimum, however, the interpretations advanced by Arizona and respondents are both plausible. See 677 F. 3d, at 439 (Kozinski, C.J., concurring) (weighing the arguments). The competing interpretations of §1973gg–4(a)(1) raise significant constitutional issues concerning Congress' power to decide who may vote in federal elections. Accordingly, resolution of this case requires a better understanding of the relevant constitutional provisions.

II

A

The Voter Qualifications Clause, U. S. Const., Art. I, §2, cl. 1, provides that "the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature" in elections for the federal House of Representatives. The Seventeenth Amendment, which provides for direct election of Senators, contains an identical clause. That language is susceptible of only one interpretation: States have the authority "to control who may vote in congressional elections" so long as they do not "establish special requirements that do not apply in elections for the state legislature." *U. S. Term Limits, Inc.* v. *Thornton,* 514 U. S. 779, 864–865 (1995) (THOMAS, J., dissenting); see also The Federalist No. 57, p. 349 (C. Rossiter ed. 2003) (J. Madison) ("The electors . . . are to be the same who exercise the right in every State of electing the corresponding branch of the legislature of the State"). Congress has no role in setting voter qualifications, or determining whether they are satisfied, aside from the powers conferred by the Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-

Sixth Amendments, which are not at issue here. This power is instead expressly reposed in the States.

1

The history of the Voter Qualifications Clause's enactment confirms this conclusion. The Framers did not intend to leave voter qualifications to Congress. Indeed, James Madison explicitly rejected that possibility:

> "The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. *To have left it open for the occasional regulation of the Congress would have been improper.*" The Federalist No. 52, at 323 (emphasis added).

Congressional legislation of voter qualifications was not part of the Framers' design.

The Constitutional Convention did recognize a danger in leaving Congress "too dependent on the State governments" by allowing States to define congressional elector qualifications without limitation. *Ibid.* To address this concern, the Committee of Detail that drafted Article I, §2, "weighed the possibility of a federal property requirement, as well as several proposals that would have given the federal government the power to impose its own suffrage laws at some future time." A. Keyssar, The Right to Vote 18 (rev. ed. 2009) (hereafter Keyssar); see also 2 The Records of the Federal Convention of 1787, pp. 139–140, 151, 153, 163–165 (M. Farrand rev. ed. 1966) (text of several voter qualification provisions considered by the Committee of Detail).

These efforts, however, were ultimately abandoned. Even if the convention had been able to agree on a uniform federal standard, the Framers knew that state ratification conventions likely would have rejected it. Madison ex-

plained that "reduc[ing] the different qualifications in the different States to one uniform rule would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention." The Federalist No. 52, at 323; see also J. Story, Commentaries on the Constitution of the United States 217 (abridged ed. 1833) (same). Justice Story elaborated that setting voter qualifications in the Constitution could have jeopardized ratification, because it would have been difficult to convince States to give up their right to set voting qualifications. *Id.*, at 216, 218–219. See also Keyssar 306–313 (Tables A.1 and A.2) (state-by-state analysis of 18th- and 19th-century voter qualifications, including property, taxpaying, residency, sex, and race requirements).

The Convention, thus, chose to respect the varied state voting rules and instead struck the balance enshrined in Article I, §2's requirement that federal electors "shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." That compromise gave States free reign over federal voter qualifications but protected Congress by prohibiting States from changing the qualifications for federal electors unless they also altered qualifications for their own legislatures. See The Federalist No. 52, at 323. This balance left the States with nearly complete control over voter qualifications.

2

Respondents appear to concede that States have the sole authority to establish voter qualifications, see, *e.g.*, Brief for Gonzalez Respondents 63, but nevertheless argue that Congress can determine whether those qualifications are satisfied. See, *e.g.*, *id.*, at 61. The practical effect of respondents' position is to read Article I, §2, out of the Constitution. As the majority correctly recognizes, "the power to establish voting requirements is of little value without the power to enforce those requirements." See *ante*, at 15.

For this reason, the Voter Qualifications Clause gives States the authority not only to set qualifications but also the power to verify whether those qualifications are satisfied.

This understanding of Article I, §2, is consistent with powers enjoyed by the States at the founding. For instance, ownership of real or personal property was a common prerequisite to voting, see Keyssar 306–313 (Tables A.1 and A.2). To verify that this qualification was satisfied, States might look to proof of tax payments. See C. Williamson, American Suffrage from Property to Democracy, 1760–1860, p. 32 (1960). In other instances, States relied on personal knowledge of fellow citizens to verify voter eligibility. Keyssar 24 ("In some locales, particularly in the South, voting was still an oral and public act: men assembled before election judges, waited for their names to be called, and then announced which candidates they supported"). States have always had the power to ensure that only those qualified under state law to cast ballots exercised the franchise.

Perhaps in part because many requirements (such as property ownership or taxpayer status) were independently documented and verifiable, States in 1789 did not generally "register" voters using highly formalized procedures. See *id.,* at 122. Over time, States replaced their informal systems for determining eligibility, with more formalized pre-voting registration regimes. See An Act in Addition to the Several Acts for Regulating Elections, 1800 Mass. Acts ch. 74, in Acts and Laws of the Commonwealth of Massachusetts 96 (1897) (Massachusetts' 1801 voter registration law). But modern voter registration serves the same basic purpose as the practices used by States in the Colonies and early Federal Republic. The fact that States have liberalized voting qualifications and streamlined the verification process through registration does not alter the basic fact that States possess broad

authority to set voter qualifications and to verify that they are met.

B

Both text and history confirm that States have the exclusive authority to set voter qualifications and to determine whether those qualifications are satisfied. The United States nevertheless argues that Congress has the authority under Article I, §4, "to set the rules for voter registration in federal elections." Brief for United States as *Amicus Curiae* 33 (hereafter Brief for United States). Neither the text nor the original understanding of Article I, §4, supports that position.

1

Article I, §4, gives States primary responsibility for regulating the "Times, Places and Manner of holding Elections" and authorizes Congress to "at any time by Law make or alter such Regulations."[1] Along with the Seventeenth Amendment, this provision grants Congress power only over the "when, where, and how" of holding congressional elections. T. Parsons, Notes of Convention Debates, Jan. 16, 1788, in 6 Documentary History of the Ratification of the Constitution 1211 (J. Kaminski & G. Saladino eds. 2000) (hereinafter Documentary History) (Massachusetts ratification delegate Sedgwick) (emphasis omitted); see also *ante*, at 13 ("Arizona is correct that [Article I, §4,] empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them").

Prior to the Constitution's ratification, the phrase "manner of election" was commonly used in England, Scotland, Ireland, and North America to describe the

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[1]The majority refers to Article I, §4, cl. 1, as the "Elections Clause." See, *e.g.*, *ante*, at 4. Since there are a number of Clauses in the Constitution dealing with elections, I refer to it using the more descriptive term, Times, Places and Manner Clause.

entire election process. Natelson, The Original Scope of the Congressional Power to Regulate Elections, 13 U. Pa. J. Constitutional L. 1, 10–18 (2010) (citing examples). But there are good reasons for concluding that Article I, §4's use of "Manner" is considerably more limited. *Id.*, at 20. The Constitution does not use the word "Manner" in isolation; rather, "after providing for qualifications, times, and places, the Constitution described the residuum as 'the Manner of holding Elections.' This precise phrase seems to have been newly coined to denote a subset of traditional 'manner' regulation." *Ibid.* (emphasis deleted; footnote omitted). Consistent with this view, during the state ratification debates, the "Manner of holding Elections" was construed to mean the circumstances under which elections were held and the mechanics of the actual election. See 4 Debates in the Several State Conventions on the Adoption of the Federal Constitution 71 (J. Elliot 2d ed. 1863) (hereafter Elliot's Debates) ("The power over the manner of elections does not include that of saying who shall vote . . . the power over the manner only enables them to determine *how* those electors shall elect—whether by ballot, or by vote, or by any other way" (John Steele at the North Carolina ratification debates)); A Pennsylvanian to the New York Convention, Pennsylvania Gazette, June 11, 1788, in 20 Documentary History 1145 (J. Kaminski, G. Saladino, R. Leffler, & C. Schoenleber eds. 2004) (same); Brief for Center for Constitutional Jurisprudence as *Amicus Curiae* 6–7 (same, citing state ratification debates). The text of the Times, Places and Manner Clause, therefore, cannot be read to authorize Congress to dictate voter eligibility to the States.

2

Article I, §4, also cannot be read to limit a State's authority to set voter qualifications because the more specific language of Article I, §2, expressly gives that authority to

the States. See *ante*, at 13 ("One cannot read [Article I, §4,] as treating implicitly what [Article I, §2, and Article II, §1,] regulate explicitly"). As the Court observed just last Term, "[a] well established canon of statutory interpretation succinctly captures the problem: '[I]t is a commonplace of statutory construction that the specific governs the general.'" *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U. S. ___, ___ (2012) (slip op., at 5) (quoting *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 384 (1992); second alteration in original). The Court explained that this canon is particularly relevant where two provisions "'are interrelated and closely positioned, both in fact being parts of [the same scheme.]'" 566 U. S., at ___ (slip op., at 5) (quoting *HCSC-Laundry* v. *United States*, 450 U. S. 1, 6 (1981) (*per curiam*)). Here, the general Times, Places and Manner Clause is textually limited by the directly applicable text of the Voter Qualification Clause.

The ratification debates over the relationship between Article I, §§2 and 4, demonstrate this limitation. Unlike Article I, §2, the Times, Places and Manner Clause was the subject of extensive ratification controversy. Antifederalists were deeply concerned with ceding authority over the conduct of elections to the Federal Government. Some antifederalists claimed that the "'wealthy and the wellborn,'" might abuse the Times, Places and Manner Clause to ensure their continuing power in Congress. The Federalist No. 60, at 368. Hamilton explained why Article I, §2's Voter Qualifications Clause foreclosed this argument:

> "The truth is that there is no method of securing to the rich the preference apprehended but by prescribing qualifications of property either for those who may elect or be elected. But this forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regula-

> tion of the *times*, the *places*, and the *manner* of elections." *Id.*, at 369.

Ratification debates in several States echoed Hamilton's argument. The North Carolina debates provide a particularly direct example. There, delegate John Steele relied on the established "maxim of universal jurisprudence, of reason and common sense, that an instrument or deed of writing shall be construed as to give validity to all parts of it, if it can be done without involving any absurdity" in support of the argument that Article I, §2's grant of voter qualifications to the States required a limited reading of Article I, §4. 4 Elliot's Debates 71.

This was no isolated view. See 2 *id.*, at 50–51 (Massachusetts delegate Rufus King observing that "the power of control given by [Article I, §4,] extends to the *manner* of election, not the *qualifications* of the electors"); 4 *id.*, at 61 (same, North Carolina's William Davie); 3 *id.*, at 202–203 (same, Virginia delegate Edmund Randolph); Roger Sherman, A Citizen of New Haven: Observations on the New Federal Constitution, Connecticut Courant, Jan. 7, 1788, in 15 Documentary History 282 (J. Kaminski & G. Saladino eds. 1983) (same); A Freeman [Letter] II (Tench Coxe), Pennsylvania Gazette, Jan. 30, 1788, in *id.*, at 508 (same). It was well understood that congressional power to regulate the "Manner" of elections under Article I, §4, did not include the power to override state voter qualifications under Article I, §2.

3

The concern that gave rise to Article I, §4, also supports this limited reading. The Times, Places and Manner Clause was designed to address the possibility that States might refuse to hold any federal elections at all, eliminating Congress, and by extension the Federal Government. As Hamilton explained, "every government ought to contain in itself the means of its own preservation." The

Federalist No. 59, at 360 (emphasis deleted); see also *U. S. Term Limits, Inc.*, 514 U. S., at 863 (THOMAS, J., dissenting) (Article I, §4, designed "to ensure that the States hold congressional elections in the first place, so that Congress continues to exist"); *id.*, at 863, and n. 10 (same, citing ratification era sources). Reflecting this understanding of the reasoning behind Article I, §4, many of the original 13 States proposed constitutional amendments that would have strictly cabined the Times, Places and Manner Clause to situations in which state failure to hold elections threatened the continued existence of Congress. See 2 Elliot's Debates 177 (Massachusetts); 18 Documentary History 71–72 (J. Kaminski & G. Saladino eds. 1995) (South Carolina); *id.*, at 187–188 (New Hampshire); 3 Elliot's Debates 661 (Virginia); Ratification of the Constitution by the State of New York (July 26, 1788) (New York), online at http://avalon.law.yale.edu/18th_century/ratny.asp (all Internet materials as visited June 6, 2013, and available in Clerk of Court's case file); 4 Elliot's Debates 249 (North Carolina); Ratification of the Constitution by the State of Rhode Island (May 29, 1790) (Rhode Island), online at http://avalon.law.yale.edu/18th_century/ratri.asp. Although these amendments were never enacted, they underscore how narrowly the ratification conventions construed Congress' power under the Times, Places and Manner Clause. In contrast to a state refusal to hold federal elections at all, a state decision to alter the qualifications of electors for state legislature (and thereby for federal elections as well) does not threaten Congress' very existence.

C

Finding no support in the historical record, respondents and the United States instead chiefly assert that this Court's precedents involving the Times, Places and Manner Clause give Congress authority over voter qualifica-

tions. See, *e.g.*, Brief for Respondent Inter Tribal Council of Arizona, Inc. (ITCA) et al. 30–31, 48–50 (hereafter Brief for ITCA Respondents; Brief for Gonzalez Respondents 44–50; Brief for United States 24–27, 31–33. But this Court does not have the power to alter the terms of the Constitution. Moreover, this Court's decisions do not support the respondents' and the Government's position.

Respondents and the United States point out that *Smiley* v. *Holm*, 285 U. S. 355 (1932), mentioned "registration" in a list of voting-related subjects it believed Congress could regulate under Article I, §4. *Id.*, at 366 (listing "notices, *registration*, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns" (emphasis added)). See Brief for ITCA Respondents 49; Brief for Gonzalez Respondents 48; Brief for United States 21. But that statement was dicta because *Smiley* involved congressional redistricting, not voter registration. 285 U. S., at 361–362. Cases since *Smiley* have similarly not addressed the issue of voter qualifications but merely repeated the word "registration" without further analysis. See *Cook* v. *Gralike*, 531 U. S. 510, 523 (2001); *Roudebush* v. *Hartke*, 405 U. S. 15, 24 (1972).

Moreover, in *Oregon* v. *Mitchell*, 400 U. S. 112 (1970), a majority of this Court, "took the position that [Article I, §4,] did *not* confer upon Congress the power to regulate voter qualifications in federal elections," as the majority recognizes. *Ante*, at 14, n. 8. See *Mitchell*, 400 U. S., at 288 (Stewart, J., concurring in part and dissenting in part); *id.*, at 210–212 (Harlan, J., concurring in part and dissenting in part); *id.*, at 143 (opinion of Douglas, J.). And even the majority's decision in *U. S. Term Limits*, from which I dissented, recognized that Madison's Federalist No. 52 "explicitly contrasted the *state control over the qualifications of electors*" with what it believed was "the

lack of state control over the qualifications of the elected." 514 U. S., at 806 (emphasis added). Most of the remaining cases cited by respondents and the Government merely confirm that Congress' power to regulate the "Manner of holding Elections" is limited to regulating events surrounding the when, where, and how of actually casting ballots. See, *e.g.*, *United States* v. *Classic*, 313 U. S. 299 (1941) (upholding federal regulation of ballot fraud in primary voting); *Ex parte Yarbrough*, 110 U. S. 651 (1884) (upholding federal penalties for intimidating voter in congressional election); see also *Foster* v. *Love*, 522 U. S. 67 (1997) (overturning Louisiana primary system whose winner was deemed elected if he received a majority of votes in light of federal law setting the date of federal general elections); *Roudebush, supra* (upholding Indiana ballot recount procedures in close Senate election as within state power under Article I, §4). It is, thus, difficult to maintain that the Times, Places and Manner Clause gives Congress power beyond regulating the casting of ballots and related activities, even as a matter of precedent.[2]

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[2]Article I, §§2 and 4, and the Seventeenth Amendment concern congressional elections. The NVRA's "accept and use" requirement applies to *all* federal elections, even presidential elections. See §1973gg–4(a)(1). This Court has recognized, however, that "the state legislature's power to select the manner for appointing [presidential] electors is plenary; it may, if it chooses, select the electors itself." *Bush* v. *Gore*, 531 U. S. 98, 104 (2000) (*per curiam*) (citing U. S. Const., Art. II, §1, and *McPherson* v. *Blacker*, 146 U. S. 1, 35 (1892)). As late as 1824, six State Legislatures chose electoral college delegates, and South Carolina continued to follow this model through the 1860 election. 1 Guide to U. S. Elections 821 (6th ed. 2010). Legislatures in Florida in 1868 and Colorado in 1876 chose delegates, *id.*, at 822, and in recent memory, the Florida Legislature in 2000 convened a special session to consider how to allocate its 25 electoral votes if the winner of the popular vote was not determined in time for delegates to participate in the electoral college, see James, Election 2000: Florida Legislature Faces Own Disputes over Electors, Wall Street Journal, Dec. 11, 2000, p. A16, though it ultimately took no action. See Florida's Senate Adjourns

III

A

Arizona has not challenged the constitutionality of the NVRA itself in this case. Nor has it alleged that Congress lacks authority to direct the EAC to create the federal form. As a result, I need not address those issues. Arizona did, however, argue that respondent's interpretation of §1973gg–4(a)(1) would raise constitutional concerns. As discussed, *supra,* I too am concerned that respondent's interpretation of §1973gg–4(a)(1) would render the statute unconstitutional under Article I, §2. Accordingly, I would interpret §1973gg–4(a)(1) to avoid the constitutional problems discussed above. See *Zadvydas* v. *Davis,* 533 U. S. 678, 689 (2001) ("'[I]t is a cardinal principle' of statutory interpretation, however, that when an Act of Congress raises 'a serious doubt' as to its constitutionality, 'this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided'" (quoting *Crowell* v. *Benson,* 285 U. S. 22, 62 (1932))).

I cannot, therefore, adopt the Court's interpretation that §1973gg–4(a)(1)'s "accept and use" provision requires states to register anyone who completes and submits the form. Arizona sets citizenship as a qualification to vote, and it wishes to verify citizenship, as it is authorized to do under Article 1, §2. It matters not whether the United States has specified one way in which *it* believes Arizona might be able to verify citizenship; Arizona has the independent constitutional authority to verify citizenship in the way it deems necessary. See in Part II–A–2, *supra.* By requiring Arizona to register people who have not

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Without Naming Electors, Wall Street Journal, Dec. 15, 2000, p. A6. Constitutional avoidance is especially appropriate in this area because the NVRA purports to regulate presidential elections, an area over which the Constitution gives Congress no authority whatsoever.

demonstrated to Arizona's satisfaction that they meet its citizenship qualification for voting, the NVRA, as interpreted by the Court, would exceed Congress' powers under Article I, §4, and violate Article 1, §2.

Fortunately, Arizona's alternative interpretation of §1973gg–4(a)(1) avoids this problem. It is plausible that Arizona "accept[s] and use[s]" the federal form under §1973gg–4(a)(1) so long as it receives the form and considers it as part of its voter application process. See *post,* at 6–10 (ALITO, J., dissenting); 677 F. 3d, at 444 (Rawlinson, J., concurring in part and dissenting in part); 624 F. 3d 1162, 1205–1208 (CA9 2010) (Kozinski, C. J., dissenting in part), reh'g 649 F. 3d 953 (CA9 2011); 677 F. 3d, at 439 (Kozinski, C. J., concurring) (same). Given States' exclusive authority to set voter qualifications and to determine whether those qualifications are met, I would hold that Arizona may request whatever additional information it requires to verify voter eligibility.

B

The majority purports to avoid the difficult constitutional questions implicated by the Voter Qualifications Clause. See *ante,* at 13–15. It nevertheless adopts respondents' reading of §1973gg–4(a)(1) because it interprets Article I, §2, as giving Arizona the right only to "obtai[n] information necessary for enforcement" of its voting qualifications. *Ante,* at 15. The majority posits that Arizona may pursue relief by making an administrative request to the EAC that, if denied, could be challenged under the Administrative Procedure Act (APA). *Ante,* at 15–17.

JUSTICE ALITO is correct to point out that the majority's reliance on the EAC is meaningless because the EAC has no members and no current prospects of new members. *Post,* at 6 (dissenting opinion). Offering a nonexistent pathway to administrative relief is an exercise in futility,

not constitutional avoidance.

Even if the EAC were a going concern instead of an empty shell, I disagree with the majority's application of the constitutional avoidance canon. I would not require Arizona to seek approval for its registration requirements from the Federal Government, for, as I have shown, the Federal Government does not have the constitutional authority to withhold such approval. Accordingly, it does not have the authority to command States to seek it. As a result, the majority's proposed solution does little to avoid the serious constitutional problems created by its interpretation.

* * *

Instead of adopting respondents' definition of "accept and use" and offering Arizona the dubious recourse of bringing an APA challenge within the NVRA framework, I would adopt an interpretation of §1973gg–4(a)(1) that avoids the constitutional problems with respondents' interpretation. The States, not the Federal Government, have the exclusive right to define the "Qualifications requisite for Electors," U. S. Const., Art. I, §2, cl. 1, which includes the corresponding power to verify that those qualifications have been met. I would, therefore, hold that Arizona may "reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship," as defined by Arizona law. Ariz. Rev. Stat. Ann. §16–166(F).

I respectfully dissent.

SUPREME COURT OF THE UNITED STATES

No. 12–71

ARIZONA, ET AL., PETITIONERS *v.* THE INTER TRIBAL COUNCIL OF ARIZONA, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 17, 2013]

JUSTICE ALITO, dissenting.

The Court reads an ambiguous federal statute in a way that brushes aside the constitutional authority of the States and produces truly strange results.

Under the Constitution, the States, not Congress, have the authority to establish the qualifications of voters in elections for Members of Congress. See Art. I, §2, cl. 1 (House); Amdt. 17 (Senate). The States also have the default authority to regulate federal voter registration. See Art. I, §4, cl. 1. Exercising its right to set federal voter qualifications, Arizona, like every other State, permits only U. S. citizens to vote in federal elections, and Arizona has concluded that this requirement cannot be effectively enforced unless applicants for registration are required to provide proof of citizenship. According to the Court, however, the National Voter Registration Act of 1993 (NVRA) deprives Arizona of this authority. I do not think that this is what Congress intended.

I also doubt that Congress meant for the success of an application for voter registration to depend on which of two valid but substantially different registration forms the applicant happens to fill out and submit, but that is how the Court reads the NVRA. The Court interprets one provision, 42 U. S. C. §1973gg–6(a)(1)(B), to mean that, if an applicant fills out the federal form, a State must regis-

ter the applicant without requiring proof of citizenship. But the Court does not question Arizona's authority under another provision of the NVRA, §1973gg–4(a)(2), to create its own application form that demands proof of citizenship; nor does the Court dispute Arizona's right to refuse to register an applicant who submits that form without the requisite proof. I find it very hard to believe that this is what Congress had in mind.

These results are not required by the NVRA. Proper respect for the constitutional authority of the States demands a clear indication of a congressional intent to preempt state laws enforcing voter qualifications. And while the relevant provisions of the Act are hardly models of clarity, their best reading is that the States need not treat the federal form as a complete voter registration application.

I

A

In light of the States' authority under the Elections Clause of the Constitution, Art. I, §4, cl. 1, I would begin by applying a presumption against pre-emption of the Arizona law requiring voter registration applicants to submit proof of citizenship. Under the Elections Clause, the States have the authority to specify the times, places, and manner of federal elections except to the extent that Congress chooses to provide otherwise. And in recognition of this allocation of authority, it is appropriate to presume that the States retain this authority unless Congress has clearly manifested a contrary intent. The Court states that "[w]e have never mentioned [the presumption against pre-emption] in our Elections Clause cases," *ante,* at 10, but in *United States* v. *Gradwell,* 243 U. S. 476 (1917), we read a federal statute narrowly out of deference to the States' traditional authority in this area. In doing so, we explained that "the policy of Congress for [a] great . . . part

of our constitutional life has been . . . to leave the conduct of the election of its members to state laws, administered by state officers, and that *whenever it has assumed to regulate such elections it has done so by positive and clear statutes*." *Id.*, at 485 (emphasis added).[1] The presumption against pre-emption applies with full force when Congress legislates in a "field which the States have traditionally occupied," *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947), and the NVRA was the first significant federal regulation of voter registration enacted under the Elections Clause since Reconstruction.

The Court has it exactly backwards when it declines to apply the presumption against pre-emption because "the federalism concerns underlying the presumption in the Supremacy Clause context are somewhat weaker" in an Elections Clause case like this one. *Ante,* at 12. To the contrary, Arizona has a "'compelling interest in preserving the integrity of its election process'" that the Constitution recognizes and that the Court's reading of the Act seriously undermines. *Purcell* v. *Gonzalez*, 549 U. S. 1, 4 (2006) (*per curiam*) (quoting *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 231 (1989)).

By reserving to the States default responsibility for administering federal elections, the Elections Clause protects several critical values that the Court disregards. First, as Madison explained in defense of the Elections Clause at the Virginia Convention, "[i]t was found neces-

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[1] The Court argues that *Gradwell* is irrelevant, observing that there was no state law directly at issue in that case, which concerned a prosecution under a federal statute. *Ante*, at 10, n. 5. But the same is true of *Ex parte Siebold*, 100 U. S. 371 (1880), on which the Court relies in the very next breath. In any event, it is hard to see why a presumption about the effect of federal law on the conduct of congressional elections should have less force when the federal law is alleged to conflict with a state law. If anything, one would expect the opposite to be true.

sary to leave the regulation of [federal elections], in the first place, to the state governments, as being best acquainted with the situation of the people." 3 Records of the Federal Convention of 1787, p. 312 (M. Farrand ed. 1911). Because the States are closer to the people, the Framers thought that state regulation of federal elections would "in ordinary cases . . . be both more convenient and more satisfactory." The Federalist No. 59, p. 360 (C. Rossiter ed. 1961) (A. Hamilton).

Second, as we have previously observed, the integrity of federal elections is a subject over which the States and the Federal Government "are mutually concerned." *Ex parte Siebold*, 100 U. S. 371, 391 (1880). By giving States a role in the administration of federal elections, the Elections Clause reflects the States' interest in the selection of the individuals on whom they must rely to represent their interests in the National Legislature. See *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 858–859 (1995) (THOMAS, J., dissenting).

Third, the Elections Clause's default rule helps to protect the States' authority to regulate state and local elections. As a practical matter, it would be very burdensome for a State to maintain separate federal and state registration processes with separate federal and state voter rolls. For that reason, any federal regulation in this area is likely to displace not only state control of federal elections but also state control of state and local elections.

Needless to say, when Congress believes that some overriding national interest justifies federal regulation, it has the power to "make or alter" state laws specifying the "Times, Places and Manner" of federal elections. Art. I, §4, cl. 1. But we should expect Congress to speak clearly when it decides to displace a default rule enshrined in the text of the Constitution that serves such important purposes.

The Court answers that when Congress exercises its

power under the Elections Clause "it *necessarily* displaces some element of a pre-existing legal regime erected by the States." *Ante,* at 11. But the same is true whenever Congress legislates in an area of concurrent state and federal power. A federal law regulating the operation of grain warehouses, for example, necessarily alters the "pre-existing legal regime erected by the States," see *Rice, supra,* at 229–230—even if only by regulating an activity the States had chosen not to constrain.[2] In light of Arizona's constitutionally codified interest in the integrity of its federal elections, "it is incumbent upon the federal courts to be certain" that Congress intended to pre-empt Arizona's law. *Atascadero State Hospital* v. *Scanlon,* 473 U. S. 234, 243 (1985).

B

The canon of constitutional avoidance also counsels against the Court's reading of the Act. As the Court acknowledges, the Constitution reserves for the States the power to decide who is qualified to vote in federal elections. *Ante,* at 13–15; see *Oregon* v. *Mitchell,* 400 U. S. 112, 210–211 (1970) (Harlan, J., concurring in part and dissenting in part). The Court also recognizes that, although Congress generally has the authority to regulate the "Times, Places and Manner of holding" such elections,

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[2]The Court observes that the Commerce Clause, unlike the Elections Clause, empowers Congress to legislate in areas that do not implicate concurrent state power. *Ante,* at 12, n. 6. Apparently the Court means that the presumption against pre-emption only applies in those unusual cases in which it is unclear whether a federal statute even touches on subject matter that the States may regulate under their broad police powers. I doubt that the Court is prepared to abide by this cramped understanding of the presumption against pre-emption. See, *e.g., Hillman* v. *Maretta,* 569 U. S. ___, ___ (2013) (slip op., at 6) ("There is therefore 'a presumption against pre-emption' of state laws governing domestic relations" (quoting *Egelhoff* v. *Egelhoff,* 532 U. S. 141, 151 (2001)).

Art. I, §4, cl. 1, a federal law that frustrates a State's ability to enforce its voter qualifications would be constitutionally suspect. *Ante,* at 15; see *ante,* at 4–8 (THOMAS, J., dissenting). The Court nevertheless reads the NVRA to restrict Arizona's ability to enforce its law providing that only United States citizens may vote. See Ariz. Const., Art. VII, §2. We are normally more reluctant to interpret federal statutes as upsetting "the usual constitutional balance of federal and state powers." *Gregory* v. *Ashcroft,* 501 U. S. 452, 460 (1991); see Frankfurter, Some Reflections on the Reading of Statutes, 47 Colum. L. Rev. 527, 540 (1947) ("[W]hen the Federal Government . . . radically readjusts the balance of state and national authority, those charged with the duty of legislating are reasonably explicit").

In refusing to give any weight to Arizona's interest in enforcing its voter qualifications, the Court suggests that the State could return to the Election Assistance Commission and renew its request for a change to the federal form. *Ante,* at 16–17. But that prospect does little to assuage constitutional concerns. The EAC currently has no members, and there is no reason to believe that it will be restored to life in the near future. If that situation persists, Arizona's ability to obtain a judicial resolution of its constitutional claim is problematic. The most that the Court is prepared to say is that the State "might" succeed by seeking a writ of mandamus, and failing that, "might" be able to mount a constitutional challenge. *Ante,* at 17, n. 10. The Court sends the State to traverse a veritable procedural obstacle course in the hope of obtaining a judicial decision on the constitutionality of the relevant provisions of the NVRA. A sensible interpretation of the Act would obviate these difficulties.

II

The NVRA does not come close to manifesting the clear

intent to pre-empt that we should expect to find when Congress has exercised its Elections Clause power in a way that is constitutionally questionable. Indeed, even if neither the presumption against pre-emption nor the canon of constitutional avoidance applied, the better reading of the Act would be that Arizona is free to require those who use the federal form to supplement their applications with proof of citizenship.

I agree with the Court that the phrase "accept and use," when read in isolation, is ambiguous, *ante,* at 6–7, but I disagree with the Court's conclusion that §1973gg–4(a)(1)'s use of that phrase means that a State must treat the federal form as a complete application and must either grant or deny registration without requiring that the applicant supply additional information. Instead, I would hold that a State "accept[s] and use[s]" the federal form so long as it uses the form as a meaningful part of the registration process.

The Court begins its analysis of §1973gg–4(a)(1)'s context by examining unrelated uses of the word "accept" elsewhere in the United States Code. *Ante,* at 7–8. But a better place to start is to ask what it normally means to "accept and use" an application form. When the phrase is used in that context, it is clear that an organization can "accept and use" a form that it does not treat as a complete application. For example, many colleges and universities accept and use the Common Application for Undergraduate College Admission but also require that applicants submit various additional forms or documents. See Common Application, 2012–2013 College Deadlines, Fees, and Requirements, https://www.commonapp.org/CommonApp/MemberRequirements.aspx (all Internet materials as visited June 10, 2013, and available in Clerk of Court's case file). Similarly, the Social Security Administration undoubtedly "accepts and uses" its Social Security card application form even though someone applying for a card

must also prove that he or she is a citizen or has a qualifying immigration status. See Application for a Social Security Card, Form SS–5 (2011), http://www.socialsecurity.gov/online/ss-5.pdf. As such examples illustrate, when an organization says that it "accepts and uses" an application form, it does not necessarily mean that the form constitutes a complete application.

That is not to say that the phrase "accept and use" is meaningless when issued as a "government *diktat*" in §1973gg–4(a)(1). *Ante,* at 7. Arizona could not be said to "accept and use" the federal form if it required applicants who submit that form to provide all the same information a second time on a separate state form. But Arizona does nothing of the kind. To the contrary, the entire basis for respondents' suit is that Proposition 200 mandates that applicants provide information that does not appear on a completed federal form. Although §1973gg–4(a)(1) forbids States from requiring applicants who use the federal form to submit a duplicative state form, nothing in that provision's text prevents Arizona from insisting that federal form applicants supplement their applications with additional information.

That understanding of §1973gg–4(a)(1) is confirmed by §1973gg–4(a)(2), which allows States to design and use their own voter registration forms "[i]n addition to accepting and using" the federal form. The Act clearly permits States to require proof of citizenship on their own forms, see §§1973gg–4(a)(2) and 1973gg–7(b)—a step that Arizona has taken and that today's decision does not disturb. Thus, under the Court's approach, whether someone can register to vote in Arizona without providing proof of citizenship will depend on the happenstance of which of two alternative forms the applicant completes. That could not possibly be what Congress intended; it is as if the Internal Revenue Service issued two sets of personal income tax forms with different tax rates.

We could avoid this nonsensical result by holding that the Act lets the States decide for themselves what information "is necessary . . . to assess the eligibility of the applicant"—both by designing their own forms and by requiring that federal form applicants provide supplemental information when appropriate. §1973gg–7(b)(1). The Act's provision for state forms shows that the purpose of the federal form is not to supplant the States' authority in this area but to facilitate interstate voter registration drives. Thanks to the federal form, volunteers distributing voter registration materials at a shopping mall in Yuma can give a copy of the same form to every person they meet without attempting to distinguish between residents of Arizona and California. See H. R. Rep. No. 103–9, p. 10 (1993) ("Uniform mail forms will permit voter registration drives through a regional or national mailing, or for more than one State at a central location, such as a city where persons from a number of neighboring States work, shop or attend events"). The federal form was meant to facilitate voter registration drives, not to take away the States' traditional authority to decide what information registrants must supply.[3]

The Court purports to find support for its contrary approach in §1973gg–6(a)(1)(B), which says that a State must "ensure that any eligible applicant is registered to vote in an election . . . if the valid voter registration form of the applicant is postmarked" within a specified period. *Ante,* at 8–9. The Court understands §1973gg–6(a)(1)(B) to mean that a State must register an eligible applicant if he or she submits a "'valid voter registration form.'" *Ante,*

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[3]The Court argues that the federal form would not accomplish this purpose under my interpretation because "a volunteer in Yuma would have to give every prospective voter not only a Federal Form, but also a separate set of either Arizona- or California-specific instructions." *Ante,* at 10, n. 4. But this is exactly what Congress envisioned. Eighteen of the federal form's 23 pages are state-specific instructions.

at 9. But when read in context, that provision simply identifies the time within which a State must process registration applications; it says nothing about whether a State may require the submission of supplemental information. The Court's more expansive interpretation of §1973gg–6(a)(1)(B) sneaks in a qualification that is nowhere to be found in the text. The Court takes pains to say that a State need not register an applicant who properly completes and submits a federal form but is known by the State to be ineligible. See *ante,* at 12–13. But the Court takes the position that a State may not demand that an applicant supply any additional information to confirm voting eligibility. Nothing in §1973gg–6(a)(1)(B) supports this distinction.

What is a State to do if it has reason to doubt an applicant's eligibility but cannot be sure that the applicant is ineligible? Must the State either grant or deny registration without communicating with the applicant? Or does the Court believe that a State may ask for additional information in individual cases but may not impose a categorical requirement for all applicants? If that is the Court's position, on which provision of the NVRA does it rely? The Court's reading of §1973gg–6(a)(1)(B) is atextual and makes little sense.

* * *

Properly interpreted, the NVRA permits Arizona to require applicants for federal voter registration to provide proof of eligibility. I therefore respectfully dissent.

Chairman NADLER. Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman.

Mr. Adams, were you hearing the last answer? Do you have a response to the statements by the last witness?

Mr. ADAMS. A couple. First of all, there is no question that the Fifteenth Amendment has limits. The Supreme Court made that very clear in Shelby. There has to be a high showing by Congress.

The things that are in H.R. 1 I can assure you are not going to be viewed favorably by particularly this Supreme Court because they go way beyond what even Section 5 was. I mean, deciding that you have X amount of days of early voting, that doesn't have anything to do with racial discrimination, absent some high showing in Congress, which we haven't seen.

Now the elections clause is different, and my written testimony goes into great detail about that, that this Congress should exercise that power as a last resort. A "last resort" is the term that was used by Alexander Hamilton. It was set up to preserve the Federal Government, not to mandate 30 days of early voting around the country.

Mr. GOHMERT. And with regard to the allegation that these constitutional claims are often raised to try to defeat civil rights actions, I will always go back to the Constitution—that is our foundational document—to see if anything, no matter whether it is Republican or Democrat, whoever is bringing a bill, does it meet constitutional muster? So I would hope that that is where we always go back to.

And so when we seek to take the power away from the States in the Fourteenth Amendment that says States, basically it is up to the States that they can exclude anyone who has participated in rebellion or other crime, I mean, you need a constitutional amendment to seize that power away from the States to make that determination. And I am impressed by a political party that thinks their power will come from people who have committed felonies and that maybe are here illegally, don't speak the language that most do, at least 80 percent as a primary language.

That is interesting politically, but here we are guided by the Constitution. And I want to go back to the Voting Rights Act. I was accused of being against the Voting Rights Act when I made very clear I had an amendment that would force the preclearance requirement on any area in the country that had a certain level of racial disparity.

But Mr. Sensenbrenner and Mr. Conyers said, nope, we want to keep—in effect what their actions said, we want to keep punishing children, grandchildren, and great-grandchildren for the sins of the original person back over 50 years ago, and we want to keep that standard for 50 more years. We want to just keep punishing sins of long-gone people, and that is not supposed to be what America is.

And so when we had the information that clearly showed that States had improved and they were doing a better job than a district in Wisconsin, a district in Massachusetts, a district in California, why wouldn't we apply those preclearance requirements to any district where there was racial disparity?

And I got much more consideration from Mr. Conyers on that issue than Mr. Sensenbrenner. Mr. Conyers, I said, look, I have—and this was outside the hearing. I have talked to deans of different law schools, liberal and conservative, and they all say you can't keep punishing people for sins of far-gone others. You have got to punish sins that are current. And you have got to change that, or the Supreme Court is going to strike that down.

And Mr. Conyers said you make a good point. Let me talk to our folks. And he ultimately came back and said you got a good point, but it has already passed. So let us just see what the Court said.

Well, the Court said what I was told by liberals and conservative deans alike. It is not going to stand scrutiny by the Supreme Court. It didn't. So I would hope we don't try to go back to that. If we are going to punish racial disparity, let us go where the problem is and some arise in the future, as they have.

But let us go to those districts and punish those by preclearance requirements, but not keep punishing people 50 years after they have corrected their actions. So I am hoping that when the Voting Rights Act comes up, we will look to be more constitutional than the last slam dunk on others was.

And I see my time has expired. I yield back.

Chairman NADLER. I thank the gentleman. I thank the gentleman.

Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you to the chairman and the ranking member.

And I think what we are here today for is to assess the current and visible and sound actions of those today that are suppressing the vote in whatever manner that they can suppress the vote. So allow me just to pose questions that I think will allow you to focus on the suppression of the vote.

As I do so, let me mention the fact that the Shelby case, of course, undermined Section 5 and created a roadmap or a question about the formula, the current formula. But we do know that preclearance was an effective tool for today, in the historical today that prevented suppression of voting from State and local entities. And I think that should be on the record as being very clear.

I would like to pose this question to Ms. Gupta, Ms. Ifill, Ms. Turberville, and Mr. Noti. Which, in your opinion, is the greater and more immediate threat to our democracy, criminal actions by a hostile foreign power to defraud an American election—and we have heard a recounting of the place of voting rights in the Constitution—or rampant voter fraud that exists only in the imagination of the White House or the executive and other like-minded conspiracy theorists?

John Dewey, the great American philosopher and education reformer, is credited with saying, "The cure for the ills of democracy is more democracy." And many of us remember New York Governor Samuel Tilden's famous saying, "The means by which a majority comes to be a majority is, in fact, an important thing, process and fairness."

In other words, the essence of a representative democracy is representation and accountability, which can only be secured and

maintained by political participation, the most effective means of which is voting.

Ms. Turberville and Mr. Noti, and I am going to go to Ms. Gupta first, Ms. Ifill, but I wanted to share with you my question. Please explain the threat and danger to a functioning democracy posed by voter suppression and voter disenfranchisement efforts such as voter caging, purging, stacking, packing, and cracking, such as the representation by a report by our secretary of state that some 95,000 registered voters were found to have been identified as noncitizen and allegedly 58,000 voted in the 2016 election.

Now this is since 1996, this report. Let me correct myself. Since 1996, but it is well known that data does not coincide, and many of these people may have gotten a driver's license, and they might have moved into citizenship and then moved into voting at different times.

Ms. Gupta and Ms. Ifill, that first question, if you heard that first question for you, and then the second question.

Ms. GUPTA. I will just start by saying thank you for recognizing that the evidence that sustained the 2006 reauthorization was based on contemporary evidence, not the evidence from 1965. It is an important point to make.

There was an extensive record that was developed, and we look forward to working to develop that record to show the contemporaneous reason why we need the Voting Rights Act reauthorized in 2019.

I think there is no question that the—and it was documented by the recent intel report that we have foreign powers that are seeking to manipulate some of the greatest vulnerabilities, racism in America, to now use—to target black Americans and to engage in voter suppression through those efforts. That is a huge threat that many of us are very concerned is not being taken seriously enough, and social media platforms are ill-equipped to actually deal or are not dealing with these issues.

And so we are facing right now a myriad of new forms of voter suppression through voter caging and voter purging that will require and often requires private litigation by organizations dedicated to that. These are some of the very changes that a preclearance regime for the Department of Justice would actually prevent to begin with.

Ms. JACKSON LEE. Thank you. Ms. Ifill. And Mr. Noti, be prepared.

Ms. IFILL. Let me use as an example Texas' voter ID law from your own State. The voter ID law that Texas imposed after the Shelby decision is a voter ID law that they had attempted to get precleared prior to the Shelby decision, and preclearance was denied. In other words, they were not allowed to make that law become real because of the preclearance requirement.

After Shelby, the Attorney General decided that they were going to move forward with that law. It was imposed. We sued. We challenged that law, and we won. But in the 3 Ayers that it took us to litigate that case, during that time, Texas elected a United States Senator in 2014, all 36 members of the Texas delegation to the U.S. House of Representatives, the Governor, the Lieutenant Governor, the attorney general, the comptroller, various statewide

commissioners, 4 justices of the Texas Supreme Court, candidates for special election in the State senate, State boards of education, 16 State senators, all 150 members of the Statehouse, over 175 State court trial judges, and over 75 district attorneys.

We proved at trial that more than half a million eligible voters were disenfranchised by the ID law. We were ultimately successful in challenging, but it was too late for those elections. And this was a scheme that had been denied preclearance.

This is the kind of thing that undermines confidence in our electoral system and that threatens our democracy. What excuse can we have as a nation for disenfranchising over half a million voters from all of the elections I just described?

Chairman NADLER. Thank you. The time of the gentlelady has expired.

Ms. JACKSON LEE. Mr. Chairman, may I offer into the record, just briefly, a letter from Justice Roundtable, expressing the desperate need for restoration——

Chairman NADLER. Without objection, the letter will be entered into the record.

[The information follows:]

MS. JACKSON LEE FOR THE OFFICIAL RECORD

The Honorable Jerrold Nadler
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

The Honorable Doug Collins
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

January 29, 2019

RE: Broad coalition supports the Democracy Restoration Act provision of H.R. 1

Dear Chairman Nadler and Ranking Member Collins:

As the House Judiciary Committee prepares to hear testimony regarding H.R. 1, the For the People Act of 2019, the Justice Roundtable[i] and its associated organizations write in support of the bill's provision – known as the Democracy Restoration Act - to extend federal voting rights to people with felony convictions.

When people leave prison and return to their community, they deserve a second chance to work, raise families, participate in community life and vote. The current patchwork of felony disenfranchisement laws across the country means that a person's right to vote in federal elections is determined simply by where they choose to call home. Congress must take action to fix this problem.

While disenfranchisement policies have been in place for many years, the number of persons subject to these laws has increased dramatically with the expansion of the criminal justice system over the last 40 years. Racial disparities in the criminal justice system translate into higher rates of disenfranchisement in communities of color. Thirty-four states disenfranchise people who are not incarcerated and are living in their communities either under supervision or have completed a felony sentence. The Democracy Restoration Act would restore federal voting eligibility to these citizens.

Recent bipartisan state efforts to scale back the impact of felony disenfranchisement are noteworthy. Florida voters in November passed a ballot initiative that reformed the state's century-old lifetime ban on voting for people with convictions, and in doing so restored the right to vote for approximately 1.4 million people. In March, approximately 43,000 Louisianans will have their voting rights restored, including some people on probation and parole, as a result of new legislation. Since 1997, 23 states have amended felony disenfranchisement policies in an effort to reduce their restrictiveness and expand voter eligibility.

People living in the community under probation or parole supervision or after completing their sentence take on the same responsibilities as other citizens living in their communities. The second chance they are afforded by release should extend to the ballot box.

A growing chorus of law enforcement officials and organizations, including police chiefs, corrections officials, and prosecutors, have called for the restoration of voting rights for people released from prison and convicted of felony offenses because it aids efforts for successful reintegration.

As the Committee reviews H.R. 1 and considers means to improve the country's electoral system, we urge you to prioritize passage of the Democracy Restoration Act. We look forward to working with you to advance this important legislation.

For questions, please contact Kara Gotsch at kgotsch@sentencingproject.org or 202-628-0871.

Sincerely,

American Friends Service Committee
American King Foundation
Beauty after the Bars
Braxton Institute
Bread for the World
Brennan Center for Justice
CAN-DO Foundation
College & Community Fellowship
The Daniel Initiative
Defending Rights & Dissent
Drug Policy Alliance
Healing Communities USA
Human Rights Watch
Innocence Project
Interfaith Action for Human Rights
International CURE (Citizens United for Rehabilitation of Errants)
Justice Innovations
Justice Programs Office, American University
Justice Strategies
JustLeadership USA
Kemba Smith Foundation
Leadership Conference for Civil and Human Rights
Legal Action Center
Life for Pot
Mennonite Central Committee U.S. Washington Office
Mommieactivist and Sons
NAACP
National Association of Criminal Defense Lawyers
National Association of Social Workers

National Black Justice Coalition
National Center for Lesbian Rights
National Council of Churches
National HIRE Network
Ohio Justice and Policy Center
Planned Parenthood Federation of America
Rich Family Ministries
Safer Foundation
The Sentencing Project
StoptheDrugWar.org
Students for Sensible Drug Policy
The Taifa Group, LLC
Treatment Communities of America
T'ruah: The Rabbinic Call for Human Rights
Union for Reform Judaism

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[i] The Justice Roundtable is a coalition of over 100 organizations working on federal criminal justice reform policy issues.

Questions

The Role of Money in Politics

- The Foreign Agents Registration Act (FARA) was originally enacted in the 1930s to address concerns over the influence of foreign government propaganda in the U.S., including that from Nazi Germany.

- Through its decades-long existence, FARA has remained a public disclosure law and Congress has not prohibited either representation of a foreign interest or the dissemination of foreign propaganda.

- Congress, however has amended FARA to further the purpose of promoting "public transparency of an agents lobbying activities on behalf of foreign clients.

- Recent interest in FARA has been sparked by events surrounding the 2016 Presidential election and the investigation of Special Counsel Robert Mueller.

- Evidence of Russian interface in the election, the lobbying activities of Key Trump campaign officials, and the appointment of individuals to high-ranking cabinet positions has fueled renewed scrutiny of the statute.

- Russian spy Maria Butina has pled guilty to being an unregistered foreign agent who worked to forge relationships with conservative activists and leading republicans in the United States.

- Butina's case highlights the importance of assuring DOJ has all the tools necessary to properly enforce the regulations set out by the FARA.

- Maria Butina focused her efforts into forging ties with the NATIONAL RIFLE ASSOCIATION, a nonprofit organization that arguably has writing the book on how to circumvent campaign financing rules.

- The NRA is known to run issue ads on politically salient issues that are aligned with the candidate of choice.

Questions

- This practice is not regulated, it is not illegal, but it is happening at the increasing rates amounting to a greater impact in the democratic process.

- H.R. 1 and this hearing is a good foundation for the conversation around campaign financing reform as there is still much ground to cover in that space.

- While I am more inclined to trust that American entities have the best interest of our varied constituencies in mind, I am concerned that, when domestic entities begin to accept money so liberally from none other than hostile foreign governments, our country's democracy begins to vacillate.

- In an inquiry by Senator Wyden from the Senate Finance Committee, the NRA has repeatedly refused to explain how or if they vet donations from shell companies, a known means for Russians to funnel money into the U.S.

- Court filings in the Maria Butina case state that Butina and Alexander Torshin, a former Russian government official who helped direct her activities, then used their NRA connections to get access to GOP Presidential candidates.

- Butina's case exposed how Russia saw the NRA as a key pathway to influencing American politics to the Kremlin's benefit.

- And it has intensified questions about what the gun rights group knew of the Russian effort to shape U.S. policy and whether it faces ongoing legal scrutiny.

- The NRA's interactions with Butina and Torshin came as the group embarked on the unprecedented spending spree to help elect Donald Trump president.

- NRA spending on the 2016 elections surged in ever ycategory, with its political action committee and political nonprofit arm together shelling out $54.4 million.

Questions

- The bulk of the money - $30 million – went to efforts supporting Trump.
- That is triple the amount the group devoted to electing Republican Mitt Romney in the 2012 presidential race.

Questions

Mr. Adav Noti

Q: How should we be framing the issue of unchecked and untracked funneling of dark money into politically inclined organizations from hostile foreign actors?

Q: What are the greatest problems presented by the current campaign finance framework? Can you speak to ways we can begin to address and fix those problems?

Government Ethics Questions

Ms. Sarah Tuberville

- The complaint SCOTUS often puts forth regarding an ethics code is that the lower court judges (e.g., the Judicial Conference, which codified the model code in 1973) can't tell justices what to do.

- It's true that the Judicial Conference is composed of two dozen district and circuit judges, but Chief Justice Roberts is its presiding office, so if Roberts plays a role in promulgating a new conduct code, then the concern that "lower judges" are telling SCOTUS what to do is quashed.

Q: H.R. 1 it states that the Judicial Conference "shall issue a code of conduct, which applies to each justice and judge of the United States," does that language presume the Chief Justice of the United States, in his capacity of presiding officer of the Judicial Conference, would work with the other members of the Conference in drafting the ethics code?

Responses to Questions for the Record

Adav Noti
Senior Director, Trial Litigation & Chief of Staff
Campaign Legal Center

Committee on the Judiciary
United States House of Representatives
March 1, 2019

Chairman Nadler, Ranking Member Collins, and Members of the Committee:

I respectfully submit the following responses to the questions for the record submitted by Representative Sheila Jackson Lee.

Q: *How should we be framing the issue of unchecked and untracked funneling of dark money into politically inclined organizations from hostile foreign actors?*

Perhaps the most troubling aspect of the "dark money" phenomenon that the Supreme Court and the Federal Election Commission have unleashed is that no one — not law enforcement agencies, not journalists, and certainly not voters — truly knows how much foreign money is being funneled into American elections through corporations. There have been reports of Russian nationals attempting to influence elections by routing money through the NRA,[1] Chinese nationals routing money

[1] *See* Peter Stone & Greg Gordon, *FBI investigating whether Russian money went to NRA to help Trump*, McClatchy (Jan. 18, 2018), https://www.mcclatchydc.com/news/nation-world/national/article195231139.html; *see generally* Rosalind S. Helderman et al., *Russian agent's guilty plea intensifies spotlight on relationship with NRA*, Wash. Post (Dec. 13, 2018), https://www.washingtonpost.com/politics/russian-agents-guilty-plea-intensifies-spotlight-on-relationship-with-nra/2018/12/13/e6569a00-fe26-11e8-862a-b6a6f3ce8199_story.html.

through a corporation to a super PAC,[2] and Saudi- and Chinese-owned corporations routing money through trade associations.[3] These examples are, in all likelihood, merely the tip of the iceberg.

Longstanding federal law prohibits foreign nationals from making donations or disbursements in connection with federal, state, and local elections.[4] This prohibition is intended to "exclude foreign citizens from activities intimately related to the process of democratic self-government."[5] Indeed, the foundational principle of self-government informs multiple constitutional provisions, and thus "the United States has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government."[6] Such limitation "is part of the sovereign's *obligation* to preserve the basic conception of a political community."[7]

Thus, the current state of the law — in which foreign money is nominally banned but easily funneled into our elections through willing domestic conduit corporations — stands directly contrary to the government's obligation to protect American citizens' First Amendment right to self-governance.

As discussed below, there are concrete measures that Congress can and should take to restore the First Amendment rights of every citizen to meaningfully participate in our election campaigns.

Q: *What are the greatest problems presented by the current campaign finance framework? Can you speak to ways we can begin to address and fix those problems?*

The biggest current problem with our campaign finance system is that unlimited corporate election spending violates the First Amendment rights of American citizens to have a meaningful voice in our campaign process. To fulfill the

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[2] *See* Jon Schwarz & Lee Fang, *The Citizens United Playbook: How a Top GOP Lawyer Guided a Chinese-Owned Company Into U.S. Presidential Politics*, The Intercept (Aug. 3, 2016), https://theintercept.com/2016/08/03/gop-lawyer-chinese-owned-company-us-presidential-politics/.

[3] *See* Lee Fang, *Never Mind Super PACs: How Big Business Is Buying the Election*, The Nation (Aug. 29, 2012), https://www.thenation.com/article/never-mind-super-pacs-how-big-business-buying-election/; *see also* Lee Fang, *Chinese State-Owned Chemical Firm Joins Dark Money Group Pouring Cash Into U.S. Elections*, The Intercept (Feb. 15, 2018), https://theintercept.com/2018/02/15/chinese-state-owned-chemical-firm-joins-dark-money-group-pouring-cash-into-u-s-elections/.

[4] *See* 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20.

[5] *See Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2011) (Kavanaugh, J.) (internal quotations omitted), *aff'd mem.*, 132 S. Ct. 1087 (2012).

[6] *Id.* at 288.

[7] *Id.* at 287 (emphasis added).

First Amendment's promise of self-government, each individual must have the right to fully participate in the process that leads to the selection of federal officeholders.

Effective campaign finance laws directly promote this right by providing voters with information and increasing the chance that a wide variety of voices can be heard. By increasing transparency and limiting the likelihood of lopsided voices in the electoral arena, these laws prevent the distortion that occurs when any one person has too loud an amplifier and drowns out the voices of others. "[L]ike the loud mouth and long talker at the town meeting, untrammeled spending during an election campaign does not serve the values of self-government, nor can it lay claim to First Amendment protection."[8]

Ultimately, to fully fix this distortion, the Supreme Court will need to revisit its jurisprudence. But even before then, Congress could take highly productive, meaningful steps to protect the voices of voters in our democracy. There are at least six such critical reforms that Congress could enact right now:

1) Eliminate dark money;

2) Require disclosure of digital electioneering;

3) Strengthen the ban on foreign influence on elections;

4) Ensure that "independent" spenders are actually independent;

5) Restore the voices of ordinary Americans through public financing; and

6) Reform the Federal Election Commission.

These reforms are described in more detail below.

1) ELIMINATE DARK MONEY

Under existing law, as interpreted by the FEC, major election spenders can remain anonymous by funneling their money through corporate organizations (usually LLCs or 501(c)(4) nonprofits) that are not required to disclose their donors.

Although the Supreme Court helped create this "dark money" phenomenon by allowing corporations to spend money in elections, the Court has consistently upheld the constitutionality of disclosure laws. Indeed, eight Justices on the *Citizens United*[9] Court—six of whom still serve—endorsed mandatory financial

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[8] J. Skelly Wright, *Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?*, 82 Colum. L. Rev. 609, 638 (1982).

[9] 558 U.S. 310 (2010).

disclosure of the corporate spending enabled by that opinion.[10] The federal courts of appeals have almost universally upheld such disclosure requirements as well.[11]

Legislation like the DISCLOSE Act (which is included in H.R. 1) would largely eliminate dark money. Such legislation would operate by requiring funds passed between multiple entities to be traced back to their original source. Specifically, organizations spending substantial amounts on election activity would be required to track and publicly report all large political contributions. Thus, if an LLC or 501(c)(4) organization makes a large contribution to a super PAC, the LLC or 501(c)(4) would be required to report information about where it obtained the funds to make that contribution.

In addition, some dark money groups evade disclosure by falsely claiming that their political spending is focused on issues, not elections. To foreclose such evasion, effective legislation would mandate disclosure when a group spends substantial funds on communications or related activity—such as polling, research, or data analytics—that promotes, supports, attacks, or opposes a candidate (regardless of whether it expressly advocates the election or defeat of a candidate). The Supreme Court has expressed approval of this "promote or attack" language, and its constitutionality has been upheld by many courts.[12]

Transparency would promote First Amendment interests by improving the functioning of Congress and its responsiveness to the public. As the Supreme Court has acknowledged, disclosure not only allows the public to track the undue influence of large contributions on elected officials,[13] it can also deter officials from improperly acting on behalf of donors rather than voters.[14]

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[10] *Id.* at 366-71.

[11] *See, e.g., Indep. Inst. v. Williams*, 812 F. 3d 787, 795 (10th Cir. 2016); *See Del. Strong Families v. Attorney Gen. of Del.*, 793 F.3d 304 (3d Cir. 2015); *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118 (2d Cir. 2014); *Justice v. Hosemann*, 771 F.3d 285 (5th Cir. 2014); *Worley v. Fla. Sec'y of State*, 717 F.3d 1244 (11th Cir. 2013); *Free Speech v. FEC*, 720 F. 3d 788 (10th Cir. 2013); *Real Truth About Abortion Inc. v. FEC*, 681 F. 3d 544 (4th Cir. 2012); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464 (7th Cir. 2012); *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34 (1st Cir. 2011); *Human Life of Wash.*, 624 F.3d 990 (9th Cir. 2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc).

[12] *See, e.g., McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 170 n.64 (2010).

[13] *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 66 (1976) (""A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return"); *Citizens United*, 558 U.S. at 370 (with disclosure, "citizens can see whether elected officials are " 'in the pocket' of so-called moneyed interests").

[14] Citing *Buckley*, Chief Justice John Roberts wrote that disclosure requirements can "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *McCutcheon v. FEC*, 572 U.S. 185, 223 (2014) (quoting *Buckley*, 424 U.S. at 67).

2) REQUIRE DISCLOSURE OF DIGITAL ELECTIONEERING

As political spending increasingly migrates online, it has become apparent that campaign finance laws have an internet blind spot.

Under existing federal law, a TV ad that identifies a candidate and is run near an election is subject to FEC and FCC reporting requirements and must include an on-ad disclaimer stating who paid for it. Reporting and disclaimer requirements for ads in traditional media have been upheld by courts across the country, including by the Supreme Court in *Citizens United*. But an identical ad run online can escape those same transparency requirements. Additionally, digital ads, unlike most TV or radio ads, are highly targeted and viewable only by the individuals to whom they are targeted. This secrecy can allow false information to circulate uncorrected, and it hinders law enforcement efforts to ensure compliance with campaign finance laws.

Russia famously exploited these digital transparency gaps to interfere in the 2016 elections. Domestic political operatives used similar tactics to sway races in 2017 and 2018.[15] Self-regulatory efforts by platforms like Facebook have been a step in the right direction, but are easily evaded and can change at any time.

Policy solutions are evolving as jurisdictions experiment with different approaches. At the federal level, the bipartisan Honest Ads Act was introduced in 2017 and integrated into H.R. 1 in 2019, and legislation has been enacted in states including New York and Maryland. These bills and laws vary in the responsibilities they impose on advertisers, platforms, and election agencies. But all meaningful digital ad disclosure legislation addresses three major issues:

Digital political ads must identify their true sponsors on their face. Given the ease with which political actors can create fake Facebook pages or Twitter accounts, it is critical that recipients know who is actually paying for digital political messages. Legislation must properly incentivize advertisers and/or platforms to ensure the accuracy of on-ad disclaimers.

Digital political ads must be made available for public review. In 2018, Facebook, Twitter, and Google each (grudgingly) agreed to address the phenomenon of "dark ads"—i.e., digital ads that are not seen by anyone except small groups of targeted users—by creating public archives of political ads. But smaller platforms may lack the capacity to institute similar archives. Digital ad

[15] Scott Shane & Alan Blinder, *Democrats Faked Online Push to Outlaw Alcohol in Alabama Race*, N.Y. TIMES (Jan. 7, 2019), https://www.nytimes.com/2019/01/07/us/politics/alabama-senate-facebook-roy-moore.html; Tony Romm et al., *Facebook Is Investigating the Political Pages and Ads of Another Group Backed by Reid Hoffman*, WASH. POST, (Jan. 7, 2019), https://www.washingtonpost.com/technology/2019/01/07/facebook-is-investigating-political-pages-ads-another-group-backed-by-reid-hoffman/.

legislation should define the appropriate category of ads that must be made public and specify who is responsible for compiling and maintaining the archive.

Digital political advertisers must be subject to the same donor disclosure laws as traditional media advertisers. Outdated federal (and some state) laws require disclosure of donors only to groups that engage in television and radio advertising. Legislation should close this loophole by applying the same requirements to digital advertising.

3) ENSURE THAT "INDEPENDENT" SPENDERS ARE ACTUALLY INDEPENDENT

The Supreme Court in *Buckley* and *Citizens United* established a constitutional framework for campaign finance legislation that permits limiting contributions to candidates and parties, but allows unlimited spending by individuals and corporations for election activity that is independent of candidates and parties.

This constitutional distinction between contributions and independent expenditures, however, rests on an explicit presumption that the spenders are "totally independent[]."[16] Thus, super PACs and dark money groups may raise unlimited amounts and make unlimited expenditures in support of candidates only if they are operating independently of those candidates—but very often, this "independence" is a fiction. Many super PACs and 501(c)(4) organizations are in close contact with the candidates they support, and often are operated by those candidates' former staff or political allies. Current law is not strong enough to prevent such coordination between candidates and outside spenders.

Legislation to strengthen coordination law, like the "Stop Super PAC Coordination Act" (included in H.R. 1), would close two categories of loopholes. First, legislation would provide that an outside group is not legally "independent" if it has certain types of contacts with a candidate or party that it supports. These contacts would cover scenarios where, for example, a candidate, a candidate's immediate family member, or a candidate's former employee creates, manages, or fundraises for a supposedly "independent" organization.

Second, legislation would also expand the kinds of campaign spending covered by the coordination law, to include all ads that reference a candidate within the several months before an election, as well as related expenditures such as partisan voter registration and polling.

When coordination between candidates and super PACs or dark money groups is limited, then the influence of the handful of wealthy donors who fund

[16] *Buckley,* 424 U.S. at 47.

those groups is limited, too. This frees officeholders from the idiosyncratic policy preferences of wealthy special interests and promotes the First Amendment value of ensuring that officeholders are responsive to their constituents.

4) STRENGTHEN THE BAN ON FOREIGN INFLUENCE ON ELECTIONS

Longstanding U.S. law prohibits any foreign national from directly or indirectly spending money in connection with U.S. elections at any level of government.[17] Even as courts have struck down other limits on money in elections, they have upheld the foreign national ban. In 2012, two years after the Supreme Court's *Citizens United* decision, that same Court summarily affirmed a decision authored by then-Judge Brett Kavanaugh upholding the broad foreign national prohibition.[18]

Despite this unquestioned constitutional authority, Congress and the FEC have done nothing to prevent foreign corporations from exploiting the opportunities for corporate spending that *Citizens United* created. Most notably, under FEC interpretations of current law, foreign corporations can sidestep the foreign national ban by making contributions through domestic subsidiaries.

Federal legislation like the REFUSE Act and DISCLOSE Act (elements of which are included in H.R. 1) would close this gap by subjecting a corporation to the foreign national ban if it is 20 percent owned by foreign nationals (or 5 percent owned by a foreign government). Additionally, Congress could, consistent with existing case law, further expand the reach of the law to prohibit foreign nationals from spending money on a broader range of campaign advertisements—for example, all ads that mention candidates—and on ballot measures.

5) RESTORE THE VOICES OF ORDINARY AMERICANS THROUGH PUBLIC FINANCING

Laws that promote disclosure of political spending, that ensure super PACs and dark money groups are truly independent of candidates, and that close digital-ad loopholes can alleviate the impact of Supreme Court decisions like *Citizens United*. But public financing will go the furthest towards creating a government that looks like, and is responsive to, the country as a whole.

Public financing broadens the donor base by inviting average Americans back into the political process. A well-crafted public financing system can reduce the amount of time spent fundraising and promote more effective policymaking, making

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[17] 52 U.S.C. § 30121(a).

[18] *Bluman*, 800 F. Supp. 2d at 288.

elected officials more responsive to the broad base of community members funding their campaigns, rather than a small handful of wealthy special interests.

Courts have largely affirmed the constitutionality of voluntary public financing programs. In *Buckley*, the Supreme Court upheld the presidential program as a constitutional means "to reduce the deleterious influence of large contributions on our political process, to facilitate communication by candidates with the electorate, and to free candidates from the rigors of fundraising."[19]

In the years since, courts have continued to uphold public financing as a means of preventing corruption and promoting political participation.[20] A 2011 Supreme Court decision struck down Arizona's "trigger" mechanism that released additional public funds in response to private spending against participating candidates, but the Court reaffirmed the general constitutionality of public financing programs.[21]

These programs can take a variety of forms.

In **matching funds** programs, a jurisdiction will match small private contributions (e.g., $250 or less) received by a participating candidate with public funds at a set rate. New York City's program is a model for jurisdictions around the country. It first implemented its matching funds program in 1988 with a one-to-one match; in 1998, the city raised the rate to four-to-one; in 2007, it raised the rate to six-to-one; and in 2018, voters passed a ballot measure raising the matching rate to eight-to-one and lowering the contribution limit.[22]

The program has encouraged candidates to connect with a broader population of donors, with studies showing that small donors to New York City candidates come from a much more diverse range of neighborhoods than the city's donors to

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[19] 424 U.S. at 91.

[20] *See, e.g.*, *Republican Nat'l Comm. v. FEC*, 487 F. Supp. 280, 284 (S.D.N.Y. 1980) ("If the candidate chooses to accept public financing he or she is beholden unto no person and, if elected, should feel no post-election obligation toward any contributor of the type that might have existed as a result of a privately financed campaign."), *aff'd*, 445 U.S. 955 (1980); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 39 (1st Cir. 1993) (validating state's interest in public financing "because such programs . . . tend to combat corruption"); *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1553 (8th Cir. 1996) (recognizing public financing reduces the "possibility for corruption that may arise from large campaign contributions" and diminishes "time candidates spend raising campaign contributions, thereby increasing the time available for discussion of the issues and campaigning"); *Green Party of Conn. v. Garfield*, 616 F.3d 213, 230 (2d Cir. 2010) (finding Connecticut program worked to "eliminate improper influence on elected officials"); *Ognibene v. Parkes*, 671 F.3d 174, 193 (2d Cir. 2011) (explaining that public financing system "encourages small, individual contributions, and is consistent with [an] interest in discouraging entrenchment of incumbent candidates").

[21] *Ariz. Free Enterprise Club's Freedom PAC v. Bennett*, 564 U.S. 721, 724 (2011).

[22] https://www.nyccfb.info/program/what-s-new-in-the-campaign-finance-program-2/.

State Assembly candidates. As the *New York Times* recently documented, the city's public financing system means that 2021 mayoral candidates are laying the groundwork for their campaigns with small-dollar fundraising events in living rooms, rather than with high-dollar fundraisers in Wall Street boardrooms.[23]

A "**democracy voucher**" system is a newer innovation, where eligible citizens are given vouchers to assign to participating candidates of their choosing. In contrast with matching funds, vouchers do not require a contributor to use his or her own funds and then obtain a reimbursement and, therefore, can allow economically disadvantaged people to make small contributions to campaigns.

Seattle is the first U.S. jurisdiction to implement a voucher program. Seattle residents receive four $25 vouchers, worth $100 in total, each election year. Seattle residents may assign their vouchers to different candidates, or donate them all to the same campaign. Participating candidates can redeem the vouchers they receive for public funds to use in their campaign. The first election after the program took effect precipitated a record number of city residents contributing to local candidates over the course of a single election cycle.[24] Participation in the voucher program corresponded with higher voter turnout.[25]

As with matching funds, voucher systems still obligate participating candidates to fundraise, but the candidates need only ask for vouchers, rather than private dollars, which eases the toll of fundraising for both candidates and individual contributors.

A **flat grant** system fully or partially funds a qualifying candidate who voluntarily participates in the program. Arizona and Connecticut, among other jurisdictions, have "full grant" programs, where participating candidates may only make campaign expenditures with public funds and may not raise private contributions after receipt of the grant. In partial grant systems, participating candidates receive lump-sum payments of public funds but may also raise some private contributions to use in conjunction with their grant funds.

Any of the preceding types of public financing can be combined into a **hybrid system**. The presidential public financing system is one example of a hybrid system, offering participating candidates matching funds during the primaries and lump-sum grants for the general election. The District of Columbia's recently enacted program is also a hybrid: Beginning in 2020, participating candidates will

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[23] https://www.nytimes.com/2019/01/28/nyregion/corey-johnson-scott-stringer-mayor-nyc.html.

[24] Jennifer Heerwig & Brian McCabe, Ctr. for Studies in Demography & Ecology, Univ. of Wash., Expanding Participation in Municipal Elections: Assessing the Impact of Seattle's Democracy Voucher Program (2018), https://www.jenheerwig.com/uploads/1/3/2/1/13210230/mccabe_heerwig_seattle_voucher_4.03.pdfh.

[25] *Id.*

receive a lump-sum payment upon qualification followed by a five-to-one match for contributions from D.C. residents.

H.R. 1's public financing provisions together create a hybrid system. The bill would create a matching system offering a 6-to-1 match on small dollar contributions up to $150; candidates who agree to further restrictions—such as a $1,000 individual contribution limit—will see the match increased by 50 percent. The bill would further incentivize small donations by offering a tax credit of up to $50 for contributions to House candidates. H.R. 1 would also create democracy voucher pilot programs in three states; voters in those states would be given $50 vouchers to allocate to federal candidates in $5 increments.

6) REFORM THE FEDERAL ELECTION COMMISSION

Enacting robust campaign finance reform legislation means little if the laws are not vigorously enforced. For example, the rise of dark money is largely attributable to the FEC's failure to craft robust disclosure rules in the wake of *Citizens United*, and its refusal to enforce the disclosure laws and rules that remain on the books.

The FEC has six Commissioner positions—no more than three of which can be from any single party—and requires four votes to take substantive action: to craft rules, adopt new regulations, or open an investigation into potential violations. This means that three Commissioners of one party can paralyze the agency if they choose. And indeed, this has been the case since at least 2008, with a controlling block of three Commissioners miring the FEC in gridlock and dysfunction and thwarting action on major issues, such as super PAC coordination and digital advertising. These routine deadlocks send a signal to candidates, parties, and independent organizations that they may freely violate the law and the FEC is unlikely do anything about it.

H.R. 1 draws from the bipartisan Restoring Integrity to American Elections Act to restructure the FEC and restore its commitment to nonpartisan election administration. Any FEC reform legislation should be aimed at restructuring the FEC to eliminate deadlocks (by, for example, reducing the number of Commissioners from six to five, and placing certain administrative authorities in a chair), and ensuring that nominees are qualified and committed to the mission of the agency (by, for example, creating a blue ribbon advisory panel to recommend Commissioner nominees).

Response of Sarah Turberville
Director, The Constitution Project at the Project On Government Oversight
To Question For the Record
Submitted By Representative Sheila Jackson-Lee
H.R. 1, the For the People Act of 2019
March 1, 2019

Question: H.R. 1 states that the Judicial Conference "shall issue a code of conduct, which applies to each justice and judge of the United States," does that language presume the Chief Justice of the United States, in his capacity of presiding officer of the Judicial Conference, would work with the other members of the Conference in drafting the ethics code?

Answer: Yes. The Judicial Conference of the United States is comprised of two dozen district and circuit court judges, and is led by the Chief Justice of the United States. The Chief Justice would necessarily participate in any rulemaking, including the creation of a code of conduct, by the Conference.

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Chairman NADLER. Mr. Buck.

Mr. BUCK. Thank you, Mr. Chairman.

Mr. Chairman, in 1960, presidential candidate John F. Kennedy needed to win the State of Illinois to win the election. His brother Robert Kennedy called Mayor Richard Daley asking about the vote count in the critically important City of Chicago.

When Robert Kennedy asked, "How many votes will we get from Chicago?" Mayor Daley responded, "How many votes do you need?"

The Democrat Party has a long history of stealing elections in this country. Our chairman knows very well the history of New York City Democrat politics with the Democrat bosses in Tammany Hall stealing elections for decades. Whether it is Huey Long in Louisiana or the Black Panthers in Philadelphia, the Democrat Party relies on corruption and voter intimidation to win elections. In 2016, we even witnessed the Democrat Party stealing election from one of its own candidates, as Hillary Clinton's allies rigged the primaries against Bernie Sanders.

Now, Mr. Chairman, we are presented with H.R. 1, the Democrat Party's wish list written by special interest groups, and here we go again. This bill works like the Chicago-style Democrat machine. It does nothing to clean up voter rolls that haven't been reviewed in years, allowing dead people and those who have moved away to continue voting.

A friend told me a story about his uncle who was a lifelong resident of Chicago and a lifelong Republican voter. His family learned that after he died, he cast his first vote for a Democrat. This bill fails to remove and even prevents removal of fraudulently registered individuals. It even mandates the counting of provisional ballots, whether those ballots are cast by citizens or not.

Look at Texas, where officials found 95,000 noncitizens have been registered to vote, and 58,000 noncitizens voted in Texas elections. It doesn't take a genius to see that this can happen anywhere without proper oversight.

This bill also infringes on a State's right to determine whether felons may vote, criminalizes free speech, and weaponizes the Federal Election Commission. H.R. 1 does nothing to make elections fairer.

Mr. von Spakovsky, any thoughts on the history of election fraud in this country?

Mr. VON SPAKOVSKY. Well, I would quote the U.S. Supreme Court in 2008, a decision written by Justice John Paul Stevens, in which they talked about the fact that, unfortunately, the United States has a long history of voter fraud documented by journalists and historians. We started a—and it could make the difference in a close election. Anyone who believes it doesn't occur can look at the news and see the Alabama mayor who was just removed after being convicted of absentee ballot fraud.

We have got a database at the Heritage Foundation with documented cases from across the country. We have almost 1,200 cases, and these are not just allegations in a newspaper of someone saying they think they saw something wrong at a poll. The only thing we put in our database are cases where someone has actually been convicted of engaging in election fraud or a court has found fraud and ordered a new election.

Some of these are isolated cases. One gentleman that we have who was convicted of voting in three different States, but there are other cases where it is organized, and particularly often in absentee ballot fraud cases is an organized effort to do that.

How widespread is the problem? Well, we don't know that. But there are enough instances of it that the Supreme Court thought it was sufficient to justify the voter ID law that the State of Indiana had passed, and that is why they upheld it in the opinion that was written by Justice John Paul Stevens.

Mr. BUCK. Does H.R. 1 improve—or does H.R. 1 limit the ability of those who want to commit fraud, or does it actually expand the ability of those who want to commit fraud?

Mr. VON SPAKOVSKY. Oh, I think it is going to make it easier to commit fraud. And I would point to the fact that it severely restricts the ability of States, basically amending the provisions that I think Congress wisely put into the National Voter Registration Act. But it amends those provisions to make it even more difficult to verify and check the accuracy of voter registration rolls.

And remember, when it was upheld by the Supreme Court, they pointed to a report, prior report that found there are almost 3 million individuals registered in more than one State, almost 2 million individuals who were deceased who were still on the rolls.

Mr. BUCK. Thank you.

Mr. Chairman, I yield back.

Chairman NADLER. I thank the gentleman. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

Let me ask Ms. Ifill, I guess. The issue about felon voting rights, Tennessee has a provision in its law that says that if you are not current in your child support, you can't get your right to vote back as a felon. You can be back on your child support if you are not a felon and you can vote, but if you are a felon, you can't get your rights back.

Do you know of any other State that has a such an impediment to voting?

Ms. IFILL. Well, I do know that some States that have sought to restore the right to vote to formerly incarcerated persons have made that right contingent on the full completion of the sentence.

Mr. COHEN. Right.

Ms. IFILL. Which can also mean the payment of fines or fees, can also mean probation. And so it is not predicated simply on having been released from prison, but it carries with it all of the additional things that might go along with a sentence.

Mr. COHEN. Yes, Tennessee has that. But they also have child support.

Ms. IFILL. I have not heard that imposed in other jurisdictions.

Mr. COHEN. It was—anybody on the panel heard of child support?

[No response.]

Mr. COHEN. I sponsored the bill in the Senate to restore voting rights, and that was put in by a House member, and I think it was done for pernicious basis. It is hard to keep current on your child support if you are in prison for a long time anyway, but that is still part of the law.

Where are the States, Ms. Ifill, that have—most of the States that have prohibitions on people having the opportunity to vote if they have committed a felony?

Ms. IFILL. Well, they have been all over the country, but certainly, there was a concentration in the South. As you may know, some of the history of these laws emanated at the turn of the 19th century, I guess the turn of the 20th century. After Southern States received back their power, they passed new constitutions. This is after the Civil War and after Reconstruction around 1900, and we saw the expansion of ex-felon voting restrictions in State constitutions during that period when there was a very robust effort to try and disenfranchise at that point newly freed slaves who had been free for several decades.

Mr. COHEN. I was a history major, and so it astonishes me. It is amazing. You know, in Memphis, we had a statue of General Nathan Bedford Forrest, and it was recently taken down. And it was put up right at the turn of the 19th, the 20th century. It is amazing how that coincided with the felon voting issue.

Ms. IFILL. Yes.

Mr. COHEN. Just things happen, amazing.

Of the States that were in the preclearance, seven of the nine were Southern States. Is that correct?

Ms. IFILL. That is correct.

Mr. COHEN. There were a lot of smaller jurisdictions in New York and Michigan and some other areas of the country. What percentage of the country that was in preclearance that was justified were in the old Confederacy, by population, do you guess?

Ms. IFILL. Most of them. Certainly most of them.

Mr. COHEN. Yes.

Ms. IFILL. Most of the jurisdictions that came in that were in the North came in in the 1970s under the language provisions of the amended Voting Rights Act, and that is when three boroughs of New York, for example, became part of the preclearance regime.

Mr. COHEN. And the State of North Carolina, wasn't their—Ms. Gupta, you mentioned that North Carolina and one other State—was it Texas—that jumped right into action and put in some old bans after that?

Ms. GUPTA. That is correct.

Mr. COHEN. So North Carolina was not one of those seven, has kind of moved up and joined the—is that correct? Is North Carolina one of the worst States now?

Ms. GUPTA. There were jurisdictions in North Carolina that were covered by the preclearance regime, but there are certainly, I will say—and this is exactly why we welcome the opportunity to develop a full record about contemporary discrimination. Unfortunately, we have seen an expansion, kind of a metastasization of voter suppression now around the country.

It used to be that you saw these kinds of overt acts in the South, and unfortunately, the disease of voter suppression really has metastasized to a lot more jurisdictions around the country. And we saw in North Carolina, the State actually enacted a statewide law that was considered the most restrictive in the country after Shelby County.

Mr. COHEN. How would you recommend to us to find the jurisdictions that are the most heinous in terms of finding ways to discriminate?

Ms. IFILL. Well, we welcome the opportunity to develop a record, to give testimony. A lot of our organizations in the Leadership Conference coalition, including the NAACP Legal Defense Fund, MALDEF, Lawyers Committee, Brennan Center, we have been collecting this evidence as best we can, documenting small and big changes that have prevented people of color from accessing the polls when laws were changed or changes were made, both small changes and big.

And it is imperative that we collect this evidence, put it before you so that you can restore the Voting Rights Act in concordance with the United States Supreme Court's opinion in Shelby and create a formula that will allow the Justice Department now to ensure before people lose the right to vote, before elections take place, that people are not unfairly and unlawfully prevented from participating in our democracy.

Mr. COHEN. My time is about out, but if I can ask indulgence. You know, our Constitution is a great document, I concur. But you have to remember that the original sin of this country was slavery, and the original document was drafted with slavery in mind. That is why African-Americans were considered three-fifths. Not three-fifths for voting rights, but three-fifths for purposes of Southern States having representation in Congress and in the electoral college, to maintain the system of slavery that was in this country.

It was part of our charter. And except for the Civil War and the Thirteenth, Fourteenth, and Fifteenth Amendments, we would still be there, and we are still fighting it today. And it took John Lewis in 1960s to go to Selma and to march and Dr. King to march and for us to get a Voting Rights Act. We are way behind, and we need to catch up and remove ourselves from that original sin.

I yield back the balance of my time.

Chairman NADLER. I thank the gentleman. Mr. Gaetz.

Mr. GAETZ. Thank you, Mr. Chairman.

I wanted to begin by congratulating you on your ascent to the chair and by expressing my sentiment that though we are not members of the same party, I have every confidence that during your leadership, this committee will be more engaging and transparent and robust in the discussion than we were during the 115th Congress.

Chairman NADLER. Thank you very much.

Mr. GAETZ. I will say that I had hoped that at one of our initial meetings we would have been giving powers back to the States in the form of removing cannabis from the list of Schedule I drugs rather than taking powers from the States.

I will also note that with some of the new additions on the Republican side, I think the committee would be very favorable to that. If we were any more favorable, we might have to start our meetings with the Grateful Dead. So I am——

Chairman NADLER. Let me just observe on your time that we may be discussing that fairly soon.

Mr. GAETZ. I look forward to it.

Today is about voting. I wanted to tell the story of Anthony Grant. He is from the town of Eatonville, Florida, wanted to be mayor. Ran, lost the vote on Election Day. But lo and behold, Mr. Grant got more than twice as many votes in the vote by mail system. We later found out that Mr. Grant had intimidated people who did not even live in the town of Eatonville to mail in ballots.

And so my question is, I guess to Ms. Gupta, you say that your organization believes that we ought to restore automatically the voting rights of people who have engaged in felonious conduct. Mr. Grant was convicted of a felony. When he is done with his probation and community service and time, should we allow him to vote again?

Ms. GUPTA. The Leadership Conference would say yes. After people have completed their sentence and served their debt to society, the right to vote should be restored. I think it should be——

Mr. GAETZ. Well, I want to reclaim my time. I am a country lawyer from North Florida, but it doesn't make much sense to me that the way to make our voting system more secure and more trusted is to empower the people who have degraded that system to come back and participate in it.

Another circumstance, James Webb Baker. Mr. Baker was from Seattle, but he wanted to influence elections in my State of Florida. And so he would send mailers intimidating people who participated in Republican efforts, really trying to threaten them if they would go vote.

We caught up with Mr. Baker. He was ultimately convicted. So you think Mr. Baker ought to be able to vote, even though he intimidated my voters in Florida?

Ms. GUPTA. I don't know the specific circumstances of that matter, but I think it is very important to recognize that felony disenfranchisement laws are a product of Jim Crow. They were born in explicit racism with legislatures standing up in the 19th century, constitutional conventions deliberately bragging about their ability to use the disenfranchisement——

Mr. GAETZ. Right. But I am not asking about those people, ma'am. I am not asking about that. I am talking about the people who go out of their way to intimidate voters. And what you are saying is that then we ought to let those people back into the system.

And I noted in your written testimony, you said that the reason that we have to automatically restore voting rights to felons is because of our racially violent past. Now H.R. 1, which you are here endorsing, does it make a distinction between people who have engaged in violent felonies and people who have engaged in nonviolent felonies and the automatic restoration of their rights?

Ms. GUPTA. H.R. 1 restores voting rights to people with felony convictions who have completed their sentence.

Mr. GAETZ. Violent or nonviolent, right?

Ms. GUPTA. So it does not—and let me just add that when you say "automatically get added to the rolls," there is nothing in H.R. 1 that replaces election officials' reviews of eligibility. They still review a registration before they are accepted into the——

Mr. GAETZ. Ma'am, I am limited on time. But that review of eligibility does not allow them to delineate between the violent and nonviolent. So I am looking at Anthony Bruton. Anthony Bruton

committed sex acts with a 12-year-old at knife point, then he threatened to cut her throat and bury her. He spent 5 years in prison for that offense.

And so then like if Anthony Bruton, under H.R. 1, were to move out of Florida and would have moved to the State of Missouri, where they had on the ballot a ballot question that dealt with whether or not your past criminal conduct in violent sexual acts would be considered in sentencing, would H.R. 1 have allowed Mr. Bruton to rape a 12-year-old at knife point, move to another State, and then vote against actions that would allow that to be considered at a subsequent sentencing?

Ms. GUPTA. Sir, our criminal justice system needs to hold people accountable for the crimes that they commit. What H.R. 1 does is uphold voting as a national symbol of equality and full citizenship. It would restore the right to vote to people who have completed their sentence and served out their debt, per the criminal justice system——

Mr. GAETZ. Yes, I get that.

Ms. GUPTA [continuing]. Accountable.

Mr. GAETZ. I just want to make the point that it is like everybody. In the State of Florida, we passed a ballot proposition that created a path for nonviolent felons to be able to participate in the process again.

But what this does is that this bill would allow someone like Nardo Harmon, who broke into the homes of people and raped 11-year-old victims. So he gets out of his house, breaks into somebody else's house and rapes an 11-year-old. But if H.R. 1 were the law, and Nardo Harmon did that, he would then be able to go vote against California Proposition 83 that would have required him to wear a GPS monitoring device.

So I think that like there are some things you can do that are so bad, the degradation of people's right to vote, intimidating people from voting, raping children, that probably surrenders your right to participate in those decisions in the future.

I appreciate the chairman's indulgence, and I yield back.

Chairman NADLER. Thank you. Mr. Johnson.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman, and thank the esteemed panel for your presence today.

I am reminded of the trip that Justice Scalia took. It was his last one. It was to the 30,000-acre resort home with exquisite furnishings and lodging owned by John B. Poindexter, a Houston-based manufacturing industrialist who had had business before the U.S. Supreme Court the year before, which resulted in the U.S. Supreme Court deciding not to hear his case. Justice Scalia did not recuse in that matter.

But anyway, he is at this luxury resort, 30,000 miles—30,000 acres, miles away from the nearest airport. The travel was by private jet from Washington to Texas, and then to get from the airport in Texas out to that exclusive area, which was only 30 miles away from the Mexican border, took some doing.

I don't know if it was by a helicopter or by a limo. Certainly not a cab. But, and there were 35 other guests hanging out at that weekend jaunt.

Mr. Poindexter admitted to the Washington Post that he did not charge Justice Scalia to come and spend that weekend at that exclusive resort or hunting preserve, whatever it is. But the fact that he was there, the fact that we don't know who paid for it, how much it cost, who was present. It could have been people with pending business before the U.S. Supreme Court, who had the opportunity in those exclusive confines to be able to discuss their case or the issues involving their case with Justice Scalia.

Does anyone, particularly you, Ms. Turberville, have any problems with the—with the visual that I have tried to describe you to and what that does to the public's ability to have confidence in the integrity of the judiciary, particularly the U.S. Supreme Court?

Ms. TURBERVILLE. Thank you, Congressman.

I could not agree more that those are the types of instances that I think give rise to the public's perception that the Justices play by a different set of rules. And I think those instances also make clear that, you know, perhaps there was nothing that was inappropriate occurring at that ranch with Mr. Poindexter.

But we are no longer in the position of being able to give the high court the benefit of the doubt, and it would seem to me that it is appropriate for this Court, whose decisions impact a far broader swath of America than any other court in the country and whose decisions are irreversible, to be held, at minimum, to a basic code of conduct and one that could have commentary that would address these kinds of circumstances.

So I think that many Americans are bothered by instances like that. This is not a partisan issue. There have been instances of Justices from both the conservative wing and the liberal wing who have perhaps engaged in conduct that we don't know all the facts about, but the disclosure rules are not that robust either.

Mr. JOHNSON of Georgia. The fact is that H.R.—Section 7001 of H.R. 1 would require the Judicial Conference to issue a code of conduct that would apply to all Federal judges, including U.S. Supreme Court Justices.

Mr. von Spakovsky, you take issue with that. Your opinion is that because the U.S. Supreme Court is constitutionally established, not legislatively, and it is coequal and independent, then it logically follows that the legislative branch cannot impose a code of conduct on the Supreme Court.

Ms. Turberville, you disagree with that. Why?

Ms. TURBERVILLE. Well, I think that there is a long history of this—of the Congress exercising its constitutional prerogative to pass laws that govern the form and function of the United States Supreme Court. And that includes recusal decisions. That includes financial disclosure obligations. That includes, I said this a little bit earlier, mandating the size of the Court and determining the length and the date of the term of the Supreme Court.

Here, we are not even talking about looking to the sort of complaint process like that found in the Judicial Conduct and Disability Act. We are talking about a basic code of conduct that the highest court of the land ought to bind itself to.

And I would—I also want to let the committee know that I have looked into the most recent polling on this conducted by a group called Fix the Court, and they actually enlisted both sort of Repub-

lican-aligned and Democratic-aligned polling company and found that 86 percent of Americans support a code of conduct for the Supreme Court. You cannot get 86 percent of Americans to agree on anything.

So I would suggest that this is something whose time has come, that the American people support, and that would be a very good thing for the legitimacy of our Nation's highest court.

Mr. JOHNSON of Georgia. Thank you.

Chairman NADLER. The time of the gentleman has expired. Mr. Biggs.

Mr. BIGGS. Thank you, Mr. Chairman.

Mr. Adams, in your written testimony on page 2, you say, "On the other hand, H.R. 1 presents an opportunity to educate the public about how various provisions in H.R. 1 that are already the laws of some States, like California, have injected vulnerabilities into the elections process." And I wondered if you would expand for us on what those vulnerabilities might look like and what they are?

Mr. ADAMS. Right. California, for many, many years after the passage of the Help America Vote Act, failed to comply with it. What was that noncompliance?

The Help America Vote Act required reasonable list maintenance. Now some people prefer to call it purging because it scares people, but it is reasonable list maintenance on duplicates, deads, people who are on the rolls who have moved away. And California was supposed to implement a statewide database so you could compare Los Angeles County with San Diego County and so forth and see who is registered in multiple places.

Well, California didn't do that for 20 years, and what it created is a system that the evidence has shown has voter rolls with huge numbers of inactive people who no longer live where they are registered to vote. And that is exactly the kind of thing that H.R. 1 would promote because it gets rid of reasonable list maintenance opportunities for State election officials.

Mr. BIGGS. Thank you. And I guess for States like Arizona that have passed an independent redistricting commission, this bill would actually basically remove our voter-elected, voter-mandated IRC format, which I am not sure I think works great, but it nonetheless is what the voters wanted and it is working the way I think the voters intended it to vote. And it would supplant it with some Federal scheme.

Elaborate on the rationality of that, please.

Mr. ADAMS. What it does is take over a power the State legislatures have in the Constitution. Now we have heard testimony that this is justified because of the Civil War amendments, that rampant voter discrimination allows the Federal Government to mandate redistricting commissions.

Well, look, I couldn't even get Gingles I, which is a prerequisite for bringing a voting rights case, in a lot of these States probably—Vermont, New Hampshire, Maine, maybe Washington, Idaho, Utah, maybe Kentucky, maybe Wisconsin, Minnesota. These are States you couldn't even bring a voting rights claim for redistricting probably. And more importantly, Mr. Biggs, nobody has brought voting rights claims in some of these States.

So Congress, to use the Fifteenth Amendment is a dead end for independent redistricting commissions because there is no showing of racial discrimination.

Mr. BIGGS. And actually, it centralizes power that may not need to go there, specifically for States like Arizona that have already taken care of it.

Mr. von Spakovsky, I am looking at your written testimony on page 8 and 9, and one of the things you refer to is the, for instance, the civil penalty on failure to properly comply with FARA, and maybe it is potentially a due process or certainly inconsistent with the very notion of due process principles. I would like you to expand on that, please.

Mr. VON SPAKOVSKY. Sure. I mean, look, I am the first to tell you I think the Foreign Agent Registration Act is a good law passed by Congress. It is needed. We need to know if lobbyists, for example, are representing foreign government. But the problem with the amendments to it is that it adds a very large civil penalty.

And look, this Congress for the past year has been looking at the issues of overcriminalization in reforming our criminal system. And yet one of the other things that needs to be looked at is onerous civil penalties that are imposed not under the kind of high legal standard that you need as in a criminal violation, but under a preponderance of the evidence standard.

And I think there are due process considerations there that ought to be given serious thought by Congress before it does this, particularly because, you know, it adds this new provision in about if you are—if you don't comply with a 60-day deadline, if you are one day over that, you may have a huge civil penalty imposed.

And I just think it is an important law. There has been no evidence produced that the Justice Department is failing to properly prosecute it. In fact, we have seen recent prosecutions under the law. And before you enhance it and add huge civil penalties, you should think about making sure that the due process requirements for the Justice Department to impose something like that also protect the rights of the American people.

Mr. BIGGS. Thank you. My time has expired.

Chairman NADLER. Thank you. Mr. Deutch.

Mr. DEUTCH. Thank you, Chairman Nadler, Ranking Member Collins.

Thanks to our distinguished panel of witnesses for being here today.

I want to start just by saying I appreciate Mr. Buck's concern over voter fraud and would refer him to President Trump's now disbanded voter integrity commission, which uncovered no evidence to support claims of widespread voter fraud.

Mr. Chairman, our first priority in this committee is protecting the integrity of our democracy. Broken campaign finance laws allow limitless special interest dollars to create a wedge between the American people and their government. Dark money, in effect, loopholes promote a lack of accountability on the campaign trail, in the White House, on the bench, and in Congress.

Voter suppression and gerrymandering make it harder for Americans to get to the polls and harder to have their voices heard in

this Congress. H.R. 1 is a set of desperately needed repairs to the foundation of our representative democracy.

Mr. Noti, January 21st marked 9 years since the Supreme Court's 5–4 decision in Citizens United. That decision, as you pointed out, opened the floodgates of limitless election spending that allows wealthy special interests to drown out the voices of American voters. Could you speak to how limitless election spending threatens the integrity of our elections?

Mr. NOTI. Yes, thank you for the question, Congressman.

Limitless spending by corporations threatens the integrity of the elections because the corporations who are engaging in the spending are not voters. They distort the process by drowning out the voices of ordinary American citizens who actually are the voters and to whom the Government needs to be responsive and accountable if democracy is going to work.

Mr. DEUTCH. But the Court claimed to be protecting First Amendment free speech rights of corporations. So how does limitless outside spending hurt First Amendment rights to participate in the political process?

Mr. NOTI. So the Court recognized or the Court for the first time said that corporations have a First Amendment right to engage in unlimited so-called independent spending in campaigns. What that ignored and the fundamental flaw of the opinion is that there is a competing First Amendment interest of ordinary Americans—actual voters—to participate meaningfully in that process, which is impossible if their voices are drowned out to the level of inaudibility by massive corporate spending.

Mr. DEUTCH. Right. So in the 2016 election cycle, the National Rifle Association spent $54 million on so-called independent expenditure political ads, funneling much of it through dark money groups. Your organization, Campaign Legal Center, filed a complaint against the NRA based on its election spending. Why?

Mr. NOTI. There are strong indications that some of the spending that the NRA engaged in was coordinated with a number of Federal candidates in that election, which coordinated campaign spending is equivalent to a campaign contribution, which would be unlawful under a number of existing provisions of law.

Mr. DEUTCH. And the tens of millions of dollars spent on independent expenditures violates the integrity of our democracy in what way?

Mr. NOTI. I think it goes back to the point we discussed earlier, Congressman, that that amount of money cannot be matched reasonably by ordinary people. And so this corporate entity can drown out the voices of the people who should actually have the main effect on elections, who are the voters.

Mr. DEUTCH. And what impact does that have on Congress' policymaking?

Mr. NOTI. Well, the——

Mr. DEUTCH. Let me answer that for you, Mr. Noti. Here is the impact that that has.

The impact that that has is that common sense gun safety measures that have the support of over 90 percent of the American people don't even get a hearing. That is the impact that it has. It is clear, Mr. Noti, Mr. Chairman, members of this committee, that

the majority of American people know that Citizens United isn't working.

A May 2018 poll by the University of Maryland found that 66 percent of Republicans—I ask my friends on the other side of the aisle to take note. Sixty-six percent of Republicans and 85 percent of Democrats want a constitutional amendment that will overturn Citizens United to allow for limits on money in politics. Nineteen States and nearly 800 localities have passed resolutions in support of a constitutional amendment.

Citizens United is not protecting the First Amendment rights of Americans. It is not giving us elections that produce governments of, by, and for the people. Citizens United is giving us a government that can't fix problems because it is paralyzed by corruption. Citizens United is standing in the way of important priorities like workers getting a living wage, finding solutions to climate change, and making our communities safer from gun violence.

That is why I sponsor the Democracy for All amendment to overturn Citizens United. That is something that we need to do. H.R. 1 acknowledges what most Americans know, that Citizens United is hurting our republic, and we need to overturn it. If we want Congress and the rest of our Government to respond to the will of the people, we need to repair our democracy.

H.R. 1 is a fantastic start, and I look forward to working with the committee to further examine the damaging impact of Citizens United and working to overturn it. This is only a partisan issue in Washington. Everywhere else in America, we know that we have to pass H.R. 1, and we have to overturn Citizens United and restore democracy to the American people.

I yield back.

Chairman NADLER. Thank you.

Ms. Lesko.

Ms. LESKO. Thank you, Mr. Chairman. And my question is for Mr. von Spakovsky. Representative Collins suggested several alternative names to this act, and I would say this bill should be calling "Fleecing the People Act." It contains a provisions where Federal tax dollars from hard-working middle-class families and single mothers would be lining the pockets of politicians to pay for nasty TV ads and robocalls, and paying for politicians' personal childcare and healthcare.

Under this bill, it is estimated that at least $3.9 billion of taxpayer dollars would line the pockets of House congressional candidates based on estimates from Bloomberg, and an estimated $6.25 billion would line the pockets of presidential candidates based on the formula in this bill and the 2016 election, for a total of $10.1 billion of taxpayer dollars. To me, this is an outrageous, outrageous use of taxpayer dollars.

You know, Democrats recently, we were in a battle. They blocked funding for a border fence. In Arizona, border security is very important. Now, under this bill, they want to use taxpayer dollars to line the pockets of politicians. To me, it appears they would rather secure their own election than secure our borders and our Nation. My question to you is do you believe this is a good use of taxpayer dollars, sir?

Mr. VON SPAKOVSKY. I don't and I would also say it is unconstitutional, the reason being that, as you know, Americans have associational rights that have been upheld by the U.S. Supreme Court, very important associational rights, and upheld by very important Supreme Court decisions. And forcing taxpayers to provide taxpayer money for candidates running for office, particularly candidates who they don't support and whose ideas they don't like, I think violates basic associational rights.

That is very different than taxes being used for government programs and government budgets. And that is why you contrast this with the public funding program that is in place. I was a commissioner for 2 years on the Federal Election Commission. We administered the public funding program, for example, that provides campaign funds for the nominees of the political parties, the Democratic Party and the Republican Party, during the general election if they agree to give up private fundraising. That money is funded not through tax dollars. It is funded through voluntary contributions by Americans. You know, there is a checkbox on their tax returns where they can agree to contribute to it.

That is perfectly constitutional because you are not forcing Americans to provide political contributions to candidates that they do not support. But I think using taxpayer dollars for that same kind of program, to me is clearly unconstitutional.

Ms. LESKO. Thank you, sir. And, Mr. Chair and Mr. Adams, do you have any responses to any of the previous testimony that you have heard today?

Mr. ADAMS. Well, look, there are a lot of ideas that people have about elections. Having an omnibus Federal bill to fix everything is not the sort of thing that the Constitution envisions. I mean, to mandate independent redistricting commissions, for example, when you have States that have never had a redistricting lawsuit, and to say that somehow the Civil War amendments and the long history of Jim Crow allows Congress to impose an independent redistricting commission on Utah really pushes the outer limits of the Constitution.

Ms. LESKO. Thank you. I yield my time back.

Chairman NADLER. I thank the gentlelady. Congresswoman Bass?

Ms. BASS. Thank you very much, Mr. Chair, and thank you for holding this hearing. I wanted to ask Mr. Adams, you mentioned several things. You mentioned that registering to vote is easy now, almost anybody could, power to the States. I was wondering, well, number one, when you heard Ms. Gupta and Ms. Ifill's testimony, and they described very specific incidents that happen, what is your response to that? Are they lying?

Mr. ADAMS. They weren't lying, but it made me think of South Carolina, South Carolina, where I had brought at least one voting rights case in Georgetown County to allow African-Americans to win school board seats. In South Carolina, they had a voter ID law just like in Texas, and using the preclearance requirement——

Ms. BASS. Wait, wait, no, stop because they gave very specific examples of voter suppression. You said it is easy to vote, you know, everybody can vote, no problems, why are people interfering in this.

If that is the case, then why did the incidents that they described happen? Why did that happen?

Mr. ADAMS. I think a full hearing about what happened in Texas is worth something.

Ms. BASS. But I am asking you about Georgia. I am asking you about Georgia——

Mr. ADAMS. Well——

Ms. BASS [continuing]. Where the secretary of state did not recuse himself. Do you think he should have recused himself?

Mr. ADAMS. Of course not. He is the State-elected official——

Ms. BASS. So even though he was running, you thought that that was fine for him to do that.

Mr. ADAMS. There was no legal obligation to do that when you run the election——

Ms. BASS. So what about the fact that he purged over a hundred thousand people from voting?

Mr. ADAMS. Well, that is called reasonableness maintenance, and it was legal——

Ms. BASS. That is called reasonableness maintenance. I think that is called voter suppression. You know, I served——

Mr. ADAMS. But that is what the law required him to do.

Ms. BASS. Wait a second. Excuse me. I serve on the Foreign Affairs Committee and I travel the world. I spent last year in Zimbabwe, the year before that in Kenya doing election observation. And I have to tell you that some of the things that have gone on in this country have been an absolute embarrassment. The fact that in the United States in 2019 we make it difficult for people to vote, we block people from voting. I mean, to use the Georgia example in Zimbabwe, you know, it is very embarrassing.

And I just don't understand when you said that Alexander Hamilton, you were quoting him and you said "just because we can doesn't mean that we should." So States pass laws and they passed laws right after the Supreme Court decision, and I think our chair pointed that out. Well, just because they could, they did that. So you said that just because the Federal government can pass a law doesn't mean we should. So what do you have to say for States that within 24, 48 hours after the Supreme Court decision passed an array of measures that made it more difficult for people to vote?

Mr. ADAMS. Congress did pass a law in 1993 that allowed the secretary of state of Georgia to do exactly what he did.

Ms. BASS. And was that right, just because they could?

Mr. ADAMS. It complies with the Federal laws.

Ms. BASS. So that was right. And so what about the fact that a number of these States, African-Americans, Latinos specifically have had difficulty voting? Is that all just fiction?

Mr. ADAMS. Absolutely not, and that is why I brought multiple voting rights cases——

Ms. BASS. You have brought multiple voting rights cases, but you basically in your opening testimony described it as though there was no problem.

Mr. ADAMS. No, that is not accurate.

Ms. BASS. I would like to ask Ms. Gupta and Ms. Ifill to respond. Ms. Gupta.

Ms. GUPTA. Well, I think that the evidence that we have laid out about the numerous instances in the last several years around voting rights suppression efforts in Georgia, in Alabama, in North Carolina, even in the recent midterm elections, demonstrates the need to actually develop a rigorous record that would support the reauthorization and the restoration of the Voting Rights Act.

Ms. BASS. Do you think that needs to happen, Mr. Adams?

Mr. ADAMS. I am sorry. I didn't hear the question.

Ms. BASS. What she just said.

Mr. ADAMS. Whether or not Section 5 should be authorized?

Ms. BASS. Mm-hmm.

Mr. ADAMS. With constitutional triggers. That is the way to do it.

Ms. BASS. Ms. Ifill.

Ms. IFILL. I think it is vital that we speak honestly in this hearing about the situation with voting in this country. We have lots of euphemisms that we use, like "list maintenance," to cover things like purges. And I represent people in communities all over this country who are the victims of these measures that are well known to have a disparate effect on African-American and Latino voters: exact match, the system used in Georgia, cross check, the system used by Kris Kobach in Kansas.

Ms. BASS. Excuse me. Mr. Von—I do not want to mispronounce your name—do you think what she is saying is fiction? Did this happen?

Mr. VON SPAKOVSKY. I think she is wildly exaggerating and claiming that discrimination is occurring in many instances.

Ms. BASS. So do you think discrimination occurred in the 2018 election?

Mr. VON SPAKOVSKY. May I answer the question, ma'am?

Ms. BASS. Well, I am not finishing asking.

Mr. VON SPAKOVSKY. I will give you a good example. I will give you a good example. North Carolina, Texas, and South Carolina all have a virtually identical voter ID law. It has a reasonable impediment——

Ms. BASS. But let me just reclaim——

Mr. VON SPAKOVSKY. It has a reasonable impediment——

Ms. BASS. Let me just reclaim my time. Excuse me. I am speaking right now. Well, I guess——

Mr. VON SPAKOVSKY. Well, you are not allowing me to answer my——

Ms. BASS. Well, you said enough, okay? You said enough. I think——

Mr. COLLINS. Mr. Chairman——

Ms. BASS. I think what has gone——

Mr. COLLINS. Regular order. I mean, the witness is either going to answer the question or not.

Ms. BASS. Oh, I wasn't done. He answered. He said enough.

Chairman NADLER. The gentlelady will suspend. The gentlelady controls the time. The gentlelady will resume.

Ms. BASS. Thank you. Let me just conclude by saying that the idea that we did not have problems in the 2018 election, the idea that all the testimony from Ms. Gupta and Ms. Ifill was just an ex-

aggeration is really an embarrassment, and I think people should be ashamed of themselves.

Mr. VON SPAKOVSKY. May I respond, Mr. Chairman?

Chairman NADLER. Yes.

Mr. VON SPAKOVSKY. Thank you. I did not say there were no problems. What I said was many of the problems have been exaggerated. There are still serious cases of discrimination that occur in this country, but they are rare. And the reason I talked about Texas, North Carolina, and South Carolina is that all three have voter ID laws that are virtually the same in that each State has what is called a reasonable impediment exemption. So any voter can vote at the polling place even if they don't have an ID as long as they fill out a form saying they had a reasonable impediment that kept them from getting an ID.

The South Carolina ID provision was upheld by a three-panel court in the District of Columbia. The Texas ID provision has been approved by the Fifth Circuit U.S. Court of Appeals.

Ms. BASS. Mr. Chair.

Mr. VON SPAKOVSKY. The Fourth Circuit did not approve the North Carolina case. So you have a disagreement among Federal judges over those decisions.

Chairman NADLER. The gentleman will suspend. The gentlelady?

Ms. BASS. Yeah, I just wanted to know if Ms. Gupta and Ms. Ifill couldn't respond because I disagree with him.

Chairman NADLER. Mr. von Spakovsky, one or two more sentences, and then Ms. Gupta and Ms. Ifill.

Mr. VON SPAKOVSKY. I would also point out that the Texas voter ID law which is currently in place, at the time that an interim remedy was approved by the Federal district judge in that case, the Justice Department filed a pleading in that case agreeing and approving that an ID requirement with a reasonable impediment exemption was an appropriate interim remedy for that Section 2. And the person whose name was at the top of that pleading was Ms. Gupta.

Chairman NADLER. Thank you. Ms. Gupta.

Ms. GUPTA. I need to make very clear that the North Carolina and Texas examples, and my colleague, Ms. Ifill, will talk about Texas, were exceedingly clear where the Federal appellate court in the Fourth Circuit in 2016 described North Carolina's monster voter suppression law, enacted just days after the Shelby County/Holder decision, described the law as "the most restrictive voting law North Carolina has seen since the era of Jim Crow" with provisions that "target African-Americans with almost surgical precision." That was in 2016.

Chairman NADLER. Ms. Ifill.

Ms. IFILL. This is the kind of testimony that I think is so disturbing because it is so misleading. The South Carolina voter ID law, which ended with the reasonable impediment provision, actually that provision was the settlement, was an agreement after the voter ID law had been challenged in court. The reasonable impediment provision in the Texas voter ID law is part of the settlement of the law that we challenged that I described to you earlier. That was the most restrictive voter ID law in the country, and the same for North Carolina.

In other words, to the extent that these voter ID laws now include this reasonable impediment exception, it is because we had to litigate it over years. And the settlement of those cases came after years and years of elections in which voters were disenfranchised and unable to participate in the political process. And it is this kind of shading of the truth, shading of the reality of what it takes for lawyers and communities to challenge discriminatory voting practices, that is the reason why we need H.R. 1, because the words, "exact match" and "cross check" and all of this, masks what is the reality.

If we have a long history of voter fraud in this country, we have a longer history of racism and voter disenfranchisement. It is time we stop dealing with fantasy and we deal with facts. Mr. Adams and Mr. von Spakovsky have had years to prove the existence of widespread, in-person voter fraud that would justify voter ID, and they have been unable to do that. What they have included on their Heritage website is mostly about fraud in absentee voting, and we have always conceded that to the extent voter fraud exists, that is where it happens. It is not in-person voter fraud.

The facts are there. The studies have been done. What we have been citing, these are not the words of Sherrilyn Ifill or Vanita Gupta. These are the words of Federal judges in courts not known, by the way, for being particularly liberal, who have found intentional discrimination in the creation of voter suppression laws. This is a real challenge for our democracy, and we have to start dealing with facts. We have to stop dealing with fantasy. And I am grateful that H.R. 1 is taking this broad-based approach and that Congress is standing up to use the power that you are given under the Constitution to restore the integrity of our electoral system.

Chairman NADLER. Thank you. The time of the gentlelady has expired. Before I yield to Mr. Reschenthaler, I yield to Ms. Jackson Lee for a unanimous consent request.

Ms. JACKSON LEE. Yes. Following the line of questioning that I had, I would like to introduce into the record the 12 Russians that were indicted for obvious voter fraud by the Mueller investigation, and then a statement regarding Maria Butina, who focused her efforts on forging ties——

Chairman NADLER. Yeah.

Ms. JACKSON LEE. I ask unanimous consent for the first document.

Chairman NADLER. Hearing no objection, both documents will be entered into the record.

Ms. JACKSON LEE. And the——

Chairman NADLER. Both documents will be entered into the record.

Ms. JACKSON LEE [continuing]. Butina where she was involved with the National Rifle——

Mr. COLLINS. I believe they have already been admitted, Mr. Chairman.

Chairman NADLER. They have been entered into the record.

[The information follows:]

MS. JACKSON LEE FOR THE OFFICIAL RECORD

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	*	
	*	CRIMINAL NO.
v.	*	
	*	(18 U.S.C. §§ 2, 371, 1030, 1028A, 1956, and 3551 et seq.)
VIKTOR BORISOVICH NETYKSHO,	*	
BORIS ALEKSEYEVICH ANTONOV,	*	
DMITRIY SERGEYEVICH BADIN,	*	
IVAN SERGEYEVICH YERMAKOV,	*	
ALEKSEY VIKTOROVICH LUKASHEV,	*	
SERGEY ALEKSANDROVICH MORGACHEV,	*	
NIKOLAY YURYEVICH KOZACHEK,	*	
PAVEL VYACHESLAVOVICH YERSHOV,	*	
ARTEM ANDREYEVICH MALYSHEV,	*	
ALEKSANDR VLADIMIROVICH OSADCHUK,	*	
ALEKSEY ALEKSANDROVICH POTEMKIN, and	*	
ANATOLIY SERGEYEVICH KOVALEV,	*	
	*	
Defendants.	*	
	*	

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INDICTMENT

The Grand Jury for the District of Columbia charges:

COUNT ONE
(Conspiracy to Commit an Offense Against the United States)

1. In or around 2016, the Russian Federation ("Russia") operated a military intelligence agency called the Main Intelligence Directorate of the General Staff ("GRU"). The GRU had multiple units, including Units 26165 and 74455, engaged in cyber operations that involved the staged releases of documents stolen through computer intrusions. These units conducted large-scale cyber operations to interfere with the 2016 U.S. presidential election.

2. Defendants VIKTOR BORISOVICH NETYKSHO, BORIS ALEKSEYEVICH ANTONOV, DMITRIY SERGEYEVICH BADIN, IVAN SERGEYEVICH YERMAKOV, ALEKSEY VIKTOROVICH LUKASHEV, SERGEY ALEKSANDROVICH MORGACHEV, NIKOLAY YURYEVICH KOZACHEK, PAVEL VYACHESLAVOVICH YERSHOV, ARTEM ANDREYEVICH MALYSHEV, ALEKSANDR VLADIMIROVICH OSADCHUK, and ALEKSEY ALEKSANDROVICH POTEMKIN were GRU officers who knowingly and intentionally conspired with each other, and with persons known and unknown to the Grand Jury (collectively the "Conspirators"), to gain unauthorized access (to "hack") into the computers of U.S. persons and entities involved in the 2016 U.S. presidential election, steal documents from those computers, and stage releases of the stolen documents to interfere with the 2016 U.S. presidential election.

3. Starting in at least March 2016, the Conspirators used a variety of means to hack the email accounts of volunteers and employees of the U.S. presidential campaign of Hillary Clinton (the "Clinton Campaign"), including the email account of the Clinton Campaign's chairman.

4. By in or around April 2016, the Conspirators also hacked into the computer networks of the Democratic Congressional Campaign Committee ("DCCC") and the Democratic National Committee ("DNC"). The Conspirators covertly monitored the computers of dozens of DCCC and DNC employees, implanted hundreds of files containing malicious computer code ("malware"), and stole emails and other documents from the DCCC and DNC.

5. By in or around April 2016, the Conspirators began to plan the release of materials stolen from the Clinton Campaign, DCCC, and DNC.

6. Beginning in or around June 2016, the Conspirators staged and released tens of thousands of the stolen emails and documents. They did so using fictitious online personas, including

"DCLeaks" and "Guccifer 2.0."

7. The Conspirators also used the Guccifer 2.0 persona to release additional stolen documents through a website maintained by an organization ("Organization 1"), that had previously posted documents stolen from U.S. persons, entities, and the U.S. government. The Conspirators continued their U.S. election-interference operations through in or around November 2016.

8. To hide their connections to Russia and the Russian government, the Conspirators used false identities and made false statements about their identities. To further avoid detection, the Conspirators used a network of computers located across the world, including in the United States, and paid for this infrastructure using cryptocurrency.

Defendants

9. Defendant VIKTOR BORISOVICH NETYKSHO (Нетыкшо Виктор Борисович) was the Russian military officer in command of Unit 26165, located at 20 Komsomolskiy Prospekt, Moscow, Russia. Unit 26165 had primary responsibility for hacking the DCCC and DNC, as well as the email accounts of individuals affiliated with the Clinton Campaign.

10. Defendant BORIS ALEKSEYEVICH ANTONOV (Антонов Борис Алексеевич) was a Major in the Russian military assigned to Unit 26165. ANTONOV oversaw a department within Unit 26165 dedicated to targeting military, political, governmental, and non-governmental organizations with spearphishing emails and other computer intrusion activity. ANTONOV held the title "Head of Department." In or around 2016, ANTONOV supervised other co-conspirators who targeted the DCCC, DNC, and individuals affiliated with the Clinton Campaign.

11. Defendant DMITRIY SERGEYEVICH BADIN (Бадин Дмитрий Сергеевич) was a Russian military officer assigned to Unit 26165 who held the title "Assistant Head of Department." In or around 2016, BADIN, along with ANTONOV, supervised other co-conspirators who targeted the DCCC, DNC, and individuals affiliated with the Clinton Campaign.

12. Defendant IVAN SERGEYEVICH YERMAKOV (Ермаков Иван Сергеевич) was a Russian military officer assigned to ANTONOV's department within Unit 26165. Since in or around 2010, YERMAKOV used various online personas, including "Kate S. Milton," "James McMorgans," and "Karen W. Millen," to conduct hacking operations on behalf of Unit 26165. In or around March 2016, YERMAKOV participated in hacking at least two email accounts from which campaign-related documents were released through DCLeaks. In or around May 2016, YERMAKOV also participated in hacking the DNC email server and stealing DNC emails that were later released through Organization 1.

13. Defendant ALEKSEY VIKTOROVICH LUKASHEV (Лукашев Алексей Викторович) was a Senior Lieutenant in the Russian military assigned to ANTONOV's department within Unit 26165. LUKASHEV used various online personas, including "Den Katenberg" and "Yuliana Martynova." In or around 2016, LUKASHEV sent spearphishing emails to members of the Clinton Campaign and affiliated individuals, including the chairman of the Clinton Campaign.

14. Defendant SERGEY ALEKSANDROVICH MORGACHEV (Моргачев Сергей Александрович) was a Lieutenant Colonel in the Russian military assigned to Unit 26165. MORGACHEV oversaw a department within Unit 26165 dedicated to developing and managing malware, including a hacking tool used by the GRU known as "X-Agent." During the hacking of the DCCC and DNC networks, MORGACHEV supervised the co-conspirators who developed and monitored the X-Agent malware implanted on those computers.

15. Defendant NIKOLAY YURYEVICH KOZACHEK (Козачек Николай Юрьевич) was a Lieutenant Captain in the Russian military assigned to MORGACHEV's department within Unit 26165. KOZACHEK used a variety of monikers, including "kazak" and "blablabla1234565." KOZACHEK developed, customized, and monitored X-Agent malware used to hack the DCCC

and DNC networks beginning in or around April 2016.

16. Defendant PAVEL VYACHESLAVOVICH YERSHOV (Ершов Павел Вячеславович) was a Russian military officer assigned to MORGACHEV's department within Unit 26165. In or around 2016, YERSHOV assisted KOZACHEK and other co-conspirators in testing and customizing X-Agent malware before actual deployment and use.

17. Defendant ARTEM ANDREYEVICH MALYSHEV (Малышев Артём Андреевич) was a Second Lieutenant in the Russian military assigned to MORGACHEV's department within Unit 26165. MALYSHEV used a variety of monikers, including "djangomagicdev" and "realblatr." In or around 2016, MALYSHEV monitored X-Agent malware implanted on the DCCC and DNC networks.

18. Defendant ALEKSANDR VLADIMIROVICH OSADCHUK (Осадчук Александр Владимирович) was a Colonel in the Russian military and the commanding officer of Unit 74455. Unit 74455 was located at 22 Kirova Street, Khimki, Moscow, a building referred to within the GRU as the "Tower." Unit 74455 assisted in the release of stolen documents through the DCLeaks and Guccifer 2.0 personas, the promotion of those releases, and the publication of anti-Clinton content on social media accounts operated by the GRU.

19. Defendant ALEKSEY ALEKSANDROVICH POTEMKIN (Потемкин Алексей Александрович) was an officer in the Russian military assigned to Unit 74455. POTEMKIN was a supervisor in a department within Unit 74455 responsible for the administration of computer infrastructure used in cyber operations. Infrastructure and social media accounts administered by POTEMKIN's department were used, among other things, to assist in the release of stolen documents through the DCLeaks and Guccifer 2.0 personas.

Object of the Conspiracy

20. The object of the conspiracy was to hack into the computers of U.S. persons and entities involved in the 2016 U.S. presidential election, steal documents from those computers, and stage releases of the stolen documents to interfere with the 2016 U.S. presidential election.

Manner and Means of the Conspiracy

Spearphishing Operations

21. ANTONOV, BADIN, YERMAKOV, LUKASHEV, and their co-conspirators targeted victims using a technique known as spearphishing to steal victims' passwords or otherwise gain access to their computers. Beginning by at least March 2016, the Conspirators targeted over 300 individuals affiliated with the Clinton Campaign, DCCC, and DNC.

a. For example, on or about March 19, 2016, LUKASHEV and his co-conspirators created and sent a spearphishing email to the chairman of the Clinton Campaign. LUKASHEV used the account "john356gh" at an online service that abbreviated lengthy website addresses (referred to as a "URL-shortening service"). LUKASHEV used the account to mask a link contained in the spearphishing email, which directed the recipient to a GRU-created website. LUKASHEV altered the appearance of the sender email address in order to make it look like the email was a security notification from Google (a technique known as "spoofing"), instructing the user to change his password by clicking the embedded link. Those instructions were followed. On or about March 21, 2016, LUKASHEV, YERMAKOV, and their co-conspirators stole the contents of the chairman's email account, which consisted of over 50,000 emails.

b. Starting on or about March 19, 2016, LUKASHEV and his co-conspirators sent spearphishing emails to the personal accounts of other individuals affiliated with

the Clinton Campaign, including its campaign manager and a senior foreign policy advisor. On or about March 25, 2016, LUKASHEV used the same john356gh account to mask additional links included in spearphishing emails sent to numerous individuals affiliated with the Clinton Campaign, including Victims 1 and 2. LUKASHEV sent these emails from the Russia-based email account hi.mymail@yandex.com that he spoofed to appear to be from Google.

c. On or about March 28, 2016, YERMAKOV researched the names of Victims 1 and 2 and their association with Clinton on various social media sites. Through their spearphishing operations, LUKASHEV, YERMAKOV, and their co-conspirators successfully stole email credentials and thousands of emails from numerous individuals affiliated with the Clinton Campaign. Many of these stolen emails, including those from Victims 1 and 2, were later released by the Conspirators through DCLeaks.

d. On or about April 6, 2016, the Conspirators created an email account in the name (with a one-letter deviation from the actual spelling) of a known member of the Clinton Campaign. The Conspirators then used that account to send spearphishing emails to the work accounts of more than thirty different Clinton Campaign employees. In the spearphishing emails, LUKASHEV and his co-conspirators embedded a link purporting to direct the recipient to a document titled "hillary-clinton-favorable-rating.xlsx." In fact, this link directed the recipients' computers to a GRU-created website.

22. The Conspirators spearphished individuals affiliated with the Clinton Campaign throughout the summer of 2016. For example, on or about July 27, 2016, the Conspirators

attempted after hours to spearphish for the first time email accounts at a domain hosted by a third-party provider and used by Clinton's personal office. At or around the same time, they also targeted seventy-six email addresses at the domain for the Clinton Campaign.

Hacking into the DCCC Network

23. Beginning in or around March 2016, the Conspirators, in addition to their spearphishing efforts, researched the DCCC and DNC computer networks to identify technical specifications and vulnerabilities.

a. For example, beginning on or about March 15, 2016, YERMAKOV ran a technical query for the DNC's internet protocol configurations to identify connected devices.

b. On or about the same day, YERMAKOV searched for open-source information about the DNC network, the Democratic Party, and Hillary Clinton.

c. On or about April 7, 2016, YERMAKOV ran a technical query for the DCCC's internet protocol configurations to identify connected devices.

24. By in or around April 2016, within days of YERMAKOV's searches regarding the DCCC, the Conspirators hacked into the DCCC computer network. Once they gained access, they installed and managed different types of malware to explore the DCCC network and steal data.

a. On or about April 12, 2016, the Conspirators used the stolen credentials of a DCCC Employee ("DCCC Employee 1") to access the DCCC network. DCCC Employee 1 had received a spearphishing email from the Conspirators on or about April 6, 2016, and entered her password after clicking on the link.

b. Between in or around April 2016 and June 2016, the Conspirators installed multiple versions of their X-Agent malware on at least ten DCCC computers, which allowed them to monitor individual employees' computer activity, steal passwords, and maintain access to the DCCC network.

c. X-Agent malware implanted on the DCCC network transmitted information from the victims' computers to a GRU-leased server located in Arizona. The Conspirators referred to this server as their "AMS" panel. KOZACHEK, MALYSHEV, and their co-conspirators logged into the AMS panel to use X-Agent's keylog and screenshot functions in the course of monitoring and surveilling activity on the DCCC computers. The keylog function allowed the Conspirators to capture keystrokes entered by DCCC employees. The screenshot function allowed the Conspirators to take pictures of the DCCC employees' computer screens.

d. For example, on or about April 14, 2016, the Conspirators repeatedly activated X-Agent's keylog and screenshot functions to surveil DCCC Employee 1's computer activity over the course of eight hours. During that time, the Conspirators captured DCCC Employee 1's communications with co-workers and the passwords she entered while working on fundraising and voter outreach projects. Similarly, on or about April 22, 2016, the Conspirators activated X-Agent's keylog and screenshot functions to capture the discussions of another DCCC Employee ("DCCC Employee 2") about the DCCC's finances, as well as her individual banking information and other personal topics.

25. On or about April 19, 2016, KOZACHEK, YERSHOV, and their co-conspirators remotely configured an overseas computer to relay communications between X-Agent malware and the AMS panel and then tested X-Agent's ability to connect to this computer. The Conspirators referred to this computer as a "middle server." The middle server acted as a proxy to obscure the connection between malware at the DCCC and the Conspirators' AMS panel. On or about April

20, 2016, the Conspirators directed X-Agent malware on the DCCC computers to connect to this middle server and receive directions from the Conspirators.

Hacking into the DNC Network

26. On or about April 18, 2016, the Conspirators hacked into the DNC's computers through their access to the DCCC network. The Conspirators then installed and managed different types of malware (as they did in the DCCC network) to explore the DNC network and steal documents.

a. On or about April 18, 2016, the Conspirators activated X-Agent's keylog and screenshot functions to steal credentials of a DCCC employee who was authorized to access the DNC network. The Conspirators hacked into the DNC network from the DCCC network using stolen credentials. By in or around June 2016, they gained access to approximately thirty-three DNC computers.

b. In or around April 2016, the Conspirators installed X-Agent malware on the DNC network, including the same versions installed on the DCCC network. MALYSHEV and his co-conspirators monitored the X-Agent malware from the AMS panel and captured data from the victim computers. The AMS panel collected thousands of keylog and screenshot results from the DCCC and DNC computers, such as a screenshot and keystroke capture of DCCC Employee 2 viewing the DCCC's online banking information.

Theft of DCCC and DNC Documents

27. The Conspirators searched for and identified computers within the DCCC and DNC networks that stored information related to the 2016 U.S. presidential election. For example, on or about April 15, 2016, the Conspirators searched one hacked DCCC computer for terms that included "hillary," "cruz," and "trump." The Conspirators also copied select DCCC folders, including "Benghazi Investigations." The Conspirators targeted computers containing information

such as opposition research and field operation plans for the 2016 elections.

28. To enable them to steal a large number of documents at once without detection, the Conspirators used a publicly available tool to gather and compress multiple documents on the DCCC and DNC networks. The Conspirators then used other GRU malware, known as "X-Tunnel," to move the stolen documents outside the DCCC and DNC networks through encrypted channels.

a. For example, on or about April 22, 2016, the Conspirators compressed gigabytes of data from DNC computers, including opposition research. The Conspirators later moved the compressed DNC data using X-Tunnel to a GRU-leased computer located in Illinois.

b. On or about April 28, 2016, the Conspirators connected to and tested the same computer located in Illinois. Later that day, the Conspirators used X-Tunnel to connect to that computer to steal additional documents from the DCCC network.

29. Between on or about May 25, 2016 and June 1, 2016, the Conspirators hacked the DNC Microsoft Exchange Server and stole thousands of emails from the work accounts of DNC employees. During that time, YERMAKOV researched PowerShell commands related to accessing and managing the Microsoft Exchange Server.

30. On or about May 30, 2016, MALYSHEV accessed the AMS panel in order to upgrade custom AMS software on the server. That day, the AMS panel received updates from approximately thirteen different X-Agent malware implants on DCCC and DNC computers.

31. During the hacking of the DCCC and DNC networks, the Conspirators covered their tracks by intentionally deleting logs and computer files. For example, on or about May 13, 2016, the Conspirators cleared the event logs from a DNC computer. On or about June 20, 2016, the

Conspirators deleted logs from the AMS panel that documented their activities on the panel, including the login history.

Efforts to Remain on the DCCC and DNC Networks

32. Despite the Conspirators' efforts to hide their activity, beginning in or around May 2016, both the DCCC and DNC became aware that they had been hacked and hired a security company ("Company 1") to identify the extent of the intrusions. By in or around June 2016, Company 1 took steps to exclude intruders from the networks. Despite these efforts, a Linux-based version of X-Agent, programmed to communicate with the GRU-registered domain linuxkrnl.net, remained on the DNC network until in or around October 2016.

33. In response to Company 1's efforts, the Conspirators took countermeasures to maintain access to the DCCC and DNC networks.

a. On or about May 31, 2016, YERMAKOV searched for open-source information about Company 1 and its reporting on X-Agent and X-Tunnel. On or about June 1, 2016, the Conspirators attempted to delete traces of their presence on the DCCC network using the computer program CCleaner.

b. On or about June 14, 2016, the Conspirators registered the domain actblues.com, which mimicked the domain of a political fundraising platform that included a DCCC donations page. Shortly thereafter, the Conspirators used stolen DCCC credentials to modify the DCCC website and redirect visitors to the actblues.com domain.

c. On or about June 20, 2016, after Company 1 had disabled X-Agent on the DCCC network, the Conspirators spent over seven hours unsuccessfully trying to connect to X-Agent. The Conspirators also tried to access the DCCC network using previously stolen credentials.

34. In or around September 2016, the Conspirators also successfully gained access to DNC computers hosted on a third-party cloud-computing service. These computers contained test applications related to the DNC's analytics. After conducting reconnaissance, the Conspirators gathered data by creating backups, or "snapshots," of the DNC's cloud-based systems using the cloud provider's own technology. The Conspirators then moved the snapshots to cloud-based accounts they had registered with the same service, thereby stealing the data from the DNC.

Stolen Documents Released through DCLeaks

35. More than a month before the release of any documents, the Conspirators constructed the online persona DCLeaks to release and publicize stolen election-related documents. On or about April 19, 2016, after attempting to register the domain electionleaks.com, the Conspirators registered the domain dcleaks.com through a service that anonymized the registrant. The funds used to pay for the dcleaks.com domain originated from an account at an online cryptocurrency service that the Conspirators also used to fund the lease of a virtual private server registered with the operational email account dirbinsaabol@mail.com. The dirbinsaabol email account was also used to register the john356gh URL-shortening account used by LUKASHEV to spearphish the Clinton Campaign chairman and other campaign-related individuals.

36. On or about June 8, 2016, the Conspirators launched the public website dcleaks.com, which they used to release stolen emails. Before it shut down in or around March 2017, the site received over one million page views. The Conspirators falsely claimed on the site that DCLeaks was started by a group of "American hacktivists," when in fact it was started by the Conspirators.

37. Starting in or around June 2016 and continuing through the 2016 U.S. presidential election, the Conspirators used DCLeaks to release emails stolen from individuals affiliated with the Clinton Campaign. The Conspirators also released documents they had stolen in other spearphishing operations, including those they had conducted in 2015 that collected emails from individuals

affiliated with the Republican Party.

38. On or about June 8, 2016, and at approximately the same time that the dcleaks.com website was launched, the Conspirators created a DCLeaks Facebook page using a preexisting social media account under the fictitious name "Alice Donovan." In addition to the DCLeaks Facebook page, the Conspirators used other social media accounts in the names of fictitious U.S. persons such as "Jason Scott" and "Richard Gingrey" to promote the DCLeaks website. The Conspirators accessed these accounts from computers managed by POTEMKIN and his co-conspirators.

39. On or about June 8, 2016, the Conspirators created the Twitter account @dcleaks_. The Conspirators operated the @dcleaks_ Twitter account from the same computer used for other efforts to interfere with the 2016 U.S. presidential election. For example, the Conspirators used the same computer to operate the Twitter account @BaltimoreIsWhr, through which they encouraged U.S. audiences to "[j]oin our flash mob" opposing Clinton and to post images with the hashtag #BlacksAgainstHillary.

Stolen Documents Released through Guccifer 2.0

40. On or about June 14, 2016, the DNC—through Company 1—publicly announced that it had been hacked by Russian government actors. In response, the Conspirators created the online persona Guccifer 2.0 and falsely claimed to be a lone Romanian hacker to undermine the allegations of Russian responsibility for the intrusion.

41. On or about June 15, 2016, the Conspirators logged into a Moscow-based server used and managed by Unit 74455 and, between 4:19 PM and 4:56 PM Moscow Standard Time, searched for certain words and phrases, including:

Search Term(s)
"some hundred sheets"
"some hundreds of sheets"
dcleaks
illuminati
широко известный перевод [widely known translation]
"worldwide known"
"think twice about"
"company's competence"

42. Later that day, at 7:02 PM Moscow Standard Time, the online persona Guccifer 2.0 published its first post on a blog site created through WordPress. Titled "DNC's servers hacked by a lone hacker," the post used numerous English words and phrases that the Conspirators had searched for earlier that day (bolded below):

> **Worldwide known** cyber security company [Company 1] announced that the Democratic National Committee (DNC) servers had been hacked by "sophisticated" hacker groups.
>
> I'm very pleased the company appreciated my skills so highly))) [. . .]
>
> Here are just a few docs from many thousands I extracted when hacking into DNC's network. [. . .]
>
> **Some hundred sheets**! This's a serious case, isn't it? [. . .]
>
> I guess [Company 1] customers should **think twice about company's competence**.
>
> F[***] the **Illuminati** and their conspiracies!!!!!!!! F[***] [Company 1]!!!!!!!!!

43. Between in or around June 2016 and October 2016, the Conspirators used Guccifer 2.0 to release documents through WordPress that they had stolen from the DCCC and DNC. The Conspirators, posing as Guccifer 2.0, also shared stolen documents with certain individuals.

a. On or about August 15, 2016, the Conspirators, posing as Guccifer 2.0, received a

request for stolen documents from a candidate for the U.S. Congress. The Conspirators responded using the Guccifer 2.0 persona and sent the candidate stolen documents related to the candidate's opponent.

b. On or about August 22, 2016, the Conspirators, posing as Guccifer 2.0, transferred approximately 2.5 gigabytes of data stolen from the DCCC to a then-registered state lobbyist and online source of political news. The stolen data included donor records and personal identifying information for more than 2,000 Democratic donors.

c. On or about August 22, 2016, the Conspirators, posing as Guccifer 2.0, sent a reporter stolen documents pertaining to the Black Lives Matter movement. The reporter responded by discussing when to release the documents and offering to write an article about their release.

44. The Conspirators, posing as Guccifer 2.0, also communicated with U.S. persons about the release of stolen documents. On or about August 15, 2016, the Conspirators, posing as Guccifer 2.0, wrote to a person who was in regular contact with senior members of the presidential campaign of Donald J. Trump, "thank u for writing back . . . do u find anyt[h]ing interesting in the docs i posted?" On or about August 17, 2016, the Conspirators added, "please tell me if i can help u anyhow . . . it would be a great pleasure to me." On or about September 9, 2016, the Conspirators, again posing as Guccifer 2.0, referred to a stolen DCCC document posted online and asked the person, "what do u think of the info on the turnout model for the democrats entire presidential campaign." The person responded, "[p]retty standard."

45. The Conspirators conducted operations as Guccifer 2.0 and DCLeaks using overlapping computer infrastructure and financing.

a. For example, between on or about March 14, 2016 and April 28, 2016, the

Conspirators used the same pool of bitcoin funds to purchase a virtual private network ("VPN") account and to lease a server in Malaysia. In or around June 2016, the Conspirators used the Malaysian server to host the dcleaks.com website. On or about July 6, 2016, the Conspirators used the VPN to log into the @Guccifer_2 Twitter account. The Conspirators opened that VPN account from the same server that was also used to register malicious domains for the hacking of the DCCC and DNC networks.

b. On or about June 27, 2016, the Conspirators, posing as Guccifer 2.0, contacted a U.S. reporter with an offer to provide stolen emails from "Hillary Clinton's staff." The Conspirators then sent the reporter the password to access a nonpublic, password-protected portion of dcleaks.com containing emails stolen from Victim 1 by LUKASHEV, YERMAKOV, and their co-conspirators in or around March 2016.

46. On or about January 12, 2017, the Conspirators published a statement on the Guccifer 2.0 WordPress blog, falsely claiming that the intrusions and release of stolen documents had "totally no relation to the Russian government."

Use of Organization 1

47. In order to expand their interference in the 2016 U.S. presidential election, the Conspirators transferred many of the documents they stole from the DNC and the chairman of the Clinton Campaign to Organization 1. The Conspirators, posing as Guccifer 2.0, discussed the release of the stolen documents and the timing of those releases with Organization 1 to heighten their impact on the 2016 U.S. presidential election.

a. On or about June 22, 2016, Organization 1 sent a private message to Guccifer 2.0 to "[s]end any new material [stolen from the DNC] here for us to review and it will

have a much higher impact than what you are doing." On or about July 6, 2016, Organization 1 added, "if you have anything hillary related we want it in the next tweo [*sic*] days prefable [*sic*] because the DNC [Democratic National Convention] is approaching and she will solidify bernie supporters behind her after." The Conspirators responded, "ok . . . i see." Organization 1 explained, "we think trump has only a 25% chance of winning against hillary . . . so conflict between bernie and hillary is interesting."

b. After failed attempts to transfer the stolen documents starting in late June 2016, on or about July 14, 2016, the Conspirators, posing as Guccifer 2.0, sent Organization 1 an email with an attachment titled "wk dnc link1.txt.gpg." The Conspirators explained to Organization 1 that the encrypted file contained instructions on how to access an online archive of stolen DNC documents. On or about July 18, 2016, Organization 1 confirmed it had "the 1Gb or so archive" and would make a release of the stolen documents "this week."

48. On or about July 22, 2016, Organization 1 released over 20,000 emails and other documents stolen from the DNC network by the Conspirators. This release occurred approximately three days before the start of the Democratic National Convention. Organization 1 did not disclose Guccifer 2.0's role in providing them. The latest-in-time email released through Organization 1 was dated on or about May 25, 2016, approximately the same day the Conspirators hacked the DNC Microsoft Exchange Server.

49. On or about October 7, 2016, Organization 1 released the first set of emails from the chairman of the Clinton Campaign that had been stolen by LUKASHEV and his co-conspirators. Between on or about October 7, 2016 and November 7, 2016, Organization 1 released

approximately thirty-three tranches of documents that had been stolen from the chairman of the Clinton Campaign. In total, over 50,000 stolen documents were released.

Statutory Allegations

50. Paragraphs 1 through 49 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

51. From at least in or around March 2016 through November 2016, in the District of Columbia and elsewhere, Defendants NETYKSHO, ANTONOV, BADIN, YERMAKOV, LUKASHEV, MORGACHEV, KOZACHEK, YERSHOV, MALYSHEV, OSADCHUK, and POTEMKIN, together with others known and unknown to the Grand Jury, knowingly and intentionally conspired to commit offenses against the United States, namely:

a. To knowingly access a computer without authorization and exceed authorized access to a computer, and to obtain thereby information from a protected computer, where the value of the information obtained exceeded $5,000, in violation of Title 18, United States Code, Sections 1030(a)(2)(C) and 1030(c)(2)(B); and

b. To knowingly cause the transmission of a program, information, code, and command, and as a result of such conduct, to intentionally cause damage without authorization to a protected computer, and where the offense did cause and, if completed, would have caused, loss aggregating $5,000 in value to at least one person during a one-year period from a related course of conduct affecting a protected computer, and damage affecting at least ten protected computers during a one-year period, in violation of Title 18, United States Code, Sections 1030(a)(5)(A) and 1030(c)(4)(B).

52. In furtherance of the Conspiracy and to effect its illegal objects, the Conspirators committed the overt acts set forth in paragraphs 1 through 19, 21 through 49, 55, and 57 through

64, which are re-alleged and incorporated by reference as if fully set forth herein.

53. In furtherance of the Conspiracy, and as set forth in paragraphs 1 through 19, 21 through 49, 55, and 57 through 64, the Conspirators knowingly falsely registered a domain name and knowingly used that domain name in the course of committing an offense, namely, the Conspirators registered domains, including dcleaks.com and actblues.com, with false names and addresses, and used those domains in the course of committing the felony offense charged in Count One.

All in violation of Title 18, United States Code, Sections 371 and 3559(g)(1).

COUNTS TWO THROUGH NINE
(Aggravated Identity Theft)

54. Paragraphs 1 through 19, 21 through 49, and 57 through 64 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

55. On or about the dates specified below, in the District of Columbia and elsewhere, Defendants VIKTOR BORISOVICH NETYKSHO, BORIS ALEKSEYEVICH ANTONOV, DMITRIY SERGEYEVICH BADIN, IVAN SERGEYEVICH YERMAKOV, ALEKSEY VIKTOROVICH LUKASHEV, SERGEY ALEKSANDROVICH MORGACHEV, NIKOLAY YURYEVICH KOZACHEK, PAVEL VYACHESLAVOVICH YERSHOV, ARTEM ANDREYEVICH MALYSHEV, ALEKSANDR VLADIMIROVICH OSADCHUK, and ALEKSEY ALEKSANDROVICH POTEMKIN did knowingly transfer, possess, and use, without lawful authority, a means of identification of another person during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), namely, computer fraud in violation of Title 18, United States Code, Sections 1030(a)(2)(C) and 1030(c)(2)(B), knowing that the means of identification belonged to another real person:

Count	Approximate Date	Victim	Means of Identification
2	March 21, 2016	Victim 3	Username and password for personal email account
3	March 25, 2016	Victim 1	Username and password for personal email account
4	April 12, 2016	Victim 4	Username and password for DCCC computer network
5	April 15, 2016	Victim 5	Username and password for DCCC computer network
6	April 18, 2016	Victim 6	Username and password for DCCC computer network
7	May 10, 2016	Victim 7	Username and password for DNC computer network
8	June 2, 2016	Victim 2	Username and password for personal email account
9	July 6, 2016	Victim 8	Username and password for personal email account

All in violation of Title 18, United States Code, Sections 1028A(a)(1) and 2.

COUNT TEN
(Conspiracy to Launder Money)

56. Paragraphs 1 through 19, 21 through 49, and 55 are re-alleged and incorporated by reference as if fully set forth herein.

57. To facilitate the purchase of infrastructure used in their hacking activity—including hacking into the computers of U.S. persons and entities involved in the 2016 U.S. presidential election and releasing the stolen documents—the Defendants conspired to launder the equivalent of more than $95,000 through a web of transactions structured to capitalize on the perceived anonymity of cryptocurrencies such as bitcoin.

58. Although the Conspirators caused transactions to be conducted in a variety of currencies, including U.S. dollars, they principally used bitcoin when purchasing servers, registering domains, and otherwise making payments in furtherance of hacking activity. Many of these payments were

processed by companies located in the United States that provided payment processing services to hosting companies, domain registrars, and other vendors both international and domestic. The use of bitcoin allowed the Conspirators to avoid direct relationships with traditional financial institutions, allowing them to evade greater scrutiny of their identities and sources of funds.

59. All bitcoin transactions are added to a public ledger called the Blockchain, but the Blockchain identifies the parties to each transaction only by alpha-numeric identifiers known as bitcoin addresses. To further avoid creating a centralized paper trail of all of their purchases, the Conspirators purchased infrastructure using hundreds of different email accounts, in some cases using a new account for each purchase. The Conspirators used fictitious names and addresses in order to obscure their identities and their links to Russia and the Russian government. For example, the dcleaks.com domain was registered and paid for using the fictitious name "Carrie Feehan" and an address in New York. In some cases, as part of the payment process, the Conspirators provided vendors with nonsensical addresses such as "usa Denver AZ," "gfhgh ghfhgfh fdgfdg WA," and "1 2 dwd District of Columbia."

60. The Conspirators used several dedicated email accounts to track basic bitcoin transaction information and to facilitate bitcoin payments to vendors. One of these dedicated accounts, registered with the username "gfadel47," received hundreds of bitcoin payment requests from approximately 100 different email accounts. For example, on or about February 1, 2016, the gfadel47 account received the instruction to "[p]lease send *exactly* **0.026043** bitcoin to" a certain thirty-four character bitcoin address. Shortly thereafter, a transaction matching those exact instructions was added to the Blockchain.

61. On occasion, the Conspirators facilitated bitcoin payments using the same computers that they used to conduct their hacking activity, including to create and send test spearphishing emails.

Additionally, one of these dedicated accounts was used by the Conspirators in or around 2015 to renew the registration of a domain (linuxkrnl.net) encoded in certain X-Agent malware installed on the DNC network.

62. The Conspirators funded the purchase of computer infrastructure for their hacking activity in part by "mining" bitcoin. Individuals and entities can mine bitcoin by allowing their computing power to be used to verify and record payments on the bitcoin public ledger, a service for which they are rewarded with freshly-minted bitcoin. The pool of bitcoin generated from the GRU's mining activity was used, for example, to pay a Romanian company to register the domain dcleaks.com through a payment processing company located in the United States.

63. In addition to mining bitcoin, the Conspirators acquired bitcoin through a variety of means designed to obscure the origin of the funds. This included purchasing bitcoin through peer-to-peer exchanges, moving funds through other digital currencies, and using pre-paid cards. They also enlisted the assistance of one or more third-party exchangers who facilitated layered transactions through digital currency exchange platforms providing heightened anonymity.

64. The Conspirators used the same funding structure—and in some cases, the very same pool of funds—to purchase key accounts, servers, and domains used in their election-related hacking activity.

a. The bitcoin mining operation that funded the registration payment for dcleaks.com also sent newly-minted bitcoin to a bitcoin address controlled by "Daniel Farell," the persona that was used to renew the domain linuxkrnl.net. The bitcoin mining operation also funded, through the same bitcoin address, the purchase of servers and domains used in the GRU's spearphishing operations, including accounts-qooqle.com and account-gooogle.com.

b. On or about March 14, 2016, using funds in a bitcoin address, the Conspirators purchased a VPN account, which they later used to log into the @Guccifer_2 Twitter account. The remaining funds from that bitcoin address were then used on or about April 28, 2016, to lease a Malaysian server that hosted the dcleaks.com website.

c. The Conspirators used a different set of fictitious names (including "Ward DeClaur" and "Mike Long") to send bitcoin to a U.S. company in order to lease a server used to administer X-Tunnel malware implanted on the DCCC and DNC networks, and to lease two servers used to hack the DNC's cloud network.

Statutory Allegations

65. From at least in or around 2015 through 2016, within the District of Columbia and elsewhere, Defendants VIKTOR BORISOVICH NETYKSHO, BORIS ALEKSEYEVICH ANTONOV, DMITRIY SERGEYEVICH BADIN, IVAN SERGEYEVICH YERMAKOV, ALEKSEY VIKTOROVICH LUKASHEV, SERGEY ALEKSANDROVICH MORGACHEV, NIKOLAY YURYEVICH KOZACHEK, PAVEL VYACHESLAVOVICH YERSHOV, ARTEM ANDREYEVICH MALYSHEV, ALEKSANDR VLADIMIROVICH OSADCHUK, and ALEKSEY ALEKSANDROVICH POTEMKIN, together with others, known and unknown to the Grand Jury, did knowingly and intentionally conspire to transport, transmit, and transfer monetary instruments and funds to a place in the United States from and through a place outside the United States and from a place in the United States to and through a place outside the United States, with the intent to promote the carrying on of specified unlawful activity, namely, a violation of Title 18, United States Code, Section 1030, contrary to Title 18, United States Code, Section 1956(a)(2)(A).

All in violation of Title 18, United States Code, Section 1956(h).

COUNT ELEVEN
(Conspiracy to Commit an Offense Against the United States)

66. Paragraphs 1 through 8 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

Defendants

67. Paragraph 18 of this Indictment relating to ALEKSANDR VLADIMIROVICH OSADCHUK is re-alleged and incorporated by reference as if fully set forth herein.

68. Defendant ANATOLIY SERGEYEVICH KOVALEV (Ковалев Анатолий Сергеевич) was an officer in the Russian military assigned to Unit 74455 who worked in the GRU's 22 Kirova Street building (the Tower).

69. Defendants OSADCHUK and KOVALEV were GRU officers who knowingly and intentionally conspired with each other and with persons, known and unknown to the Grand Jury, to hack into the computers of U.S. persons and entities responsible for the administration of 2016 U.S. elections, such as state boards of elections, secretaries of state, and U.S. companies that supplied software and other technology related to the administration of U.S. elections.

Object of the Conspiracy

70. The object of the conspiracy was to hack into protected computers of persons and entities charged with the administration of the 2016 U.S. elections in order to access those computers and steal voter data and other information stored on those computers.

Manner and Means of the Conspiracy

71. In or around June 2016, KOVALEV and his co-conspirators researched domains used by U.S. state boards of elections, secretaries of state, and other election-related entities for website vulnerabilities. KOVALEV and his co-conspirators also searched for state political party email addresses, including filtered queries for email addresses listed on state Republican Party websites.

72. In or around July 2016, KOVALEV and his co-conspirators hacked the website of a state board of elections ("SBOE 1") and stole information related to approximately 500,000 voters, including names, addresses, partial social security numbers, dates of birth, and driver's license numbers.

73. In or around August 2016, KOVALEV and his co-conspirators hacked into the computers of a U.S. vendor ("Vendor 1") that supplied software used to verify voter registration information for the 2016 U.S. elections. KOVALEV and his co-conspirators used some of the same infrastructure to hack into Vendor 1 that they had used to hack into SBOE 1.

74. In or around August 2016, the Federal Bureau of Investigation issued an alert about the hacking of SBOE 1 and identified some of the infrastructure that was used to conduct the hacking. In response, KOVALEV deleted his search history. KOVALEV and his co-conspirators also deleted records from accounts used in their operations targeting state boards of elections and similar election-related entities.

75. In or around October 2016, KOVALEV and his co-conspirators further targeted state and county offices responsible for administering the 2016 U.S. elections. For example, on or about October 28, 2016, KOVALEV and his co-conspirators visited the websites of certain counties in Georgia, Iowa, and Florida to identify vulnerabilities.

76. In or around November 2016 and prior to the 2016 U.S. presidential election, KOVALEV and his co-conspirators used an email account designed to look like a Vendor 1 email address to send over 100 spearphishing emails to organizations and personnel involved in administering elections in numerous Florida counties. The spearphishing emails contained malware that the Conspirators embedded into Word documents bearing Vendor 1's logo.

Statutory Allegations

77. Between in or around June 2016 and November 2016, in the District of Columbia and

elsewhere, Defendants OSADCHUK and KOVALEV, together with others known and unknown to the Grand Jury, knowingly and intentionally conspired to commit offenses against the United States, namely:

a. To knowingly access a computer without authorization and exceed authorized access to a computer, and to obtain thereby information from a protected computer, where the value of the information obtained exceeded $5,000, in violation of Title 18, United States Code, Sections 1030(a)(2)(C) and 1030(c)(2)(B); and

b. To knowingly cause the transmission of a program, information, code, and command, and as a result of such conduct, to intentionally cause damage without authorization to a protected computer, and where the offense did cause and, if completed, would have caused, loss aggregating $5,000 in value to at least one person during a one-year period from a related course of conduct affecting a protected computer, and damage affecting at least ten protected computers during a one-year period, in violation of Title 18, United States Code, Sections 1030(a)(5)(A) and 1030(c)(4)(B).

78. In furtherance of the Conspiracy and to effect its illegal objects, OSADCHUK, KOVALEV, and their co-conspirators committed the overt acts set forth in paragraphs 67 through 69 and 71 through 76, which are re-alleged and incorporated by reference as if fully set forth herein.

All in violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATION

79. Pursuant to Federal Rule of Criminal Procedure 32.2, notice is hereby given to Defendants that the United States will seek forfeiture as part of any sentence in the event of Defendants' convictions under Counts One, Ten, and Eleven of this Indictment. Pursuant to Title 18, United

States Code, Sections 982(a)(2) and 1030(i), upon conviction of the offenses charged in Counts One and Eleven, Defendants NETYKSHO, ANTONOV, BADIN, YERMAKOV, LUKASHEV, MORGACHEV, KOZACHEK, YERSHOV, MALYSHEV, OSADCHUK, POTEMKIN, and KOVALEV shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds obtained directly or indirectly as a result of such violation, and any personal property that was used or intended to be used to commit or to facilitate the commission of such offense. Pursuant to Title 18, United States Code, Section 982(a)(1), upon conviction of the offense charged in Count Ten, Defendants NETYKSHO, ANTONOV, BADIN, YERMAKOV, LUKASHEV, MORGACHEV, KOZACHEK, YERSHOV, MALYSHEV, OSADCHUK, and POTEMKIN shall forfeit to the United States any property, real or personal, involved in such offense, and any property traceable to such property. Notice is further given that, upon conviction, the United States intends to seek a judgment against each Defendant for a sum of money representing the property described in this paragraph, as applicable to each Defendant (to be offset by the forfeiture of any specific property).

Substitute Assets

80. If any of the property described above as being subject to forfeiture, as a result of any act or omission of any Defendant --

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property that cannot be subdivided without difficulty;

it is the intent of the United States of America, pursuant to Title 18, United States Code, Section

982(b) and Title 28, United States Code, Section 2461(c), incorporating Title 21, United States Code, Section 853, to seek forfeiture of any other property of said Defendant.

Pursuant to 18 U.S.C. §§ 982 and 1030(i); 28 U.S.C. § 2461(c).

Robert S. Mueller, III
Special Counsel
U.S. Department of Justice

A TRUE BILL:

Foreperson

Date: July 13, 2018

Chairman NADLER. I want to let the members know that we plan to continue until votes are called at about, I think, 1:45, it is anticipated, and we do not plan to take a lunch break. Mr. Reschenthaler.

Mr. RESCHENTHALER. Thank you, Mr. Chairman. Before I get to my question, Mr. von Spakovsky and Mr. Adams, is there anything that you feel that you need to respond to before I continue?

Mr. ADAMS. Yes, thank you very much. We can talk about facts and we can talk about myth, but one thing is a fact, that it was not a settlement that led to the South Carolina voter ID being upheld. It was an opinion by the Court of Appeals. It was an opinion that the reasonable impediment provisions of that case made the South Carolina voter ID subject to Section 5 preclearance. It wasn't a settlement. What might have been a settlement were subsequent cases based on that judicial opinion.

Mr. RESCHENTHALER. Mr. von Spakovsky.

Mr. VON SPAKOVSKY. I would point out that Ms. Ifill seems to have missed the provision on the Heritage website where we recommend ID provisions not only for in-person voting, but also for absentee balloting. I would also point out that in this supposed epidemic of voter suppression, during the entire 8 years of the Obama Administration, they only filed five cases under Section 2 of the Voting Rights Act. You can compare that to, I believe, 3 times as many Section 2 cases that were filed under the Bush Administration.

Mr. RESCHENTHALER. Thank you, gentlemen. I just want to elaborate on what my colleague, Congresswoman Lesko, was talking about before. So I am the sole Republican and representative from Pennsylvania on this committee, and I have seen firsthand what happens when you let entities with absolutely no accountability to the voters draw district lines. Last year the Pennsylvania Supreme Court usurped the State legislature's authority and, I would also argue, the authority of the executive branch as well, by overturning the existing congressional map and redrawing its own.

The U.S. Constitution gives State governments the power to run their own elections. So by denying States the ability to draw legislative districts as they see fit and instead forcing them to use unelected, unaccountable commissions or the courts to decide district lines, H.R. 1 takes power away from the voters. It is my opinion that this is the opposite of a "bill for the people." Rather, it is a bill against the people's rights to have their voice heard.

So Mr. von Spakovsky and Mr. Adams, could you each just speak to the redistricting reform element of H.R. 1, and do you believe this provision raises any constitutional issues? Thank you, and I yield back the balance of my time after the answers.

Mr. VON SPAKOVSKY. Look, if the people of a State want to on their own decide, either through the referendum process or through their elected State representatives, to establish an independent redistricting commission, they have the full authority to do that. But for Congress to dictate this to all the States is, I think, an antidemocratic measure. And there are parts of this provision also that I think are potentially unconstitutional, and I will give you an example of that.

This provision of H.R. 1 says that if a commission is not established or if it doesn't adopt a plan, then the redistricting lines for Congress will be drawn up by a three-judge Federal court. Now, yeah, Federal courts get involved in redistricting, but they only get involved when there has been a violation of the Voting Rights Act because there has been discrimination in the drawing of the lines or because the equal protection doctrine of the Fourteenth Amendment, one person/one vote, has been violated because the districts are equal enough. And that is appropriate and courts do that.

But this bill would give the judicial branch the ability to draw up lines when there has been no such violation. And so, in essence, you are taking a power the Congress gives to the legislative branches and you are giving it to the judicial branch, and I think that part of the bill is potentially unconstitutional. And the other part of it, I think, is very anti-democratic, taking away from the people of a State the right to decide whether in their State how redistricting lines should be drawn.

Chairman NADLER. Thank you.

Mr. CICILLINE. Thank you, Mr. Chairman, and thank you for prioritizing H.R. 1. I also want to thank Ms. Gupta, Ms. Ifill, Mr. Noti, and Ms. Tuberville for your testimony and for being extraordinary patriots in helping to protect our democracy.

The landmark legislation that we are considering this afternoon will do what Democrats said we would do by reducing the influence of corporate spending in political campaigns, restoring ethics and integrity to government, and restoring power to the American people. Widespread cynicism in America is caused by a deep sense that the government doesn't work for the people, caused by policies that amplify the voices of the rich and powerful to drown out the voices of ordinary Americans, and making it harder and harder for people to vote.

Here in America, our great democracy will only survive if power resides with the people and not the powerful corporate special interests. The first step we must take is to make sure that every American has an equal voice in their government so that government enacts policies that advance the public good. Instead, too many Americans are getting crushed by healthcare costs, childcare expenses, housing costs, low wages, and ballooning student loan debt. They have watched Congress and this Administration rig the rules for the wealthy and well-connected while refusing to address the issues that really matter in their lives.

We have also seen the voting process become an obstacle course with ever-increasing burdens particularly on eligible African-Americans and other communities of color and on young and low-income voters. These problems have only been made worse by the presence of dark money in our elections, which means anyone can secretly impact our elections, including the prospect of foreign adversaries. And that is why it is so important that we pass H.R. 1, which will repair our democracy by restoring real power to the people of this country and away from the special interests and powerful corporations.

I am very proud that the legislation includes the Disclose Act, which would require that we shed light on very corrosive dark money in our elections, that it provides for automatic voter reg-

istration, which I have introduced, and finally, that it includes legislation to give the Justice Department more authority to better enforce the Foreign Agents Registration Act. Without fixing our broken system and taking power from the powerful special interests and returning it to the people of this country, it will be almost impossible to make progress on the issues that are important to the American people, like higher wages, lower prescription drug costs, reducing gun violence, and responding to the urgent challenges of climate change.

Last Congress, we saw what happens when politicians respond to their donors and powerful corporations. Republicans voted to take away healthcare for 23 million Americans and raise out-of-pocket costs for millions. They gave billions of dollars in tax breaks to the rich so that billionaires could avoid paying their fair share, and then proposed paying for those tax breaks by cutting Medicaid and Social Security. And they passed legislation to please the NRA and ease firearm restrictions even after many of the deadliest mass shooting in modern American history. So this bill will return power to the people and restore our democracy. It will help us clean up the culture of corruption in Washington and focus on making sure our government works for the people of this country.

Republican opposition to these reforms, as seen by the almost farcical arguments that we have heard during this hearing, is obvious because they benefit from this broken system, as do their donors and their super PACs. And so I want to associate myself with the remarks of Congresswoman Bass about the sort of very disappointing positions of two of our witnesses that are, frankly, arguing to disenfranchise Americans from participating in their elections by misstating evidence and that claims are being exaggerated.

But I would like to just ask you, Mr. Noti, you in your written testimony addressed the real pernicious impact of Citizens United, that from 2008 to 2016, these well-funded outside groups spent over $5 billion, and there was an increase in special interest spending of 900 percent. That decision of Citizens United that invited the corporate takeover of our democracy, which many are celebrating apparently at this hearing, was premised on two assumptions in Citizens United: one that a new campaign finance system would be a development that pairs corporate spending with effective disclosure, and two, that unlimited corporate spending would pose no threat of corruption because these would be independent expenditures. Would you describe how those two assumptions have actually panned out in the complete loss of control of our democracy by the American people and the complete hijacking of American democracy by big corporate special interests?

Mr. NOTI. Yes, Congressman. Those premises weren't true when they were written, and they are not true now. They are considerably less true now than they were then. As to disclosure, the inherent characteristics of the corporate form make it very easy for individuals and entities to route money through corporations ultimately to super PACs or other outside spenders, and thereby to cloak the ultimate sources of funds. So that premise of Citizens United has not played out. And to be clear, that is mostly the fault

of the Federal Election Commission who could have stepped in and stopped this and has chosen repeatedly not to.

As to independence, again, the Federal Election Commission has done nothing to ensure that this new category of outside corporate spending is, in fact, independent. In every election cycle, the sham of independence gets shammier, and there is more and more coordination between the so-called outside spenders and the candidates, contrary to law.

Mr. CICILLINE. And why does that matter?

Mr. NOTI. Because the premise of Citizens United, even if you take it at its face, is that independent spending does not corrupt, but direct contributions are corrupting, but a coordinated outside expenditure is equivalent to a direct contribution. So even if it is true that outside spending isn't corrupting, and it is not true, but even if it were, within the framework of Citizens United, this should still be unlawful, and there is no First Amendment right to corrupt.

Mr. CICILLINE. Thank you. I yield back, Mr. Chairman.

Chairman NADLER. I thank the gentleman. I now recognize Mr. Cline.

Mr. CLINE. Thank you, Mr. Chairman, and congratulations on your ascension to the chairmanship of the committee. I look forward to working with you during the session.

I wanted to focus on a couple of different issues coming from the Commonwealth of Virginia where just about every one of these issues is in play right now. But first, speaking to the reality of voter fraud, which has been discounted by several of my colleagues on the other side, we need look no further than my own district where a gentleman is just finishing his prison term in the Federal penitentiary for submitting fraudulent voter registration forms to the voter registrar. And it was only caught when he submitted a registration form for a previously-deceased local judge that the registrar actually identified the name, recognized it as a local judge who had died some years prior, and alerted authorities.

But we do have voter fraud. It is in Virginia and it is real, and we need to take steps to improve the integrity of our voter rolls. But also I wanted to ask, because this does focus on restoring the right of ex-felons to vote, one of the rights which is taken away from individuals when they are convicted of felonies. I would ask Ms. Gupta, does your organization support the restoration of the additional rights which are taken away from individuals when they are convicted of felonies?

Ms. GUPTA. The Leadership Conference has advocated for ending many of the collateral consequences that accompany people even after they have completed their sentence. There have been any number of studies that have been conducted that actually indicate that people who have served their time, and pay their commitment to the country, and who have their voting rights restored are actually less likely to re-offend, and that disenfranchisement actually hinders their rehabilitation and reintegration into their community. And so there are public safety reasons actually to support the restoration of rights once a person has been held accountable by the criminal justice system.

Mr. CLINE. So right to serve on a jury, for example?

Ms. GUPTA. This hearing is about H.R. 1 and the restoration of rights.

Mr. CLINE. I understand. Does your organization support——

Ms. GUPTA. I don't think that we have taken a blanket position.

Mr. CLINE. Okay. Ability to run for public office?

Ms. GUPTA. Again, I don't think the Leadership Conference has an official public position. What we have said is that the restoration of rights of citizenship actually inures to the benefit and rehabilitation of people who have served their time and completed their debt to society by serving time in prison.

Mr. CLINE. But in keeping with that, that would be an understandable rehabilitation to restore that right.

Ms. GUPTA. Again, I think that the Leadership Conference doesn't have an official position on it. We have spoken more broadly to the plight of collateral consequences that, frankly, encumber too many people, too many people of color who have been subjected already to bias in the system to deliberate double sentences.

Mr. CLINE. Okay. Reclaiming my time, can you speak to the practicality, and actually what this is doing is enabling someone who has been convicted of a felon, either at the State or local level, to vote only in Federal elections. Is that correct?

Ms. GUPTA. Yes, H.R. 1 would apply to Federal elections.

Mr. CLINE. Okay. Do you see any problem in the application of that restoration of rights to only vote in a Federal election when there are local elections on the ballot? Let me go down to Mr. von Spakovsky on the actual ability, practicality to implement this kind of two-tiered system.

Mr. VON SPAKOVSKY. I am not just an election lawyer, but I have actually been a county election administrator in two different States, both Virginia and Georgia. Local counties have big enough trouble maintaining one voter registration list, and keeping it accurate and up to date, and doing the kind of maintenance they need to. It would be very difficult—in fact, I would say probably almost impractical—for jurisdictions to keep two separate sets of books indicating that some people are registered and can vote in Federal elections, others can only vote in State elections. It would cause great confusion, and I think you would have election officials all over the country complaining that you have just made their job even more difficult than it already is.

Mr. CLINE. Thank you, Mr. Chairman. I would also ask the gentleman in Virginia, we have a 50/50 or 51/49 legislature where the final seat in the legislature, control of the legislature came down to literally the drawing of lots after a recount, after a second recount, because it was done right before the legislature started. If this private right of action is granted, what would that do to the ability of a legislature in this situation of Virginia to actually conduct its business on time?

Chairman NADLER. The time of the gentleman has expired.

Mr. ADAMS. There is no question that litigation will be more common if the private right of action under Hoevel was expanded and further delay certifications.

Chairman NADLER. Thank you.

Mr. RASKIN. Mr. Chairman, thank you. A great Republican president spoke of government of the people, by the people, and for the

people, which has been the tantalizing and always elusive dream of American history. We have an Administration today which has converted the Federal government into a money-making operation for the President, his family and friends, and a handful of other people, completely distorting and deforming the constitutional design. They have been taking money from foreign princes, kings, and governments in direct violation of the emoluments clause. They gather every night over at the Trump Hotel, which I call the Washington Emolument because that is where you go to deposit all of your support for the Trump Administration.

So H.R. 1 is serious business. It is about restoring democracy and the trajectory of Democratic enlargement and equality in our history. Ms. Gupta, let me start with you. I heard the gentleman from Florida try to undermine the idea of restoring voting rights to former prisoners by invoking two very scary specters. One is of people who had offended against democratic norms getting their right to vote back, and the other was people who had committed violent offenses. I am going to ask about both of those.

Let's start with one of my constituents, for example, Jack Abramoff, who committed multiple public corruption offenses—bribery, conspiracy, and so on—spent several years in prison, and he was restored his voting rights. Do you think that that was a proper thing to do, or do you think that he should be denied his voting rights forever?

Ms. GUPTA. Well, as I said, when a person serves their sentence and serves their debt to society, voting rights should be restored. We have a duty in this country to ensure participation of people in our democracy, and when people have served their prison terms, they should have their rights restored.

Mr. RASKIN. Okay. Thank you. What about hundreds of thousands of people who took up violent arms against the Union and tried to destroy the government, including people who were serving in government, like Senator Breckenridge from Kentucky who went over to the Confederacy and committed treason against the Union? Do you think that President Johnson and the Republicans in Congress did the wrong thing by restoring voting rights to people who took up arms against the Union and killed people who were carrying the Union flag?

Ms. GUPTA. Our consistent position was that that was an appropriate restoration of rights. We understand that there are things that people will do that put them in the line of criminal accountability. But the fact is that voting is a national symbol of full citizenship, and when a person has served out their term, they should be able to have their rights restored.

Mr. RASKIN. Thank you very much. Mr. Noti, I have got a question for you. The premise of Justice Kennedy's opinion in Citizens United was that the CEOs, in taking money directly out of the corporate treasuries and spending it in politics, "were exercising vicariously the underlying free speech rights of the shareholders of the corporation." Now, is it your sense that most CEOs and corporations are consulting the shareholders before they spend money in politics today?

Mr. NOTI. No, Congressman, and one of the premises of the opinion was that if shareholders didn't like the way their corporation was engaging in political spending, they could stop it.

Mr. RASKIN. Because there would be prompt and rapid disclosure on the internet, right?

Mr. NOTI. Disclosure and the mechanisms of "corporate democracy" is the phrase that was used.

Mr. RASKIN. Okay. So we have neither disclosure nor democracy in terms of the shareholders controlling. Would you favor a proposal which would say that no corporation can spend any money in our politics without a prior majority vote of the shareholders, which is the rule that exists in the United Kingdom?

Mr. NOTI. That would be an appropriate measure for either this body or the SEC to impose.

Mr. RASKIN. Okay. Thank you very much. Ms. Ifill, let me come to you quickly. I have learned something astonishing in this hearing, which is that our colleagues across the aisle now are openly championing gerrymandering, which is reviled by the vast majority of the American people. But they are standing up both constitutionally and politically for gerrymandering, which is quite remarkable, and if I read any of them wrong, I would happily be corrected.

But can you talk about the way that gerrymandering is used to nullify the democratic rights of the people? The gentleman from Pennsylvania spoke, complaining apparently about the Pennsylvania Supreme Court's ruling, which gave us the first reasonably fair elections in Pennsylvania in a very long time. Before that, a State that is basically a blue State or an evenly-divided State had 13 Republicans and 5 Democrats in their delegation. The North Carolina delegation has 10 Republicans and 3 Democrats, again, in a 50/50 State. In Ohio, it is a 3 to 1 split where there are 12 Republicans and 4 Democrats. And do you think that that kind of partisan lopsidedness is justification enough for them to embrace and advance gerrymandering as a reasonable constitutional and policy for America?

Ms. IFILL. Let me begin by saying I represent a nonpartisan civil rights organization and have litigated, you know, for many years on that basis. However, the very premise of our democracy is that no one group has all the power all the time. The whole premise of a democracy is based on shared power, and it is based on the ability to know that if you don't have power, you may have power tomorrow.

Any scheme that seeks to lock in the power of one group into perpetuity undermines the very foundation of our democracy, and it breeds cynicism within the electorate and turns people away from participation in our democracy. I would also point out that partisan gerrymandering very often is accompanied by racial gerrymandering, and that the affiliation of various racial groups with political parties means that a very serious partisan gerrymander usually has consequences that submerge and silence the voice of racial minorities as well.

Mr. CICILLINE [presiding]. Thank you very much. The time of the gentleman has expired. Ms. Jayapal, the gentlelady from Washington.

Ms. JAYAPAL. Thank you, Mr. Chairman. This is indeed a great day that we get to have a hearing on a bill that really seeks to restore Americans' faith in our democracy. And I want to spend most of my time on a fairly little-known provision, which is the Foreign Agents Registration Act, or FARA.

Two years ago, former national security adviser, Michael Flynn, retroactively registered as a foreign agent under FARA, a law that initially Congress enacted in 1938 to address increasing concern about the influence of Nazi propaganda. Mr. Flynn's FARA registration indicated that the Turkish government paid him more than $530,000 to serve as a lobbyist while simultaneously working as a Trump Campaign adviser. Months later, reports emerged that he worked on a $15 million plan to kidnap a political enemy of Turkish President Erdogan and fly him to an island prison. In addition, former Trump Campaign manager, Paul Manafort, pled guilty to conspiracy against the United States to violate FARA in regards to his failure to register as an agent of Ukraine's government.

The events of the past few years, I think, have truly illustrated how important it is for us to exercise proper oversight over how foreign agents are trying to influence U.S. policy. And so let me direct my questions to Mr. Noti. You are the senior director of trial litigation and the chief of staff for the Campaign Legal Center and an expert on FARA. How are Mr. Flynn and Mr. Manafort able to get away with this, and is this a problem for our democracy?

Mr. NOTI. They are examples of the enforcement problem that I mentioned in my opening statement. Basically, there is an under-resourced unit within the Department of Justice charged with FARA enforcement, but because of the resources they have, all they can do is look at the filings that come in and send follow-up letters. There is nobody who is charged with looking more broadly to see whether there are foreign agents out there who are not registered who should be, and that is one of the things that H.R. 1 would correct.

Ms. JAYAPAL. Thank you. I think it is quite incredible to me that the Department of Justice has only pursued seven criminal enforcement actions for FARA violations from 1966 to 2015, and as you say in your statement, it is not a slam on the Department of Justice. There simply haven't been the resources. But let me ask you if the provisions in H.R. 1 are sufficient to address these problems in our current system.

Mr. NOTI. Well, I think one additional gap in FARA that the examples that you raise point out is what has come to be known as the LDA loophole, the fact that somebody who is registered under the Lobbying Disclosure Act need not register under FARA. There was bipartisan support last Congress for eliminating that loophole. It needs to be eliminated and would have addressed, in all likelihood, the two situations you raised.

Ms. JAYAPAL. Thank you. One other thing I am concerned about is that some political activities to capture promotional or informational activities on behalf of a foreign principal may not be captured. And I think that is particularly concerning given Russian actions to interfere in our elections. Do you think that FARA should cover these sorts of activities?

Mr. NOTI. Absolutely. I mean, going back to the original purpose, the whole point of the act was to make sure that the American decisionmakers and government officials and the public weren't subjected to foreign propaganda without at least knowing that it was foreign propaganda. So if there are gaps in FARA's current coverage that are allowing that activity to be conducted, those should be closed.

Ms. JAYAPAL. Thank you. And I would like to briefly mention one more concern of mine regarding lobbying on behalf of foreign countries. Last month, the New York Times reported that "The targets of U.S. sanctions are hiring lobbyists with ties to President Trump in order to avoid sanctions." So, for instance, last June, following personal intervention by President Trump, the Commerce Department rescinded sanctions that could have seriously damaged the Chinese technology behemoth, ZTE. The President acted after a $1.4 million, 3-month lobbying push on behalf of ZTE.

Mr. Chairman, I seek unanimous consent to enter this article into the record.

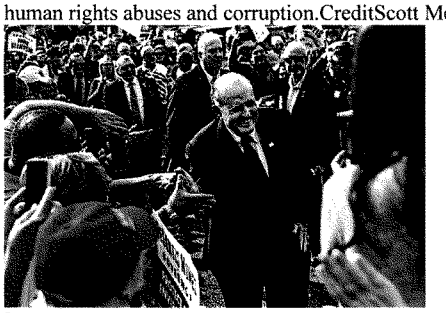
Mr. CICILLINE. Without objection.

[The information follows:]

MS. JAYAPAL FOR THE OFFICIAL RECORD

Targets of U.S. Sanctions Hire Lobbyists With Trump Ties to Seek Relief

Rudolph W. Giuliani, President Trump's personal lawyer, attended a reception hosted by the Democratic Republic of Congo's special envoy in July. Some saw Mr. Giuliani's presence as an endorsement of the country's government, which was facing threats of additional sanctions for human rights abuses and corruption.CreditScott McIntyre for The New York Times



Image

Rudolph W. Giuliani, President Trump's personal lawyer, attended a reception hosted by the Democratic Republic of Congo's special envoy in July. Some saw Mr. Giuliani's presence as an endorsement of the country's government, which was facing threats of additional sanctions for human rights abuses and corruption.CreditCreditScott McIntyre for The New York Times

By Kenneth P. Vogel

- Dec. 10, 2018

WASHINGTON — On a July evening, Trump administration officials and allies, including the president's personal lawyer, Rudolph W. Giuliani, gathered with investors atop the Hay-Adams hotel overlooking the White House for a cocktail reception featuring a short presentation by the Democratic Republic of Congo's special envoy to the United States.

An invitation for the reception billed it as an opportunity to learn about "the role Africa plays in gaining access to critical minerals, such as cobalt" and to discuss "the strategic relationship" between the United States and the nations of Africa.

In fact, the reception was part of an aggressive $8 million lobbying and public relations campaign that used lobbyists with ties to the Trump administration to try to ease concerns about the Congolese president, Joseph Kabila, whose government was facing threats of additional sanctions from the Trump administration for human rights abuses and corruption.

The lavish cocktail party was one example of a lucrative and expanding niche within Washington's influence industry. As President Trump's administration has increasingly turned to

sanctions, travel restrictions and tariffs to punish foreign governments as well as people and companies from abroad, targets of those measures have turned for assistance to Washington's K Street corridor of law, lobbying and public relations firms.

The work can carry reputational and legal risks, since clients often come with toxic baggage and the United States Treasury Department restricts transactions with entities under sanctions. As a result, it commands some of the biggest fees of any sector in the influence industry. And some of the biggest payments have been going to lobbyists, lawyers and consultants with connections to Mr. Trump or his administration.

"People overseas often want to hear that you know so-and-so, and can make a call to solve their problem," said Erich Ferrari, a leading Washington sanctions lawyer who said he has tried to disabuse prospective clients of such notions.

It is a perception that matches up with the pay-to-play mind-set that defines politics in many parts of Africa, Asia, the Middle East and the former Soviet states. As politicians and executives from those regions have increasingly been targeted by sanctions, they have sought to apply that approach — backed by huge sums of cash — to navigating Washington, lobbyists and former government officials say.

This has been encouraged, they say, by the willingness projected by Mr. Trump and his team to make deals around sanctions and tariffs exemptions. Previous administrations had worked to wall off politics from those processes, which are supposed to be overseen primarily by career officials and governed by strict legal analyses.

The Trump administration rescinded sanctions against ZTE, a Chinese company, after intense lobbying.CreditMark Schiefelbein/Associated Press

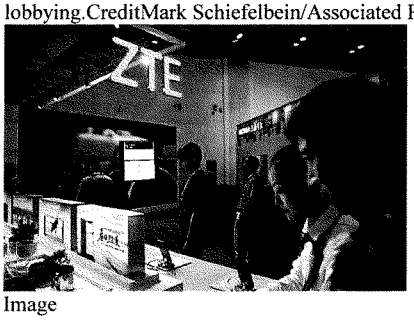


Image
The Trump administration rescinded sanctions against ZTE, a Chinese company, after intense lobbying.CreditMark Schiefelbein/Associated Press

In June, after a personal intervention by Mr. Trump, the Commerce Department rescinded sanctions that could have crippled the Chinese technology giant ZTE, which had fought the sanctions through an intense three-month lobbying push that cost $1.4 million.

A $108,500-a-month lobbying campaign has helped delay the imposition of sanctions against an industrial conglomerate owned by the Russian oligarch Oleg Deripaska. Among the leaders of the lobbying efforts for both ZTE and Mr. Deripaska's companies was Bryan Lanza, a former Trump campaign aide who maintains close ties to administration officials.

His firm, Mercury Public Affairs, has signed other clients facing punitive measures from the United States government, including the United States subsidiary of Hikvision, a company owned by the Chinese government.

The company, according to lobbying filings, paid a Mercury team including Mr. Lanza a fee that started at $70,000 a month to lobby on the carrying out of a military-spending bill. The bill bars the United States government from purchasing video surveillance products made by a handful of Chinese companies, including Hikvision, ZTE and Huawei, whose chief financial officer was arrested in Canada at the request of the United States government, apparently on suspicion of violating sanctions against Iran.

Sanctions targets who had not previously tried to win reprieve are sensing an opening. Viktor F. Yanukovych, the former president of Ukraine, who had sanctions levied against him in 2014, has discussed a push to win relief and refurbish his image with well-connected law and lobbying firms including Greenberg Traurig.

Among the other Trump-linked lobbyists who have received big contracts from targets of sanctions and tariffs is Brian Ballard, a top fund-raiser for Mr. Trump's campaign and the Republican National Committee.

His firm signed a $125,000-a-month contract in August 2017 to represent the Turkish-state-owned bank Halkbank, which has been working to avoid punishment for its role in a billion-dollar scheme to evade sanctions on Iran. The representation brought Mr. Ballard into discussions with Mr. Giuliani, who represented a gold trader charged in the scheme.

Then there is the lawyer Alan Dershowitz. His criticism of the special counsel's investigation of Mr. Trump has endeared him to the president. But Mr. Dershowitz also has a long history of representing clients in transnational legal matters, including sanctions.

Mr. Dershowitz is advising Dan Gertler, an Israeli billionaire who was the target of sanctions by Washington last year for using his connections to Mr. Kabila, the Congolese president, to facilitate what the Treasury Department called "opaque and corrupt mining and oil deals."

The lawyer Alan Dershowitz is advising Dan Gertler, an Israeli billionaire who was penalized with sanctions last year under a human rights law for using his connections to the Congolese president.CreditTodd Heisler/The New York Times

Image

The lawyer Alan Dershowitz is advising Dan Gertler, an Israeli billionaire who was penalized with sanctions last year under a human rights law for using his connections to the Congolese president.CreditTodd Heisler/The New York Times

Mr. Dershowitz called Mr. Gertler "a very good person" who is "being targeted primarily because of the actions of other people."

While Mr. Trump has invited Mr. Dershowitz to the White House to discuss Middle East issues on multiple occasions, Mr. Dershowitz said he had not used his access to lobby on behalf of Mr. Gertler.

"I would never raise an issue like this," he said.

Mr. Kabila's government has stocked up on consultants who have cast themselves as able to broker access at the highest levels of the administration. It has paid $8 million to its security contractor, an Israeli firm called Mer Security and Communication Systems, to hire American lobbyists, according to lobbying filings.

Mer paid $500,000 in April 2017 to Alston & Bird, the firm of former Senator Bob Dole. Mr. Dole's team indicated that it could secure a meeting between Mr. Kabila and Mr. Trump, according to people familiar with the relationship. The meeting never happened, and Mer ended the subcontract in frustration.

Mer proceeded to invest millions more in lobbying and public relations firms with lower profiles but closer ties to the Trump team.

Lobbying filings show $360,000 paid by Mer to Adnan Jalil, a former congressional liaison for Mr. Trump's campaign; $250,000 to the firm of Nancye Miller, the wife of the Trump campaign adviser and former C.I.A. chief R. James Woolsey Jr.; $680,000 to the firm of former Representative Robert L. Livingston, an early Trump endorser; and $598,000 to the firm of Brian Glicklich, who has represented Trump allies such as Breitbart News and Rush Limbaugh.

Mer also agreed to pay $1.25 million to the firm of Robert Stryk, who had worked with Trump campaign officials, to organize the Hay-Adams event and meetings around it for Mr. Kabila's special envoy to the United States. (Mr. Stryk's firm, Sonoran Policy Group, also signed a

$100,000-a-month contract in August to represent Somalia in its bid for increased military aid from the Trump administration and removal from its travel ban list. And Sonoran registered as a subcontractor for a law firm to lobby for a notorious Serbian arms dealer who was hit with sanctions for selling weapons to Liberia).

At the time of the Congolese reception, the Trump administration and the international community were pressuring Mr. Kabila to step down, partly by intimating that his allies might face additional sanctions. Not only had he been accused of violent repression of dissent and looting millions, but he had overstayed the country's constitutionally mandated term limits by nearly two years.

The Congolese officials at the reception posed for photos with Mr. Giuliani, and afterward there was some confusion about his connection to the lobbying effort.

Joseph Kabila, the president of the Democratic Republic of Congo. Mr. Kabila's government has stocked up on consultants who have cast themselves as being able to broker access to the highest levels of the Trump administration.CreditJohn Wessels/Agence France-Presse — Getty Images

Image

Joseph Kabila, the president of the Democratic Republic of Congo. Mr. Kabila's government has stocked up on consultants who have cast themselves as being able to broker access to the highest levels of the Trump administration.CreditJohn Wessels/Agence France-Presse — Getty Images

Francois Balumuene, the Congolese ambassador to the United States, suggested in an interview in September that his country was working with Mr. Giuliani to figure out the administration's position on an upcoming presidential election called by Mr. Kabila to avoid threatened sanctions.

"What I know is that it is possible that Giuliani will let us know how to go ahead," Mr. Balumuene said. He referred additional questions about Mr. Giuliani's role to the country's special envoy to Washington, Raymond Tshibanda, who could not be reached for comment.

Mr. Giuliani said he was not serving as an intermediary between the Democratic Republic of Congo and the administration. In an interview in September, he initially said he stopped by the reception for a half-hour to "say hello to people" and to impress a woman with whom he had been dining by taking her "to the top of the Hay-Adams to see a Washington party" with a "great view."

But he later suggested that he attended at least partly because he was interested in exploring business opportunities, adding, "We've always wanted to see what's Africa all about."

And someone familiar with Mr. Giuliani's business affairs said that one of his companies has recently been negotiating a consulting deal to work in the Democratic Republic of Congo, possibly through Mer.

In text messages on Sunday, Mr. Giuliani said that "if I do it, it would only be security consulting" similar to what he does in other countries, not lobbying. "Beyond that, I can't say anything other than you can assume if we are working in a foreign country, we are doing security — physical and cyber, antiterrorism, emergency management."

It is not clear whether the lobbying overseen by Mer had much effect, and several of Mer's subcontracts with Trump-linked lobbyists have expired.

Less than a month after the Hay-Adams event, Mr. Kabila announced that he would not seek a third term in presidential elections scheduled for this month. While some Trump administration officials are concerned that the elections are being tilted in favor of Mr. Kabila's chosen successor, the United States has not leveled additional sanctions against the country since Mr. Kabila's announcement — an outcome some lobbyists on the account are privately claiming as a victory.

In October, Mer signed a new $200,000 contract with a public relations firm called Sanitas International that was co-founded by Christopher Harvin, a senior adviser to the Trump campaign who had worked in President George W. Bush's administration. The firm is seeking to demonstrate to the news media that Mr. Kabila does, in fact, intend to step down and hold free and fair elections.

Ms. JAYAPAL. Thank you. Let me just ask Ms. Gupta to clarify something that I think I heard from some of the witnesses earlier, which is there seem to be some indication that people are trying to say that we are somehow inflating the concerns about voter suppression. I would like to ask you to comment on that and specifically this claim that there is no problem with voter suppression, which I think is what I heard, but I am sure I will be corrected if not. But please comment.

Ms. GUPTA. There has been trial after trial in the last several years that laid bare the amount of evidence of voter suppression. And I feel like it is important for members of Congress to understand that Mr. von Spakovsky has made a career out of giving misleading testimony. In fact, as recently as June of 2018 in a case called Fish v. Kobach, U.S. District judge Julie Robinson, opined on Mr. von Spakovsky's expert testimony around a proof of citizenship requirement.

She said that "The Court gives little weight to Mr. von Spakovsky's opinion and report because they are premised on several misleading and unsupported examples" of what was in that instance non-citizen voter registration. She pointed to his "myriad misleading statements," said that "His advocacy led him to cherry pick evidence in support of his opinion," and said that "lack of academic rigor in his report, in conjunction with his clear agenda and misleading statements render his opinions unpersuasive."

We represent organizations that have been long in the business of fighting voter suppression, and this is why these misleading statements are deeply, deeply troubling and misleading to members of Congress.

Mr. CICILLINE. Thank you very much.

Ms. JAYAPAL. Thank you. I yield back.

Mr. CICILLINE. The gentlelady's time has expired. There is a vote which the time has run out. I am going to recognize Mr. Correa for his 5 minutes, and then we will take a recess so folks can vote.

Mr. CORREA. Thank you, Mr. Chairman.

Mr. CICILLINE. We will come back immediately after votes.

Mr. CORREA. Thank you, Mr. Chairman. I want to thank the members of this panel for being here today. This is such an important issue, my first Judiciary Committee hearing, and thank you very much for your service today.

I am an original co-sponsor of H.R. 1 because I believe that when people vote, America is strong. When people vote, democracy is stronger. And I strongly believe that to protect our voting rights system, everybody eligible to vote, his or her rights have to be guaranteed. We have to do everything we can to make sure every eligible American voter votes.

My district, I am home to a huge group of American veterans, many veterans from the Greatest Generation still with us, many highly decorated for their bravery. And my district also, we are also home to many new Americans. In fact, many people call my area the new Ellis Island of America. One thing we all have in common is we all work hard. We are all blue collar folks. Like my parents, these new immigrants work really hard, obey all the laws to the best of their ability, work hard for the American Dream to someday earn the right to vote as American citizens.

Then something interesting happens. Folks begin to try to figure out how to suppress votes. In my district, you got subtle things like robocalls, people getting phone calls saying you shouldn't vote, it is against the law for you to vote. And then there are things that aren't so subtle. In my district a few years back, we had a whole guard voter incident. Whole guards were hired to guard the polls in the mainly ethnic areas of my district. A few years later, a letter went out to primarily Hispanic voters saying be careful. If you break the laws, you are a felon. Be very careful. And you know what this does? Maybe on its face that letter was legally correct, but most of my voters who are new citizens have worked so hard to follow the law, that anything at all that threatens them, threatens their status, they run away from those situations.

In these two cases, after the elections we were able to find the court system to address these issues. But my question to you, Ms. Gupta, is, what do we do before the election? What happens when these incidences come to our attention? Can we protect our voters to make sure that they know that their rights as American citizens are to be protected? What is our recourse?

Ms. GUPTA. Well, our recourse used to be that changes in local voting patterns would be reported to the Justice Department, and there would be recourse for the Justice Department to ensure that racial discrimination was not animating these changes and preventing people from exercising their franchise. As we said, in 2013, the United States Supreme Court gutted that key tool of the Voting Rights Act, and it is why H.R. 1 is such an important act in order to restore the Voting Rights Act, and to restore the ability of the Justice Department and Federal courts to actually prevent these kinds of nefarious actions from taking place before elections.

Litigation is crucial, and groups have risen to the challenge to file Section 2 cases. But they are time intensive, they occur after elections after people have already been disenfranchised, and can take years to come to adjudication, during which elections are taking place. And so that is why it is incumbent and necessary for Congress to restore the provisions of the Voting Rights Act.

Mr. CORREA. So H.R. 1 will help protect the rights of my American citizens to vote before the election.

Ms. GUPTA. H.R. 1, yes, expresses a commitment to restoring the Voting Rights Act, and that is what we hope to achieve in this Congress. H.R. 1 also contains a slew of protections that have become proxies for racial discrimination around list maintenance and unwarranted voter purging. H.R. 1 seeks to remedy those so that people can have their rights guaranteed before elections take place.

Mr. CORREA. Thank you, Mr. Chair. I yield the remainder of my time.

Mr. CICILLINE. What a gentleman. I am going to ask unanimous consent to include in the record a Brennan Center for Justice report entitled, "Non-Citizen Voting: The Missing Millions," which makes clear that these claims about voter fraud are completely unsupported by the evidence; a second article by the Brennan Center entitled, "An Insidious Foreign Dark Money Threat: New Reports about Russian Money Going to the NRA Could Prove Watchdog's Fears Correct;" an article by The Hill entitled, "Most Dark Money Spending in Recent Elections Came From 15 Groups;" and finally,

a GAO report entitled, "Post-Government Employment Restrictions and Foreign Agent Registration: Additional Action Needed to Enhance Implementation Requirements."

Without objection, so ordered.[The information follows:]

MR. CICILLINE FOR THE OFFICIAL RECORD

BRENNAN
CENTER
FOR JUSTICE
TWENTY
YEARS

NONCITIZEN VOTING: THE MISSING MILLIONS

Christopher Famighetti, Douglas Keith and Myrna Pérez

Brennan Center for Justice *at New York University School of Law*

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I. INTRODUCTION AND FINDINGS

In 2016, for the first time, presidential politics was roiled by claims of widespread illegal voting. In the weeks after the election, the claims continued. President-elect Trump insisted, "In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally."[1] On that same day, four hours later, he added, "Serious voter fraud in Virginia, New Hampshire and California — so why isn't the media reporting on this? Serious bias — big problem!"[2] After his inauguration, the claims escalated. "I will be asking for a major investigation into VOTER FRAUD," he declared.[3]

As time passed, Trump's claim grew more specific and more exaggerated. On Feb. 9th, he told a group of 10 senators that ineligible persons had voted in droves, and that they had been driven in buses by the thousands from Massachusetts to New Hampshire.[4] White House Press Secretary Sean Spicer defended and reiterated the claims of voting by noncitizens.[5] Senior policy advisor Stephen Miller toured the Sunday morning news interview shows to defend the claim.[6] The White House asserted that these claims required an investigation, to be led by Vice President Mike Pence.[7] In a March 22nd interview with TIME, the president said that he believes he will be proven right and that he is moving forward with the investigative committee.[8] In late April, Spicer told CNN that he expects news on the voter fraud investigation in the "next week or two," and that Pence will still be "very involved."[9]

Are the president's claims plausible? The Brennan Center reached out systematically to those who would know best: the local officials who actually ran the election in 2016. These officials are in the best position to detect improper voting — by noncitizens or any other kind. To make sure we were speaking to the right individuals, this study relies on interviews with officials who ran the elections in jurisdictions (towns, cities, or counties) nationwide with the highest share of noncitizen residents, and those in states identified by Trump as the locus of supposed misconduct. We interviewed a total of 44 administrators representing 42 jurisdictions in 12 states, including officials in eight of the 10 jurisdictions with the largest populations of noncitizens nationally.[10]

Our nationwide study of noncitizen or fraudulent voting in 2016 from the perspective of local election officials found:

- In the jurisdictions we studied, very few noncitizens voted in the 2016 election. Across 42 jurisdictions, election officials who oversaw the tabulation of 23.5 million votes in the 2016 general election referred only an estimated 30 incidents of suspected noncitizen voting for further investigation or prosecution. In other words, improper noncitizen votes accounted for 0.0001 percent of the 2016 votes in those jurisdictions.

- Forty of the jurisdictions — all but two of the 42 we studied — reported no known incidents of noncitizen voting in 2016. All of the officials we spoke with said that the incidence of noncitizen voting in prior years was not significantly greater than in 2016.

- In the 10 counties with the largest populations of noncitizens in 2016, only one reported any instances of noncitizen voting, consisting of fewer than 10 votes, and New York City, home to two of the counties, declined to provide any information.
- In California, Virginia and New Hampshire — the states where Trump claimed the problem of noncitizen voting was especially acute — no official we spoke with identified an incident of noncitizen voting in 2016.

The absence of fraud reinforces a wide consensus among scholars, journalists and election administrators: voter fraud of any kind, including noncitizen voting, is rare.

Two features of this study stand out.

It is the first analysis to look at voting from the perspective of local officials in 2016 — the year that Trump claimed was marred by widespread illegal voting.

Why speak with local officials? In the United States, elections are administered within local jurisdictions — counties, cities, and townships. These bodies and their officials run elections, process registration applications, and directly deal with voters. To be sure, local elections officials may not be aware of every incident of ineligible voting, and the tools at their disposal are imperfect, but they remain well-positioned to account for what is happening in the area they oversee.

Second, this study casts a wider net than studies focusing on prosecutions or convictions. It identifies both those who voted improperly by mistake, and those who did so with malicious intent. We asked administrators both the number of incidents of noncitizen voting they referred for prosecution or further investigation, and the number of suspected incidents they encountered but did not refer in 2016. In all but two of 42 possible jurisdictions, the answers to both questions were zero. Some who claim widespread misconduct insist that, because prosecution is hard, there is likely a much wider pool of people who were caught voting improperly, but who simply were not prosecuted. This study finds that both the number of people referred for prosecution and the number of people merely suspected of improper voting are very small.

II. METHODOLOGY

Three Brennan Center researchers spoke to election officials in 42 jurisdictions. The researchers sought to quantify every credible instance of noncitizen voting seen by those officials, even if those instances did not result in a conviction. In addition, the researchers sought to assess whether fraud, more generally, was widespread. We spoke to local election officials as opposed to state-level administrators or prosecutors because in the United States, elections are run within counties, cities, and townships.

Interview Protocols

The Brennan Center conducted in-depth interviews with more than 40 election officials. We interviewed all but two of the jurisdictions by phone; the remaining two jurisdictions provided answers via e-mail. We standardized the interview process by asking the primary questions in the same wording and order. During each interview, we queried election officials on a standard set of questions regarding the scope of their professional experience in election administration, prevalence of noncitizen voting, and prevalence of fraud generally. We asked the officials to quantify three scenarios involving noncitizen voting: (1) the number of cases of noncitizen voting referred for prosecution or further investigation in 2016; (2) the number of cases of noncitizen voting referred for prosecution or further investigation over their careers; (3) the number of cases of noncitizen voting officials encountered in 2016, but did not refer. In addition, we asked for any explanations the administrator had for why noncitizen voting occurred at whatever rate described. During the interview, where appropriate, we asked follow up questions, to focus responses and gather contextual data. After all the interviews were conducted, we sought confirmation in writing from the administrators that the information captured from the interviews was accurate, and to promote standardization of the responses collected.

In addition to questions about noncitizen voting, we asked about voter fraud more generally. The responses to these questions were not specific enough to warrant additional findings, though officials were nearly unanimous in reporting that there was no widespread voter fraud in their jurisdictions. One official, however, reported that as many as 700 persons may have improperly voted in both political parties' primaries in early 2016. We do not have enough information to substantiate those numbers. No official reported significant numbers of persons voting twice in the same election, or voting under another person's name.

Selection of Jurisdictions

We selected the jurisdictions included in this analysis according to two criteria. For the first criterion, we selected a nationwide set of jurisdictions with large adult noncitizen populations.[11] We started with a list of the 44 counties with more than 100,000 adult noncitizens. We reached out to these counties via phone and email to schedule interviews. Based on this outreach, we were able to conduct interviews with election officials from 27 of the 44 counties, including eight of the 10 counties with the largest populations of noncitizens in the county.[12] The New York City Board of Elections, home to the two remaining counties with the 10 largest noncitizen populations, declined to participate in this research.

For the second criterion, we focused on the three states — California, New Hampshire and Virginia[13] — that Trump expressly singled out as having widespread noncitizens voting in 2016. For these states, we selected a geographically and demographically diverse set of five jurisdictions: (1) at least two jurisdictions with large numbers of adult noncitizens, (2) at least two other jurisdictions with a high percentage of adult noncitizens and (3) at least one rural[14] or sparsely populated jurisdiction with a comparatively high percentage of adult noncitizens.[15] The jurisdictions interviewed can be found in the appendix.

Accounting for Limitations

This study faced two potential methodological concerns: (1) the problem of selection bias, in other words, the concern that the jurisdictions willing to be interviewed differed too much from jurisdictions that refused to participate, and (2) the problem of response bias, in other words, that the numerical responses given to us the by the officials were inaccurate.

We made efforts to detect any evidence of either of these problems. Regarding selection bias, we examined any known partisan affiliation of the responders, and discovered that few, if any, ran for their position under a partisan banner. Forty of our 44 interviewees were either appointed to their positions or won their seats in non-partisan contests. Most have longstanding careers in election administration. We also reviewed the literature of noncitizen voting and fraud to see if any credible reports of recent systemic fraud would be captured if we had more responses from jurisdictions that have more than 100,000 noncitizens. We acknowledge that the refusal of the New York City Board of Elections to provide the requested information is noteworthy, but we nevertheless believe there are enough jurisdictions involved to be comfortable that the results we obtained are consistent with prior studies finding noncitizen voting to be rare.

Relatedly, we attempted to detect response bias by comparing our findings to those of other recent studies that use a variety of other methodologies. We reviewed comprehensive analyses of referrals, investigations, and prosecutions for election-related offenses covering each of the states in which we spoke with administrators.[16] We were prepared to ask the election officials to explain any discrepancies if other sources were meaningfully out of sync with their estimates, but as it happens, in all but one instance, there was no cause to do so.

For example, three Secretaries of State have recently made very public allegations of noncitizens voting, albeit on a much smaller scale than what Trump has said. On Feb. 27th, Ohio Secretary of State Jon Husted (R) claimed to have identified 82 noncitizens that had voted in at least one past election, but he did not indicate how many elections he examined or specify that any of that fraud happened in 2016.[17] On April 19th, Nevada's Secretary of State Barbara Cegavske (R) reported that a statewide audit found that three noncitizens had voted in the 2016 election.[18] On April 21st, the North Carolina State Board of Elections, comprised of three Republicans and two Democrats, reported 41 noncitizens cast ballots in November.[19] Even if true,[20] those numbers reaffirm that noncitizen voting is extraordinarily rare because the incidents of noncitizen voting alleged in Ohio, Nevada, and North Carolina amount to,

at most, .0015, .0003, and .0009 percent of ballots in those states respectively in 2016.[21] The Brennan Center did note that the Nevada Secretary of State's analysis identified three more possible instances of noncitizen voting in Clark County than Clark County Registrar of Voters, Joe Gloria, reported during our initial interview.[22] Gloria determined that until his office receives more information from the Secretary of State about this investigation, he did not believe he had enough information to warrant revision of his original responses.

III. HOW ELECTION ADMINISTRATORS DETECT AND PREVENT FRAUD

How would local election officials actually know if improper voting were taking place? Practices vary, but all but two interviewees reported to us that they rely on certain common safeguards against fraud to help detect and deter fraud.[23] Often these measures detect misconduct as well as prevent it. For example, election administrators reported that:

- They operate hotlines, or have a process for members of the public to challenge the eligibility of voters, or otherwise have a mechanism for poll workers or other citizens to report concerns of noncitizens voting.
- Some are notified when persons registered decline to serve on juries because they are noncitizens.
- Some register persons at naturalization ceremonies and then run a check to see if the newly-naturalized citizens are already registered.[24]
- A few have to do research to prepare documentations for United States Citizenship and Immigration Services (USCIS) or an individual certifying that a person seeking naturalization has not registered or voted before.

While no administrator reported that noncitizen voting was common, four of the 44 administrators raised concerns that the safeguards described were insufficient for preventing or identifying the registration of ineligible people. One expressed that the tools he had likely understated how many noncitizens were on the rolls. But many also noted that while noncitizens might be registered, it is often accidental, and ineligible people who end up on the rolls likely do not vote.

How is it possible for a noncitizen to register or vote by mistake? A noncitizen might get on the rolls when lawfully applying for a driver's license. This may happen as a result of an applicant not understanding the forms they are completing, or, as one official noted, because applicants presume that a DMV employee would not ask them to register if the applicant were not entitled to do so. But all who raised this particular issue noted that often it was the result of a mistake, not the intention to influence an election outcome. Lynn Ledford, Voter Registration and Elections Director in Gwinnett County, Georgia, articulated a sentiment shared by others:

"Sometimes a voter won't understand that they're completing a voter registration application," she said. "They will come and self-report and explain their accident. Then we give them a confirmation in writing that they have been removed and take them off the rolls."

One election administrator noted that a noncitizen may get registered because someone else, for example a person paid to sign up people to register to vote, misinformed the noncitizen as to the rules. While a crime may have been committed in this kind of circumstance, the noncitizen did not intend to improperly influence an election outcome.

There are numerous deterrents for fraudulent participation in elections, including:

- **Severe Penalties:** Federal law, and the law of every state in the country, imposes penalties for fraudulent voting.[25] For example, under federal law, a noncitizen who votes illegally can receive a prison term of up to five years if citizenship status was intentionally misrepresented, and fined up to $250,000.[26] There are also immigration-related consequences: an ineligible noncitizen can be deported for casting a single vote. In fact, being registered to vote can be the basis for denying citizenship.[27]

- **High Risk of Detection:** Because there are records of who votes, detection is very easy. Voting records can be and are reviewed or compared to lists of ineligible voters to identify anyone ineligible by election administrators,[28] political parties,[29] and activists.[30] As noted by Tammy Patrick, Fellow at the Bipartisan Policy Center and former Federal Compliance Officer at the Maricopa County Elections Department in Arizona: "Voter apathy is an issue for citizens in this country. To think that someone who is here trying to stay under the radar would put their name on an official list and get out to vote in elections and expose themselves, with so much at risk, doesn't make sense." Detection threats do not just come from people interested in elections. USCIS can require naturalization applicants to produce proof that they have never registered or voted, including a "voting record from the relevant board of elections commission."[31] Indeed, several election administrators we interviewed reported being called upon to produce this documentation for noncitizens going through the naturalization process.

- **Low Reward:** A noncitizen who votes illegally will add one vote to the mix. Given the facts that there is a record of the vote, and the noncitizen would have had to provide a signature at some point, adding a single illegal vote to the mix is a very inefficient and illogical way to steal an election.[32]

Some officials noted that there are reasons apart from election fraud that account for the claims of improper voting. In some cases, claims of illegal voting are motivated by political operatives seeking advantage in a heated contest. In another case, an administrator noted that an ex-husband seeking to harass his ex-wife and her boyfriend made an allegation of electoral wrong-doing. In some cases, what appears to be evidence of illegal voting is actually an improper attempt by an eligible citizen to get out of jury service. Several interviewees described how eligible Americans sometimes check a box on a jury service form claiming not to be citizens because they do not want to serve on the jury. "One way for people to get out of jury duty is they can say they're a noncitizen and fill out a card saying they're not a citizen," explained Jacquelyn Callanen, Elections Administrator in Bexar County, Texas. Other times, noted one administrator, a citizen will forget to check the "citizen" box when filling out a driver's license form and that will trigger a process which could end in a citizen's registration being canceled, and also artificially inflate the number of alleged noncitizens who are on the registration rolls.

IV. OVERBLOWN AND EXAGGERATED CLAIMS OF FRAUD UNDERMINE ELECTION ADMINISTRATION

False claims of voter fraud undermine the very processes they claim to want to protect. In response to the president's claims, Vermont Secretary of State Jim Condos explained that "unsubstantiated voter fraud claims undermine our democracy and disparage the hundreds of thousands of hard-working election officials across our great nation."[33] Secretaries of State from across the country joined in voicing concerns about the harm false claims do to the public's faith in democracy.[34]

Most election officials we spoke with for this report echoed these concerns. Several explained that these false allegations make the difficult job of running elections even more difficult, for example, by undermining the public's faith in their local officials' ability to run an election, by making eligible voters reluctant to register for fear of committing a crime, and by making it difficult to retain employees that, come election season, are working long hours for weeks at a time with no days off, all while hearing allegations that they are not doing their jobs effectively.

Conclusion

Studies have consistently shown that our elections are not infected by widespread fraud, and some types of fraud, like in-person impersonation and noncitizen voting, have been found time and again to be very rare. This survey finds that election administrators have reached the same conclusion as academics and researchers based on year-round experiences administering elections. In particular, it finds that voting by noncitizens is incredibly rare.

While voting by ineligible people is rare, voter roll errors do occur. These errors include the registration of ineligible people, and the non-registration of eligible people. Inaccurate rolls cause confusion, expense, and disenfranchisement (a problem identified by Trump, but one that is distinct from illegal voting). They also create security risks because they are more vulnerable than clean rolls to bad actors trying to exploit out-of-date entries. Most relevant to this study, inaccurate voter rolls provide fodder for persons who claim there is widespread fraud in our election systems.

Common-sense steps could safeguard integrity while assuring that all eligible citizens can vote. Automatic voter registration, for example, would clean up voter rolls.[35] In addition, other steps include securing the aging voting machines that are beginning to malfunction across the country.[36]

The country can and should take steps to improve the ways we administer elections, but those decisions should be based on facts and evidence as to what kinds of problems are actually plaguing our elections.

Endnotes

1 Donald Trump, Twitter post, November 27, 2016, 3:30 p.m., http://twitter.com/realDonaldTrump.

2 Donald Trump, Twitter post, November 27, 2016, 7:31 p.m., http://twitter.com/realDonaldTrump.

3 Donald Trump, Twitter post, January 25, 2017, 7:10 a.m., http://twitter.com/realDonaldTrump; Donald Trump, Twitter post, January 25, 2017, 7:13 a.m., http://twitter.com/realDonaldTrump.

4 Eli Stokols, "Trump brings up vote fraud again, this time in meeting with senators," *Politico*, February 10, 2017, http://www.politico.com/story/2017/02/trump-voter-fraud-senators-meeting-234909.

5 Danny Vinik, "Spicer makes misleading voter fraud claim to defend Trump's false voter fraud claim," *Politico*, January 24, 2017, http://www.politico.com/blogs/donald-trump-administration/2017/01/spicer-trump-voter-fraud-claim-234121.

6 Glenn Kessler, "Stephen Miller's bushels of Pinocchios for false voter-fraud claims," *Washington Post*, February 12, 2017, https://www.washingtonpost.com/news/fact-checker/wp/2017/02/12/stephen-millers-bushels-of-pinocchios-for-false-voter-fraud-claims/?utm_term=.7f239e2266d8.

7 Callum Borchers, "Trump walks back false voter fraud claim in interview with Bill O'Reilly," *Washington Post*, February 5, 2017, https://www.washingtonpost.com/news/the-fix/wp/2017/02/05/trump-walks-back-false-voter-fraud-claim-in-interview-with-bill-oreilly/?utm_term=.4436b4b1f7f1.

8 "Read President Trump's Interview With TIME on Truth and Falsehoods," by Michael Scherer, *TIME*, March 23, 2017, http://time.com/4710456/donald-trump-time-interview-truth-falsehood/.

9 Elizabeth Landers, "Trump was going to investigate voter fraud. What happened?," *CNN*, April 21, 2017, http://www.cnn.com/2017/04/21/politics/donald-trump-voter-fraud-mike-pence/.

10 We did not receive data from two of the ten counties with the largest noncitizen populations, Kings County, New York and Queens County, New York. Despite persistent outreach over the course of three months, the New York City Board of Elections did not provide the necessary information prior to this report's publication.

11 All census data used in this analysis is based on the 2011-2015 American Community Survey 5 Year Estimates. The number of adult noncitizens in election jurisdictions is based on computations from the following American Community Survey table: *Sex by Age by Nativity and Citizenship Status. (B05003).* The adult noncitizen population was computed by summing values for all noncitizens, both male and female, over the age of 18. All computations of the percentage of adult noncitizens in election jurisdictions are relative to the total population. In the case of California and Virginia, election jurisdictions are counties or county equivalents. In New Hampshire, as a general matter, election jurisdictions are county subdivisions.

12 States include: Arizona, California, Florida, Georgia, Illinois, Maryland, Nevada, New York, Texas, Virginia and Washington. A list of specific counties consulted for this analysis is on file with the Brennan Center. One jurisdiction had a new administrator who was not in office during 2016, so we also interviewed a former administrator to ensure that our responses reflected relevant past and current experiences.

13 In California, there was overlap between the state specific set of jurisdictions and the national set of jurisdictions, given the large number of noncitizens that reside there. Among the 44 counties with the largest populations of noncitizens, 13 are located in California. For this reason, California counties account for a disproportionate share of the registered voters in this analysis. Further, in the case of Virginia, one Virginia County is included among the 44 counties that we identified as having the largest populations of noncitizens.

14 We identified "rural" election jurisdictions by consulting data for population density contained in the following table from the 2010 U.S. Decennial Census: *Population, Housing Units, Area, and Density: 2010. 2010 Census Summary File 1. (GCT-PH1).* For each state, we identified rural jurisdictions by identifying those jurisdictions with (1) a low population density relative to other jurisdictions in the state, and (2) a comparatively high percentage of adult noncitizens relative to other jurisdictions in the state.

15 In California and Virginia, our outreach solicited responses and interviews in more than five jurisdictions. For this reason, our state specific analyses in California and Virginia include more than the baseline of five jurisdictions. New Hampshire meets our minimum baseline for the state specific set of election jurisdictions.

16 In California, where 23 million voters participated in the November elections, the Secretary of State received 948 election-related complaints in all of 2016. The Secretary of State determined that only 73 of those involved potential wrongdoing by a voter and were worthy of further investigation. Those 73 included 56 allegations of double voting, 16 allegations of fraudulent voter registration, and 1 incident of fraudulent voting. Laurel Rosenhall, *Valid voter fraud complaints in California? Dozens, not millions*, Calmatters, 2017, https://calmatters.org/articles/valid-voter-fraud-complaints-in-california-dozens-not-millions/. Nevada's Secretary of State compared lists of voters with persons who indicated to the DMV that they were not citizens and found that three noncitizens may have voted in 2016. State of Nevada Secretary of State, "Secretary Cegavske Releases Details Regarding Ongoing Elections Investigation," news release, April 19, 2017, http://nvsos.gov/sos/Home/Components/News/News/2229/309?backlist=%2fsos. In Virginia, a review of nearly all prosecutions for election-related offenses between 2005 and 2015 found 91 total convictions, 85 of which were limited to single incidents in two counties. Bill Bartel, "Virginia voter registration records have loopholes but no evidence of widespread fraud," *The Virginian-Pilot*, February 18, 2017, http://pilotonline.com/news/government/local/virginia-voter-registration-records-have-loopholes-but-no-evidence-of/article_6ad3e1d5-3ef6-56ce-b0d9-7052bf3c3d36.html. In 2007, 2009, and 2011, New Hampshire's Attorney General published the results of post-election investigations into 352 voters that completed a sworn affidavit to prove their eligibility when registering to vote on Election Day. The investigations found that all of those voters were eligible. See New Hampshire Attorney General, *2010 General Election Voter Fraud Report/Investigation*, 2011, http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=12499; New Hampshire Attorney General, *2008 General Election Voter Fraud Report/Investigation*, 2009, http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=12498; New Hampshire Attorney General, *2006 General Election Voter Fraud Report/Investigation*, 2007, http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=12497. A News21 study of prosecutions by state attorneys general in five states – including Arizona, Georgia and Texas where we interviewed administrators – found just 38 successful prosecutions for any kind of election fraud between 2012 and 2016. Those cases included at least 15 cases that did not involve misconduct by a voter, and another 13 cases of double voting in Arizona. That study did not, however, include local prosecutions. Sami Edge and Sean Holstege, "Voter fraud is not a persistent problem," *News21*, August 29, 2016, https://votingwars.news21.com/voter-fraud-is-not-a-persistent-problem/. In sworn testimony, an official from the Texas Attorney General's office reported that the Attorney General had received 320 allegations of voter fraud between 2002 and 2012, three of which related to noncitizen voting and resulted in prosecutions. Transcript of Dep. of Major Forrest Mitchell at 193-194, Veasey v. Perry, 71 F. Supp. 3d 627 (S.D. Tex. 2014) (No. 721-14). Less comprehensive studies are available in Maryland and New York. Brian E. Frosh, Attorney General of Maryland, wrote to Reps. Elijah E. Cummings, Robert A. Brady and James E. Clyburn, noting that the Maryland State Board of Elections uncovered just two instances of voter fraud after the 2012 general election. Brian E. Frosh, Attorney General of Maryland, to Reps. Elijah E. Cummings, Robert A. Brady and James E. Clyburn, March 6, 2017, http://www.marylandattorneygeneral.gov/News%20Documents/Voter_Fraud.pdf. Eric T. Schneiderman, Attorney General of New York, wrote to Reps. Elijah E. Cummings, Robert A. Brady and James E. Clyburn, reporting that his office received just two unsubstantiated allegations of voter fraud in 2016. Eric T. Schneiderman, Attorney General of New York, to Reps. Elijah E. Cummings, Robert A. Brady and James E. Clyburn, Feb. 22, 2017, https://www.scribd.com/document/340046673/2017-02-22-Ltr-to-Cummings-Brady-Clyburn-Re-Voter-Fraud#from_embed. Finally, in 2012, News21 undertook a nationwide investigation in which they requested records of prosecutions for voter fraud in every state since 2000. News21 did not receive responses or records from every part of every state, but across the 12 states we spoke with, over the course of a decade, that investigation uncovered 28 prosecutions for voting by a noncitizen, at least 10 of which were dismissed by the time of News21's investigation. News21, *Election Fraud in America*, August 12, 2012, http://votingrights.news21.com/interactive/election-fraud-database/.

17 State of Ohio Secretary of State, "Husted: Investigation Uncovers Non-Citizens Who Registered to Vote & Illegally Cast Ballots," news release, February 27, 2017, https://www.sos.state.oh.us/sos/mediaCenter/2017/2017-02-27.aspx?utm_source=Press+Release+February+27&utm_campaign=I+Want+to+Vote+survey+launch+PR&utm_medium=em.

18 State of Nevada Secretary of State, "Secretary Cegavske Releases Details Regarding Ongoing Elections Investigation," news release, April 19, 2017, http://nvsos.gov/sos/Home/Components/News/News/2229/309?backlist=%2fsos.

19 North Carolina State Board of Elections, *Post-Election Audit Report*, 2017, https://s3.amazonaws.com/dl.ncsbe.gov/

sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf. For the partisan makeup of the board, see North Carolina State Board of Elections, "About Us," accessed April 26, 2017, https://www.ncsbe.gov/about-us.

20 There is cause to subject these allegations to rigorous examination. Ohio and Nevada identified alleged noncitizens by comparing lists of registered voters to individuals who had, at some time in the past, indicated they were noncitizens when visiting the state driver licensing office. Obviously, a person's citizenship status can change in between license renewals. North Carolina identified its preliminary list of alleged noncitizens by comparing drivers' license data, voting records, and the U.S. Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database and concluded that that drivers' license data and SAVE data were unreliable for determining citizenship status. North Carolina later sent letters to targeted persons to obtain more information, but at this time it remains to be seen how much this later effort remedied the original infirmity. See North Carolina State Board of Elections, *Post-Election Audit Report*, Appendix 1, 2017, https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf.

21 5,607,641 people voted in Ohio in November 2016. State of Ohio Secretary of State, "Voter Turnout in General Elections," https://www.sos.state.oh.us/sos/elections/Research/electResultsMain/HistoricalElectionComparisons/Voter%20Turnout%20in%20General%20Elections.aspx. 1,125,429 voted in Nevada. State of Nevada Secretary of State, "Voter Turnout Statistics," http://silverstateelection.com/vote-turnout/. 4,769,640 voted in North Carolina. North Carolina State Board of Elections, "General Election Voter Turnout," https://www.ncsbe.gov/voter-turnout.

22 See State of Nevada Secretary of State, "Secretary Cegavske Releases Details Regarding Ongoing Elections Investigation," news release, April 19, 2017, http://nvsos.gov/sos/Home/Components/News/News/2229/309?backlist=%2fsos (alleging that three noncitizens voted in Clark County).

23 For example, all jurisdictions (or the state elections office) compare identifying information in the registration application, specifically a driver license number or the last four digits of a social security card, against motor vehicles databases or the social security database, to ensure that a person with those identifying numbers exists. This practice is called for by federal law. See 52 U.S.C. § 21083(a)(5). There are other requirements, for example, requiring persons to sign under penalty of perjury that they are who they say they are. 52 U.S.C. § 20508(b)(2)(C).

24 Susan Bucher, Supervisor of Elections in Palm Beach County, Florida noted that her office goes to naturalization ceremonies every week to register new citizens. Supervisor Bucher explained that, "after doing that we go back to check and see if they're already registered to vote so we don't have duplicate records and we've never found anyone who has a duplicate record. We've registered more than around 55,000 and not a single one had registered prior."

25 See, e.g., 18 U.S.C. § 611 (making it unlawful for any alien to vote for candidates for federal offices and imposing penalties of up to one year in prison); Fla. Stat. § 104.16 ("Any elector who knowingly votes or attempts to vote a fraudulent ballot, or any person who knowingly solicits, or attempts, to vote a fraudulent ballot, is guilty of a felony of the third degree"). Several local jurisdictions, including the city of Chicago and seven Maryland municipalities, allow noncitizens to vote in particular elections. See 105 Ill. Comp. Stat. 5/34-2.1(d)(ii) (2017); Arelis R. Hernández, "Hyattsville will allow non-U.S. citizens to vote in city elections," *Washington Post*, December 7, 2016, https://www.washingtonpost.com/local/md-politics/hyattsville-will-allow-non-us-citizens-to-vote-in-city-elections/2016/12/07/63bc87ae-bc8c-11e6-ac85-094a21c44abc_story.html?utm_term=.aad9ad43944d.

26 A violation of 18 U.S.C. § 1015(f) is a felony punishable by up to 5 years in prison and a $250,000 fine. See 18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3571(b)(3). States also have their own harsh penalties. In a recent high-profile example, a noncitizen in Texas who voted was sentenced to eight years in prison. Claire Z. Cardona, "Grand Prairie woman illegally voted for the man responsible for prosecuting her," *Dallas News*, February 10, 2017, http://www.dallasnews.com/news/tarrant-county/2017/02/08/grand-prairie-woman-found-guilty-illegal-voting. This was considerably longer than the "affluenza" teen who killed 4 people while driving drunk. Sean Lester, "While North Texas 'affluenza' teen went free, similar East Texas case led to 20 years in prison," *Dallas News*, February 15, 2016, http://www.dallasnews.com/news/crime/2016/02/15/while-north-texas-affluenza-teen-went-free-similar-east-texas-case-led-to-20-years-in-prison.

27 U.S. Citizenship and Immigration Services, *Policy Manual*, Vol. 12, Part F, Chapter 5 (Washington, DC, 2017),

https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter5.html.

28 See, e.g., State of Ohio Secretary of State, "Husted: Investigation Uncovers Non-Citizens Who Registered to Vote & Illegally Cast Ballots," news release, February 27, 2017, https://www.sos.state.oh.us/sos/mediaCenter/2017/2017-02-27.aspx?utm_source=Press+Release+February+27&utm_campaign=I+Want+to+Vote+survey+launch+PR&utm_medium=em. Officials in Florida, Colorado, Michigan, and Iowa have conducted similar investigations. See Florida Department of State, "Secretary of State Ken Detzner Files Lawsuit Against U.S. Department of Homeland Security, Seeks Access to Database of Non-Citizens to Ensure Accuracy of Florida Voter Rolls," press release, June 11, 2012, http://dos.myflorida.com/communications/press-releases/2012/secretary-of-state-ken-detzner-files-lawsuit-against-us-department-of-homeland-security-seeks-access-to-database-of-non-citizens-to-ensure-accuracy-of-florida-voter-rolls/; State of Colorado Department of State, "1 in 8 voters who received letters trending as non-citizens," news release, August 30, 2012, https://www.sos.state.co.us/pubs/newsRoom/pressReleases/2012/PR20120830Trending.html; State of Michigan Department of State, "Johnson asks AG to investigate voting by non-U.S. citizens," news release, December 5, 2013, http://www.michigan.gov/sos/0,4670,7-127--317582--rss,00.html; State of Iowa Secretary of State, *DCI Voter Fraud Investigations Report*, 2014, http://publications.iowa.gov/16874/1/DCI%20Voter%20Fraud%20Report%205-8-14.pdf.

29 Political parties may not have access to lists of noncitizens, but review lists of voters to identify those ineligible for other reasons, particularly when the margin of victory in a contest is small. See, e.g., Colin Campbell, "McCrory campaign expands ballot complaints to 52 counties," *News & Observer*, November 17, 2016, http://www.newsobserver.com/news/politics-government/election/article115492333.html.

30 See, e.g., Public Interest Legal Foundation, *Alien Invasion in Virginia*, 2016, https://publicinterestlegal.org/files/Report_Alien-Invasion-in-Virginia.pdf; Public Interest Legal Foundation, *Aliens & Felons*, 2016, https://publicinterestlegal.org/files/Philadelphia-Litigation-Report.pdf. Despite using unreliable methodology, these reports, authored by an organization that promotes the myth of widespread voter fraud, identified few noncitizens on the rolls.

31 U.S. Citizenship and Immigration Services, *Policy Manual*, Vol. 12, Part F, Chapter 5 (Washington, DC, 2017), https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter5.html.

32 See, e.g., Justin Levitt, *The Truth About Voter Fraud*, Brennan Center for Justice, 2007, 7, http://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf; Lorraine C. Minnite, *Myth of Voter Fraud* (New York: Cornell University Press, 2010), 5, 77-85.

33 State of Vermont Office of the Secretary of State, "Secretary of State Jim Condos' Statement on Voter Fraud Claims by President Trump," news release, January 25, 2017, https://www.sec.state.vt.us/media/824085/voter-fraud-claims-response-press-release.pdf.

34 Brennan Center Staff, "In Their Own Words: Officials Refuting False Claims of Voter Fraud," *Brennan Center for Justice*, accessed April 26, 2017, https://www.brennancenter.org/quotes-on-voter-fraud; see also, National Association of Secretaries of State, "Statement from National Association of Secretaries of State on Election Integrity," news release, October 18, 2016, http://www.nass.org/index.php/news-releases-and-statements/release-nass-statement-election-integrity-oct16.

35 See Brennan Center for Justice, *Automatic and Permanent Voter Registration: How it Works*, 2015, https://www.brennancenter.org/sites/default/files/publications/Automatic_Permanent_Voter_Registration_How_It_Works.pdf. Automatic voter registration automatically registers to vote any eligible voter that provided all of the information necessary to register to vote to another government agency, unless a person declines to be registered.

36 See Lawrence Norden and Christopher Famighetti, *America's Voting Machines at Risk*, Brennan Center for Justice, 2015, https://www.brennancenter.org/sites/default/files/publications/Americas_Voting_Machines_At_Risk.pdf.

Appendix: Jurisdictions Interviewed

Accomack County, Virginia

Bexar County, Texas

Cook County, Illinois

City of Alexandria, Virginia

City of Concord, New Hampshire

City of Dover, New Hampshire

City of Fairfax, Virginia

City of Manassas, Virginia

City of Manassas Park, Virginia

City of Somersworth, New Hampshire

Clark County, Nevada

Colusa County, California

Contra Costa County, California

Dallas County, Texas

El Paso County, Texas

Fairfax County, Virginia

Fresno County, California

Gwinnett County, Georgia

Harris County, Texas

Imperial County, California

Kern County, California

King County, Washington

Los Angeles, California

Loudoun County, Virginia

Maricopa County, Arizona

Miami-Dade County, Florida

Montgomery County, Virginia

Orange County, California

Orange County, Florida

Palm Beach County, Florida

Prince George's County, Maryland

Riverside County, California

Sacramento County, California

San Bernardino County, California

San Diego County, California

San Mateo County, California

Santa Clara County, California

Town of Hanover, New Hampshire

Town of Hebron, New Hampshire

Town of Stewartstown, New Hampshire

Travis County, Texas

Westchester County, New York

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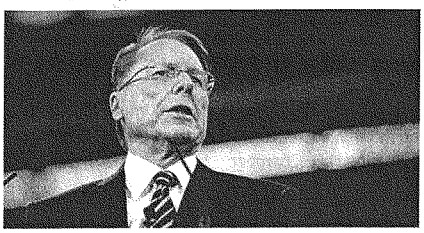
An Insidious Foreign Dark Money Threat

New reports about Russian money going to the NRA could prove watchdogs' fears correct.

Ciara Torres-Spelliscy
January 19, 2018



Cross-posted from NY Daily News

The scenario McClatchy News reports the FBI is investigating might strike some people as outlandish: Whether a Russian banker close to the Kremlin steered funds through the National Rifle Association to help Donald Trump win the White House.

In fact, the likelihood that foreign funds — which are illegal in U.S. elections — would secretly flow through groups like the NRA and into political

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Texas' Voter Fraud

contests has burned in bright neon for years, because the nation's fractured election laws practically invite such subterfuge.

Just days after the Supreme Court issued its Citizens United vs. Federal Election Commission decision allowing unlimited outside spending in elections, President Obama, in his first State of the Union address, warned that the decision "will open a floodgate for special interests — including foreign corporations — to spend without limit in our elections."

According to the Washington Post, Justice Samuel Alito, who was sitting in the chamber alongside his fellow Supreme Court jurists as Obama spoke, "winced at the accusation and muttered 'not true.' "

The new report raises the specter that Obama's fears have been realized.

Since Citizens United, over $800 million in "dark money" has poured into federal elections. The source of these funds is largely untraceable for the public because it has been funneled through secretive nonprofits, such as the NRA and the U.S. Chamber of Commerce.

For many years now, good-government groups and campaign finance experts have warned that illegal foreign funds could be hiding in that dark money.

That's because, in federal races, political spenders that go dark are exploiting a loophole between the campaign finance system overseen by the FEC, which typically insists on that all donors to campaigns identify themselves, and charities the Internal Revenue Service allows to collect funds donated anonymously.

Once the donation arrives at a nonprofit — either a so-called social welfare organization, such as the NRA, or a trade association like the Chamber — the

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nonprofit is free to spend the money on politics, so long as the group can show that influencing elections isn't its main reason for being . Bam! The public can't trace the money back its original source.

Foreigners are not allowed to spend in American elections — not in presidential races, not for state or city officials, not for dog catcher. But a nonprofit playing this dark money shell game could easily hide an illegal foreign source of money as just another anonymous donor.

Some liberal groups also play the anonymous-donor election game, from the Sierra Club to the Human Rights Campaign.

But the NRA's spending in the 2016 elections was historically unprecedented at $54 million, $31 million of it spent in support of Trump's election and the rest on Congress. The total was more than double what the NRA spent in the 2012 election.

Where did the new money come from? So far, the public doesn't know.

A further unknown is whether the reported FBI probe will be folded into the larger investigation being led by Special Counsel Robert Mueller into links between Russia and the 2016 election.

We don't know what evidence the feds have yet. The report about an NRA connection could turn out to be a lot of smoke with no underlying fire. But it could also be the nightmare scenario Obama warned about: a foreigner exploiting our campaign finance disclosure loopholes to spend illegal money in American elections.

If this turns out to be true, Congress should act to protect our democratic electoral process with greater transparency. Two reforms would help enormously to shine a light on where political money is coming from.

One: Pass a new law that requires all political spenders to name their financial backers through the Federal Election Commission.

Two: Pass a new law that requires corporations to inform the public where they are spending in politics through the Securities and Exchange Commission.

Without these reforms, the public will be left in the dark, while foreign criminals will wield ever more power to interfere with our democracy.

The views expressed are the author's own and not necessarily those of the Brennan Center for Justice.

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Most 'dark money' spending in recent elections came from 15 groups: analysis

BY CHRIS MILLS RODRIGO - 09/12/18 01:27 PM EDT

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Three-quarters of the "dark money" spending in the most recent full election cycle came from the same 15 groups, according to a new report by a non-profit group that focuses on campaign finance.

Issue One found that among the 15 groups were the U.S. Chamber of Commerce, National Rifle Association (NRA) and Planned Parenthood Action Fund.

According to the Center for Responsive Politics, these "dark money" groups reported spending over $800 million between January 2010 and December 2016. "Dark money" refers to money given to certain organizations often used to influence elections, something that has become a hot-button issue since the Supreme Court's landmark Citizens United ruling in 2010.

The analysis also detailed some of the organizations that had donated to those 15 groups, arguing that the donations help shed light on the issues driving the spending. For example, although the Chamber does not reveal its donors, the report traced nearly 100 blue-chip companies which did disclose payments to the trade association. This process found that Dow Chemical Co. contributed $13.5 million and Chevron Inc. added $4.5 million more.

Although dark money groups are expressly prohibited from coordinating with candidates, Issue One argues in its analysis that there are various work-arounds which have allowed money to pour into elections. These sources remain major players in the 2018 midterm elections.

Other notable findings from the report include that more than 12 of the country's largest trade associations have contributed to many of the top 15 dark money groups. Some funds from these groups, which include Crossroads GPS and 45Committee, are so obscured that a meager two percent of money raised could be tied to specific donors.

The research, which combed through available data, including Federal Election Commission filing, tax returns, and corporate filings, to attempt to match donations to donors, is now available on a public database in collaboration with ProPublica.

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Mr. CICILLINE. I thank the witnesses. We are going to stand in recess, and we will return immediately after votes.

[Recess.]

Mr. RICHMOND [presiding]. I am going to call the hearing back in order so the Judiciary Committee will resume, and with that, we will have Mr. McClintock will be recognized for five minutes.

Mr. MCCLINTOCK. Thank you, Mr. Chairman.

Ms. Gupta, you take a very expansive view—over here—take a very expansive view of our constitutional authority to write state elections laws as they pertain to federal elections. Florida, we have heard, allows felons to vote. Does Congress have the constitutional authority to override such a law and prevent felons from voting nationally in federal elections?

Ms. GUPTA. It is well within Congress's power under the Fourteenth Amendment to prevent racial discrimination in voting and devices that perpetuate racial discrimination, and that would be the basis for restoring the right to vote for people with felony convictions in federal elections.

Mr. MCCLINTOCK. I am not talking about restoring the right to vote. I am saying if Congress has the right to draft and enact elections laws binding the states in federal elections, I would assume that would include forbidding felons to vote, which is recognized under the Fourteenth Amendment.

Ms. GUPTA. Well, Congress can restore under the Fourteenth Amendment. I am not sure that I—that I understand your question.

Mr. MCCLINTOCK. So they can do the things that you think need to be done but can't do the things you don't want to see done.

Ms. GUPTA. Well, I think it is——

Mr. MCCLINTOCK. That seems to be a bit of a double standard. Let me go on.

Mr. von Spakowsky, seems to me there are two fundamental principles in voting. Number one is that every citizen who wants to vote and is qualified to vote should vote without any fear of intimidation or discrimination.

The other principle is one citizen one vote. Every fraudulent or illegal or multiple vote that is recorded cancels out a citizen's legal and legitimate vote. Our laws have to reconcile both of those principles. Could you give us an assessment of this bill?

Mr. VON SPAKOVSKY. I think that is very true. In fact, when Congress passed the Help America Vote Act in 2002, that was what a number of members of Congress said. They want to be sure that everyone who is eligible to vote gets to vote and that their votes are not stolen or diluted through fraudulent votes. So, now, there is a——

Mr. MCCLINTOCK. Does H.R. 1 threaten these principles or support these principles?

Mr. VON SPAKOVSKY. I think H.R. 1 does not support these principles. In fact, it is going to make it very difficult for states to have the kind of integrity and security that they need in the election process.

Also, H.R. 1, as I said, to me there are provisions in here that are anti-democratic, taking away the right of voters to make their own decisions in particular states on how they want their congres-

sional representatives picked. That is—that is not a good idea. It is not only bad policy; I think it is potentially unconstitutional.

Mr. MCCLINTOCK. What university studies are you aware of that estimate the number of noncitizens who are currently voting illegally?

Mr. VON SPAKOVSKY. I am aware of a number of studies. Mr. Adams actually could speak to this more clearly. The Public Interest Legal Foundation has done a number of reports on various states including Virginia and I think Michigan and others where they went and got actual election records from county election departments, asking them for the lists of voters who, on their own voluntarily, contacted election departments and said, "I am not a U.S. citizen. I need to be taken off the voter rolls." And they found that there were thousands of such voters in various states on their reports.

Mr. MCCLINTOCK. How many thousands? Tens of thousands?

Mr. VON SPAKOVSKY. Well, Mr. Adams can answer that.

Mr. MCCLINTOCK. Mr. Adams, can you help us?

Mr. ADAMS. Right. Thank you.

What we found was a pervasive problem with noncitizens on the rolls. If you look at my written testimony, I actually include two examples. I do screen shots of voter registration forms—one from Virginia, one from New Jersey—and these are but two of many that we have harvested, where the applicant actually marks on the voter registration form that they are not an American citizen.

Mr. MCCLINTOCK. So just in terms of numbers, what kind of estimates are there?

Mr. ADAMS. It is hard to know. It is hard to know. I mean, it is significant, and in a state like Virginia all it takes is one where control of the House flipped.

Mr. MCCLINTOCK. Mr. von Spakovsky, just very quickly. My understanding of Citizens United is that it upheld the right of individuals to pool their resources so that they can compete in the marketplace of ideas against billionaires, for example. What have I got wrong on that?

Mr. VON SPAKOVSKY. Yeah. I am always surprised at this criticism of the Citizens United decision, particularly the idea or the claim that it somehow helps the rich.

If you go all the way back to Alex de Tocqueville in his "Democracy in America," he talks about something that we all know is true, which is that Americans use associations for many reasons including in the political arena.

For the average person like me who is not rich, if I want to get my ideas across to Congress or other folks I join a membership organization. There was a lot of criticism here earlier of the NRA. But the NRA represents millions of Americans who have a particular view of the Second Amendment.

That is not any different than millions of Americans who are members of Planned Parenthood or NARAL. The whole point of Citizens United was that there was a federal law barring all corporations and unions, and corporations included nonprofit corporations and membership organizations like the NRA, like NARAL, like the NAACP, from engaging in independent political speech.

That was, clearly, a violation of First Amendment. It is unconstitutional and I think it was a great decision by the court.

Mr. RICHMOND. The gentleman's time has expired.

We will recognize the gentleman from California, Mr. Swalwell.

Mr. SWALWELL. Thank you, Mr. Chairman. Thank you to our panel for participating in this.

And I have to tell you, after being in Congress for six years I have come to find that there are so many issues that my Republican colleagues and I agree on and that the American people agree that we have reached consensus on, and that ranges from reducing gun violence to addressing climate change to finding health care solutions.

But my constituents ask and people I encounter across the country always ask, if we have reached consensus where 90 percent of Americans think we should have background checks, the majority of Americans believe that climate change is happening, 90 percent of Americans think we should have the DREAM Act, why can't you guys even vote on these issues?

And I have concluded that it is the dirty maps and the dirty money. It is rigged gerrymandered maps where politicians from both parties protect their friends and the status quo and it is the outside unlimited nontransparent money where Republican colleagues have told me, "I am with you on this issue—I am just—" and I have had someone say this to me, "I am afraid about how I am going to be scored," meaning that these outside groups will give scores based on how you vote and if you are not with them they will primary you with more money in an unlimited kind of way, and that is poisoning our politics and preventing us from reaching consensus.

So I think we have an opportunity in this bill, the "For the People Act," to empower everyday voices.

And I want to start with Ms. Ifill, and if it is okay I want to call you Professor Ifill because I don't know if you remember—you were my civil procedure professor at the University of Maryland. [Laughter.]

Ms. IFILL. I love that.

Mr. SWALWELL. You wouldn't remember me. I remember you. I was not a standout student at all. But, Ms. Ifill, according to your testimony, Section 5 of the Voting Rights Act would have prevented some of the voter suppression schemes that we have encountered over the past five years, and I was hoping you could articulate some of those schemes today.

Ms. IFILL. Yeah, just a few of them. Earlier, I spoke about Texas's voter ID law, an ID law that had been denied pre-clearance prior to the Shelby decision. Two hours after the Shelby decision, the attorney general of Texas tweeted out his intention to resuscitate that law, which he did, and we spent three years litigating it. We ultimately prevailed. But in the ensuing three years there were elections for all kinds of offices—a law that, clearly, could not have survived pre-clearance.

Just in 2018 we were on the ground in Georgia on Election Day doing election protection work. In Grady County, the polling place had been changed two weeks prior to the election. A notice had been placed in a very small community newspaper, but otherwise

there was not real notice provided to the community. And so people arrived at the old polling place and community residents had to spend the day standing outside the old polling place directing people to the place of the new polling place that had not been properly identified.

Under Section 5, the moving of a polling place is the kind of thing that you had to submit to pre-clearance and have it approved by the Justice Department before it could be implemented.

Now, there were a number of people that day who could drive to the new polling place. But there were a number of people who had just taken off work and had a limited amount of time to vote and could not drive to the new polling place and so went back to work and were unable to participate in the political process.

Those are just two small examples—well, one big and one small—but both consequential of the kinds of changes that would very easily have been—have been averted and the problems that would have been averted had Section 5 been in place wouldn't have required litigation—would have simply required a review by the Department of Justice and an opportunity for the community to resist that change or to at least be informed of that change in a timely way.

Mr. SWALWELL. Thank you.

Mr. Noti, it is my hope that in our lifetime we have publicly-financed campaigns. I hope you will briefly speak to whether you believe that could occur. But I also have one concern with super PACs today.

As I understand it, and correct me if I am wrong, if a candidate contacts a donor and tells the donor that there is ABC super PAC working on my behalf, that candidate can solicit a contribution up to the maximum that candidate could receive federally. So I think it is, you know, $2,700 today.

But as I understand it, there is no disclosure requirement by that candidate that they made that ask and, of course, there is no way to know if the donor made the contribution or not because of the lack of transparency.

Is that something that you think maybe we should address is having the candidates affirmatively, you know, tell the public that they have made requests for super PAC help?

Mr. NOTI. That is correct, Congressman. But I would go farther than that. Candidates should not be soliciting for super PACs, period.

Mr. SWALWELL. Agreed. Yeah.

Mr. NOTI. Right, so that the——

Mr. SWALWELL. But the FEC allows that today.

Mr. NOTI. Currently, the FEC allows that. The FEC probably has the authority to put an end to it. Congress certainly has the authority to put an end to it as an implementation of Citizens United. But if it is going to be happening, yes, the public should certainly be aware and journalists and law enforcement should be aware that that is happening.

Mr. SWALWELL. And, quickly, will we see publicly-financed campaigns in our lifetime? Is that something we should aspire to?

Mr. NOTI. Absolutely. The momentum for publicly-financed campaigns, for small-dollar matching in particular, is growing. More

and more jurisdictions are considering them or implementing them. The District of Columbia just this year implemented a matching system. I think that will rise up from the municipalities and states to Congress, yes.

Mr. SWALWELL. All right. Thank you. I yield back.

Mr. RICHMOND. The gentleman's time has expired.

I will recognize Ms. Scanlon for five minutes.

Ms. SCANLON. Thank you.

As a newly-elected member of the Pennsylvania delegation, my constituents and I know all too well the importance of the reforms included in this bill.

The gentleman from Pennsylvania mentioned earlier that our congressional districts were redrawn last year but he neglected to mention that the redrawing occurred because those districts had been unconstitutionally gerrymandered as part of the red map strategy that was funded by dark money.

Our democracy doesn't work when special interests push gerrymandering and other voter suppression tactics that weaken our representative system of government and I am sure my colleague, Congresswoman Dean, will agree with me that what happened in Pennsylvania is exactly why we need legislation that prevents gerrymandering and gives voters fair representation so that they can choose their elected representatives rather than the other way around.

I am extremely proud that H.R. 1 contains a commitment to restore the Voting Rights Act as well as measures to prevent gerrymandering and other forms of voter suppression. I am also proud that my first bill, the Inaugural Fund Integrity Act, has been included in this landmark legislation.

That bill would put limits on donations to presidential inaugural committees and require public disclosure of all donations and spending by such funds in order to expose and reduce opportunities for corruption.

H.R. 1 also provides measures to modernize our elections while maintaining security so that all citizens can participate in our democracy. Therefore, I am also proud to be a leader on language in this bill to increase access to voting for individuals with disabilities.

To that end, Ms. Gupta, could you discuss whether there are particular issues that impact voters with disabilities?

Ms. GUPTA. Yes. There are a number of issues that impact voting for people with disabilities. There are inaccessible poll sites in too many places that don't meet the criteria established by the Americans with Disabilities Act. There are accessible machines that don't work.

Poll workers may not be trained in how to interact with people with disabilities and, you know, there are also individuals with disabilities—many veterans actually with disabilities who seek to vote securely and independently and are unable to do so in the same manner as every other voter, and H.R. 1 seeks to—with a specific provision focusing on access to voting for individuals with disabilities. It requires states to promote access to voter registration and voting for people with disabilities as well as grants to improve voting for people with disabilities and creates a pilot program that

would actually allow people with disabilities to register and vote from home as well as provide necessary training for poll workers to make sure that nobody with a disability is prevented from exercising their franchise.

Ms. SCANLON. And these measures, in addition to helping our veterans, would also help seniors, wouldn't they?

Ms. GUPTA. Yes, they would absolutely help veterans, seniors, and others with disabilities—intellectual disabilities, physical disabilities, and the like.

Ms. SCANLON. As someone who has organized and participated in election protection work and as the representative of a vibrant and diverse community, I know all too well the impact of voter suppression.

Ms. Ifill, can you speak to turnout gaps among different ethnic and racial groups and how Congress might help reduce some of that?

Ms. IFILL. Thank you very much, and I am glad you asked the question because Congress recognized in the passage of the Voting Rights Act that the ability to participate in the political process equally is actually the focus and that casting the ballot is actually only part of that. It is casting the ballot, it is having that ballot count, and it is the meaningful opportunity to participate in the political process.

And, in fact, the more individuals, particularly from minority groups, do not see their ballot counting, the less they are incentivized to turn out and participate in the political process.

And so what we see across the board when we are engaging with the communities that I represent is we are often seeing low registration numbers. We are often seeing low turnout numbers.

We are often seeing people who turned out but couldn't vote because they waited on long lines. We are seeing a whole menu of ways in which minority communities are discouraged from participating robustly and fully in the political process, and that means that their voices aren't heard and that lessens their confidence in our political system, in our justice system, and in their rights as free citizens in our society.

Ms. SCANLON. Thank you. I have to say that that accords with what I have seen when I have been working at polling places myself throughout my district.

Thank you. I yield back.

Mr. RICHMOND. The gentlelady's time has expired.

I now recognize the gentlelady from Texas, Ms. Garcia.

Ms. GARCIA. Thank you, Mr. Chairman.

First, let me just say that my remarks are really going to be about direct experience. You know, I have heard today some statements about how things are exaggerated, that things are fiction, that this isn't really the way it happens.

But let me just tell you about some of the things that have happened to me personally as a voter. I got a letter from our voter registrar when I was an elected county commissioner.

An official just two floors down from me sends me a letter that I got in the mail that told me that I would be purged from the voter list because there was a discrepancy between what was on

my driver's license and what the post office said. That is an example.

Then I thought things were straight. But then when I was a senator—an elected senator—I went to Election Day and I was told that I was not on the rolls. It was a little bit later on. Many years had passed. Thought it was fixed. I was not on the voter rolls and it was just—it turned out to be confusion between the spelling of my name because sometimes it is spelled S–Y–L–V–I–A or sometimes S–I–L–V–I–A. So well, all right. Just another problem.

Well, lo and behold, when I was in the primary for this particular race for the United States Congress, I went to my polling place and a huge line. But it wasn't because they were all there to vote for me. It was because the machines were broken. They had not even started.

So I had to stand in line probably for an hour, an hour and a half, before they got the machines working. Now, you tell me that is all coincidental or you tell me that I am just a problem voter. Or is it because my last name is Garcia?

I mean, I don't know. It just seems that in my district whenever we have an election—and it is a 77 percent Latino district—we always have to make sure that we got people to answer the phones, that we know where to call for the hotline with the secretary of state, who to call at the county. I mean, they are all in my phone, and I am lucky because when all of these things happened I pulled out my phone and called officials directly. But your average voter doesn't have the capacity to do that.

So, to me, that is why we need the Voting Rights Act. That is why we need so much of what is in this bill.

So I wanted to start with you, Ms. Ifill, and it is good to see you again. I know that you and I both testified before the Senate Judiciary Committee on the extension of the Voting Rights Act some years ago. So here we are again on this side of the House.

You talk about how the changes or you are beginning to see a lot of voter suppression post-Shelby and, again, because I keep hearing this fiction and exaggeration. Can you give us examples of some of them, particularly in my state who seems to be the king of voter discrimination of late?

Ms. IFILL. Well, I think it is just this week that your new secretary of state sent a letter out to counties indicating his belief that there is the potential that 95,000 noncitizens are on the voter rolls or have been voting, and we have already sent a letter along with the Texas Civil Rights Project and other civil rights groups asking him to rescind that letter.

We have received no information about how he compiled that list. We are asking for transparency. This is the kind of thing that can result in voter fraud prosecutions. Even if they are unsuccessful, they have the effect of deterring people from wanting to register or participate in the political process.

I have already talked about the Texas voter ID law. We are also challenging Alabama's voter ID law and that case is pending before the court right now. We have talked about polling place changes. We have talked about the use of exact match in Georgia, even though it is well documented the disproportionate effect that this has on both African Americans and Latinos.

There is a myriad of voting changes that have been implemented despite the clear knowledge that they will have a disparate impact on African Americans and Latinos, and all of this is pursued with the—with the idea that somehow this is going to bring—what was the name of the commission that my two colleagues sitting at this table served on—the Election Integrity Commission—that this is going to increase the integrity of elections——

Ms. GARCIA. This——

Ms. IFILL [continuing]. That this is going to stop voter fraud. And yet, we don't have the evidence of widespread voter fraud. We just heard Mr. Adams say it is difficult to say how many, if there are sizeable numbers of noncitizens who have voted.

But, by contrast, we can tell you precisely how many voters were disenfranchised by Texas's voter ID law. We could tell you precisely how many were disenfranchised by Wisconsin's voter ID law.

We can tell you precisely how many were disenfranchised by North Carolina's omnibus voting bill. We can tell you the effect of ending early registration on Sundays when African Americans do "Souls to the Polls." So we have all of the evidence that these measures suppress the votes of racial minorities.

Ms. GARCIA. Thank you. And——

Mr. RICHMOND. The gentlelady's time has expired.

Ms. GARCIA. Thank you, Mr. Chairman.

Mr. RICHMOND. I now recognize the gentleman from Colorado, Mr. Neguse.

Mr. NEGUSE. Thank you, Mr. Chair. Also, I want to extend my thanks to Chairman Nadler for hosting this important hearing and to extend my gratitude to Congressman Sarbanes for his leadership in crafting this important piece of legislation that provides much-needed reforms to our democratic process.

Access and transparency, I know we can all agree, in our voting system is vital to the integrity of our democracy. In the 2016 election, 92 million eligible Americans did not vote and in 2014 we witnessed the lowest voter participation rate in 72 years.

For the nation's democracy to function properly and for government to provide fair representation, all eligible Americans must have the opportunity to vote and be encouraged to do so, which is why I am so excited about supporting this piece of legislation.

Last week I introduced legislation that would allow 16- and 17-year-olds to register to vote ahead of their 18th birthday to ensure that every first-time voter has the ability to engage in our political process early on. The bill, largely, emulates legislation that was successfully enacted in Colorado, in my home state.

We already see that when young voters are registered they participate at rates comparable to older voters, which is why pre-registration is so important. Voting really is a foundational right and it is essential that there are as few barriers as possible for registration and participation in our democracy.

I believe if we start this process at a younger age we can spur political participation and engagement in all Americans.

And so my questions are for Ms. Gupta and Ms. Ifill. I guess I am curious about your thoughts around pre-registration and, in particular, if you have seen any data or anecdotal evidence to sug-

gest that when youth are engaged in the democratic process early in their lives that they are more likely to stay engaged.

Ms. GUPTA. Well, thank you, Congressman, for—both for the legislation and for your comments. I think that it is really important, the kind of access that we provide through registration and at what point we provide it.

It is both automatic voter registration, making that the default rather than the kind of—the thing that people have to affirmatively take steps to do—but also your bill of really focusing on pre-registration so that when a person turns 18 they can actually exercise their right to vote.

These really signal the kind of country we want to be and the kind of democratic participation we want to have. We saw extraordinary youth turnout in the 2018 mid-term elections. In Florida, there was a recent study that showed the extent to which young people in Florida turned out to vote and felt more connected with government than they had ever felt before.

And we have had a historic, I would say, problem with people—young people in this country feeling disenfranchised and alienated and marginalized from government and when they feel like government is corrupt or does not work for them they do not want to participate.

And so that is why H.R. 1—so much of what it is doing, frankly, is about restoring the legitimacy of government and the role of civic participation in young people's lives, and as young people become more and more kind of connected to the issues of the day it is really important for the kind of democracy we want to be that we provide ample opportunity to have them register as early and as frequently as possible, and that is why H.R. 1 with AVR nationwide would go a long way.

Ms. IFILL. Just very briefly, I would say I think there is no more damning reality about the crisis in our democracy than the failure for there to be widespread bipartisan support to ensure that young people are pre-registered to vote and that we are introducing them to their citizenship obligations as adults as soon as possible.

It is impossible for me to understand how that can be controversial, how that can be partisan, and the fact that it is speaks volumes about the crisis that we face in this country.

Mr. NEGUSE. Thank you both.

Last question relates to the gerrymandering piece of this or the piece of legislation that targets the practice of gerrymandering. A core component of H.R. 1 looks at partisan gerrymandering in our country, and ensuring that every voter and district is represented equally instead of carving out districts so that one party is favored over another is critical to restore Americans' faith in our democracy.

This last elections voters were loud and clear about their opposition to partisan gerrymandering and that includes my home state of Colorado where voters passed an effort to create independent commissions for redistricting.

So my question is to Ms. Gupta. I know in your capacity you travel the country quite a bit, you know, meeting with folks about these issues including the need for gerrymandering reform.

I am curious about—certainly, in my state it is very clear that there are a plethora of people who want this change and they expressed that at the ballot box. I am curious about your conversations in other states and whether this is something that is top of mind to the folks that you have visited with.

Ms. GUPTA. There is a reason why voters in "red" and "blue" states in 2018 voted for—to create independent redistricting commissions around the country. I think people are fed up with thinking that the parties can own their voters and, in fact, voters want to be able to choose their politicians, not have politicians choose their voters.

In 2015, the United States Supreme Court decided that it was perfectly consistent with the Constitution to make sure that legislators weren't drawing their own lines. We stand unique in the world for allowing that kind of thing to happen.

Gerrymandering is a uniquely American phenomenon, and yet, H.R. 1 really goes a long way to prevent intentional manipulation of district lines for partisan advantage and it goes through a very carefully calibrated and described process of having five Democrats, five Republicans, five independents, sit—all randomly chosen from a pool of applicants—sit on an independent commission.

There are specific criteria about how district lines would get drawn and a plan would need majority support to be enacted, including the backing of at least one Democrat, one Republican, and one independent.

And, as you said, in California, Arizona, and Colorado—your state—we have seen improvements in representation, in voter confidence and trust, and how district lines get drawn and in competitiveness.

And so this reform embodied in H.R. 1 is really important to restoring legitimacy in how district lines get drawn.

Mr. RICHMOND. The gentleman's time has expired and I will recognize the gentlelady from Georgia, Mrs. McBath.

Mrs. MCBATH. Thank you, Mr. Chairman, and thank you to each of the witnesses that are here today sharing your expertise on these very, very important issues.

And I just want to take a moment to really acknowledge my own father, who was the only black dentist in Joliet, Illinois, in the early 1960s and he was also the president of the Illinois branch of NAACP for over 20 years and also served on the executive board. So I am no stranger to the civil rights movement. My mother was also a nurse and she also was actively involved in the civil rights movement.

Now, from the time that I could walk with my family I marched alongside my family and my parents and fellow demonstrators, shouting for equality and calling for justice, and I often say the very first song I ever learned was "We Shall Overcome."

And my father, he actually planned those marches and I can still picture him presiding over the meetings at my kitchen table in our house filled with poster boards and preparations and hope.

So when it comes to voting rights, my father's work is still completely unfinished. Now, but today we are starting all over again. What I witnessed my father and my mother fighting for, we are

fighting for all over again with preparations, with resolve, and with hope.

And I would like to make reference to an article by Vox.com, if you have a chance to look at it. It is entitled, "Why Long Lines at Polling Places are a Voting Rights Injustice."

And my question today is both for you, Ms. Gupta, and also Ms. Ifill. My colleague, Congressman Collins, said earlier today that he thought that long lines to vote in Georgia were a good sign, and I know many of—many of his Republican colleagues absolutely believe the same thing and I can tell you I do not. Might I say I witnessed firsthand voter suppression in the state of Georgia, having come through those very elections in November.

Would you two both be willing to explain to me why long lines, at best, are a sign of underinvestment in voting and, at worst, a form of extreme voter suppression?

Ms. IFILL. Thank you.

Let me tell you what we saw on Election Day. We do election protection work every Election Day, whether there is a federal election or not, where there are primaries and general elections, and the long lines that we see are a testament to our failure. They are a monument to the failure of our democracy to invest in the casting of ballots and in the right that the Supreme Court has said is preservative of all rights.

I cannot imagine how anyone could think that voters waiting on line in the morning for four hours in Gwinnett County, Georgia, because the machines lacked the power cords, how anyone could think that was a good thing.

I don't understand how anybody could see the lines—I actually have video of it—I was told I couldn't submit video—of the lines in north Charleston, South Carolina, Election Night as elections are being called and African Americans are standing in line for two and three hours.

I cannot imagine how we can think it is positive that in Harris County the election judge had to extend the polling place hours because people had to stand in line so long because the machines were malfunctioning.

I can't imagine how we could think it is something positive when machines are flipping the votes in South Carolina, in Florida, in Texas, causing voters to stand on line, have to move to a provisional ballot line—how voters arriving on Election Day—I was there in November 2016 doing election protection work in Alabama and I cannot tell you how many elderly African-American couples came to vote together and only discovered, living in the same place for 25 and 30 years, that one was on the rolls and one was not. One could cast a ballot and one had to cast a provisional ballot.

I don't know how we could possibly think that is a good thing. This is not a partisan concern. This is about whether or not we are a healthy democracy, and it is an embarrassment and a disgrace that we compel people to spend four hours standing on a line to exercise their right as citizens to participate in the political process.

Ms. GUPTA. I would just like to add I think that there is simply no reason that the United States of America, the wealthiest nation

in the world, would not have sufficient poll sites and number of poll sites so people can vote and not have to wait in four-hour lines.

There is simply no excuse for it, and in the aftermath of the Shelby County decision the Leadership Conference, in conjunction with other civil rights groups, compiled a list of poll closures—thousands that happened in the aftermath of the Shelby County decision because these small minor things were undetectable anymore to national organizations, the federal government, and the like.

These are the ways in which we have cut voting access by a death by a thousand cuts since the Shelby County decision and these are the kinds of things that would have been forced—have been pre-cleared by the Justice Department or federal courts around simple things like the closure of poll sites that can seem pretty innocuous or efficient actually carry with them incredibly detrimental impacts on voter access.

And so part of what H.R. 1 does is actually both seek to enhance the jurisdiction of the Election Assistance Commission that has a responsibility to make sure that machines work. But the restoration of the Voting Rights Act here, again, the case must be made as to why it needs to be restored so that these kinds of seemingly minor changes actually that result in the disenfranchisement of voters are detected in advance.

Mrs. MCBATH. I want to thank you very much for explaining the truth.

Mr. RICHMOND. The time of—the time of the lady is—gentlelady has expired.

I will recognize the gentleman from Georgia.

Mr. COLLINS. Thank you, Mr. Chairman.

Just as a clarification, I appreciate the gentlelady being here and congratulating her on being a part. But also she said there does need to be truth and I would not say that my comment on long voter lines were a indication of incompetence on poll officials who wouldn't put a plug on a voting machine.

Indications of long lines is people actually showing up to vote, which I think Ms. Gupta—Ms. Gupta and Ms. Ifill would agree with.

Having in my state of Georgia, in which some of the counties that have the longest lines are the ones who chose. In Georgia it is the local officials that choose how many voting machines they put into their place of polling. It is how many they would—and if they have two years, most of them, between times to figure out how to plug in a machine, then maybe we need to change the election officials in those counties.

But to say and to imply that I would say that long lines are—a showing of problematic system in our voting or elections is—no, mine was a compliment because actually in—between 2014 and 2018 in the state of Georgia we saw an 11 percent increase in black male voting. We saw a 14.58 percent increase in black female voting. We saw an 18 percent increase in Hispanic male voting and a 24 percent increase in Hispanic female voting. Mine is to let everyone vote that wants to vote, that registers and gets there and we have a very generous early voting. I just want to make that clarification for the record.

I yield back.

Mr. RICHMOND. The gentleman from Arizona is recognized, Mr. Stanton.

Mr. STANTON. All right. Thank you very much, Mr. Chairman.

I am proud to be a new member of this Congress and I am proud that in the 116th Congress the very first bill that was introduced is the "For the People Act." We are going to make very positive reforms to help the American people have more confidence in our democracy, obviously, including a plan to restore the Voting Rights Act, nonpartisan redistricting commissions, ban shadow lobbying, banning corporate contributions and dark money, and many other things I think would be very positive steps, moving it forward. I am proud to be a co-sponsor.

I come from Arizona where we do have clean elections and it works out very well—publicly-funded elections—and both Republican and Democrats in the state of Arizona have successfully used the clean election system to get elected to public life.

We have a nonpartisan redistricting commission that has been mentioned. We passed it in 2010. It has created very competitive congressional elections and state legislative elections. I think it has built confidence by the people of Arizona, more confidence in the electoral system.

And I was mayor of the city of Phoenix and we saw the big problem as it relates to dark money and the influence of dark money. We put banning dark money on the ballot as a municipal initiative. It passed with 85 percent of the vote. Our next-door neighbors in the city of Tempe, also in my congressional district, they did even better. A ban on dark money in the city of Tempe passed with 91 percent of the vote. The American people in a bipartisan way are in favor of these positive reforms.

Now, I also come from a state with a very large Native American population and we are blessed to have a very large Native population, and I want to ask the witnesses here, particularly Ms. Gupta and Ms. Ifill, to talk about the benefits—if this Congress does do the right thing and restore the Voting Rights Act, maybe some of the specific benefits to our Native American citizens.

Ms. IFILL. I am glad you mentioned that. You know, I think many people are aware of what happened in North Dakota with the voter ID law that required a street address. You know, we have over the years worked with the Native American Rights Fund and those lawyers in Alaska where there are very particular problems of voter—of voter suppression that have occurred over the years.

And if you are not familiar with Native American reservations, if you are not familiar with what it means to be in these rural areas, if you are not familiar with the customs and practices of those communities, you can think that these measures that are—that are described as efficient have no effect.

And I think that North Dakota law—that voter ID law—was the perfect example. The idea of requiring a street address might sound innocuous to many people. But it was in understanding that many Native Americans did not have a street address and seeing that community come together to try to quickly create street addresses to comply with the law on one hand is maybe one of the positive things is seeing people want so much to vote that they are willing to try to comply with the law.

But it is actually terrible that they have to come together to try and meet a law that puts this onerous burden on them—that requires this of them even though their communities are not situated in such a way as to make compliance with that law easy.

So we should remember when we think about the Voting Rights Act we talk about the African-American population, we talk about the Latino population. The Native American population is also part of this as is the Asian-American population in terms of language, minorities, and the kind of ballot assistance and materials that they need as well.

Mr. STANTON. Thank you so much.

Ms. GUPTA. Yeah. I will just say that when I was at the Justice Department one of my great regrets is I don't think that we were ever able to fully approach voting rights for Native Americans in the way that the struggles that they were actually facing in many, many parts of the country in rural communities.

The poll sites are simply too far and too few and they are—there were instances in Alaska where people would have had to travel for a hundred miles to get to a poll site. It was simply—it was not even conceivable that this was appropriate in our modern-day time.

And so part of what is needed is when we think about restoring the Voting Rights Act is really focusing on the availability of poll locations in Native American communities to address this very serious problem.

Mr. STANTON. Thank you very much. I have one follow-up question actually for Mr. Noti in a different direction.

As a new member of Congress, I am learning a lot about something called shadow lobbying where—which apparently is a huge loophole in the lobbyist registration requirements—people being hired to provide strategic consulting whether or not they have any expertise in the area simply because of relationships they may have formed.

Obviously, the case of Michael Cohen is the most famous one where he was paid a significant sum in areas outside of his expertise. Talk about shadow lobbying and how this H.R. 1 would fix that loophole.

Mr. NOTI. Right. So the Lobbying Disclosure Act is an important transparency measure that allows citizens to know the influences that are being brought to bear on lawmakers. One existing loophole in it is that it only reaches sort of the last individual who actually talks to the policymaker.

And so what some enterprising folks have figured out is that if you just keep yourself one step removed from that—you do all the same work, the same advice, the same guidance who to talk to, what to say, but have somebody else actually conduct that activity—under existing law there is a perception that does not count as lobbying and therefore doesn't trigger either registration or other financial disclosure obligations.

H.R. 1 would close that loophole by designating strategic support—strategic counseling in support of lobbying as lobbying. One of the criticisms I believe I heard today was that it is broad and amorphous—who knows what strategic consulting is. It is not strategic consulting generally—strategic consulting in support of lobbying.

Mr. RICHMOND. The time of the gentleman has expired and we will now have the gentlelady Dean from Pennsylvania.

Ms. DEAN. Thank you, Mr. Chairman, and I thank the ranking member and all the members of the committee. I also thank all of you for coming to testify on this very important measure.

I, too, am a brand new member of Congress. I come from Pennsylvania—from the great Commonwealth of Pennsylvania. So you will note that our experience in Pennsylvania will be threaded in my remarks and in my questions.

I wanted to start with a sentence out of your testimony, Ms. Gupta, which I applaud. You write, "Our democracy works best when everyone, no matter who they are or what their color, can fully participate."

I couldn't agree with you more and I share, Ms. Ifill, your bafflement that we are actually having a debate over whether or not we should get full participation—full voter participation or should we allow things to stand in the way of full voter participation.

Two areas that I wanted to focus on—and I will direct my question for you to enlighten us, to both Ms. Gupta and Ms. Ifill—are the recent kind of incubator experiences of Pennsylvania in the area of voter ID and in the area of redistricting—incubators in the case of good and in bad. The bad would be in 2012 a Democratic legislature with a Democratic governor—this is a presidential election year, you will recall—passed, and this is pre-Shelby—Pennsylvania is not a part of that—passed voter ID.

Seemingly innocuous. Euphemistically, of course you should show your identification. I came in two months later in a special election to the Pennsylvania House and we saw the collateral damage that that did, the lack of trust that voters had.

We went to nursing homes after nursing homes to try to help older people who no longer had identification cards, who couldn't access, in many cases, their birth certificates. We know that it disenfranchised or attempted to disenfranchise students, young people, poor people, and, clearly, people of color. Our speaker of the House was caught nationally, you will remember, saying, "Voter ID. We got it. That will get us Mitt Romney," or whomever.

So I ask you to tell us about how this important legislation will speak to those very corrosive types of legislation, and I will flip over and then give it to you both to say the very good news that happened. Just one year ago, the Pennsylvania Supreme Court said that our congressional lines were palpably gerrymandered, palpably unconstitutional.

And so I am a little baffled, again, by my colleague on the other side of the aisle from Pennsylvania who found that to be a troubling decision. It was a constitutionally-based decision and I, frankly, wouldn't be here if it weren't for that Supreme Court decision, which rectified a 13 to 5 delegation in Pennsylvania to a 9–9, matching our voter registration.

Can you talk about both of those issues and how H.R. 1 will give us the opportunity to rectify those problems?

Ms. IFILL. Let me start, briefly, and then I will turn it over to Vanita and particularly on the voter ID piece, which you very eloquently describe that experience in Pennsylvania, which I think is really instructive for us.

First of all, the idea of the need for voter ID laws and their proliferation around the country, even pre-Shelby, really comes out of a set of kind of voter suppression tactics and ideas that were being circulated, frankly, and that is why it is so important for us to speak the truth in this moment and to say these are not ideas that came about because there was evidence of widespread voter fraud.

That has still not happened despite the many years that many experts have had to try and prove it. They have not been able to prove it.

Ms. DEAN. It was actually stipulated in that Pennsylvania case——

Ms. IFILL. That is correct.

Ms. DEAN [continuing]. That they couldn't come up with a case.

Ms. IFILL. They could not even demonstrate that it existed. So this was an answer in search of a problem. This was not some good government measure designed to address ballot boxes that were being subjected to some kind of fraud.

This was a move designed to control the population, to control the electorate, and to control the outcome of elections, and people understood exactly what it meant and what it was.

The reality is that we have members of the population for whom it is difficult to get the kind of ID that is required by these laws either because they are in situations where they no longer have their birth certificate, where they don't have the underlying documents because they have to pay for the underlying documents, or because, in some cases, as in Texas and in North Carolina, the legislatures actually picked forms of ID that they knew that minority populations were less likely to have.

This is a terrible thing in a democracy to have a legislature meet and pass a law whose purpose is to disenfranchise a segment of the population.

And so it is critical in H.R. 1 that we address this issue, that we call a spade a spade and stop pretending that these voter ID laws are some good government measure. They are a disenfranchising measure, they have metastasized around the country, and it is time for the United States Congress to address it.

Ms. DEAN. Thank you.

Mr. RICHMOND. The time of the gentlelady has expired.

I will now recognize the gentlelady from Florida, Ms. Mucarsel-Powell.

Ms. MUCARSEL-POWELL. Thank you, Mr. Chairman. I wanted to thank Chairman Nadler for holding this important hearing here today. Thank you to all the witnesses for appearing in front of us today.

I think that we all agree that so many Americans in this country are losing faith in our government and there are so many reasons for this, and I am glad that we are finally addressing some of them in this hearing.

I know that Americans do not want their elected officials to be improperly swayed by campaign contributions. Americans do not want their neighbor's vote to count more than their own vote and we, in the Congress of the United States, must do everything we can to ensure that an individual's right to vote is not impeded.

And it reminds me near the end of Justin Ginsburg's dissent in the Shelby County v. Holder. She suggested a simple analogy to illustrate why the regional protections of the Voting Rights Act were still necessary.

She wrote that, quote, "Throwing out pre-clearance 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." I am a representative of Florida. I don't throw away my umbrella.

So with that, I wanted to ask Ms. Gupta, Florida was one of the states that required pre-clearance before the Shelby County decision. Can you provide us with an example of a change to the voting laws in Florida that were enacted since the decision and what sort of impact it has had?

Ms. GUPTA. Thank you, Congresswoman. There have been a significant number of poll site closures in the state of Florida which have created a lot of issues around long lines and accessibility of poll sites.

These kinds of changes, as I have said, they seem minor because they happen in different places and they are small in—you know, closing a poll site doesn't seem like it would rise to some kind of nefarious effort.

But taken collectively, the Justice Department was unable to have any clear indication of what was happening with the number of poll sites being closed locally, and that is the kind of thing where those kinds of changes would have been pre-cleared or not by the Justice Department to prevent racial discrimination.

There are any number of these kinds of minor and major changes that Florida has made since the Shelby County decision that have not been detected by the Justice Department as a result of the Shelby County decision and these are the things that ultimately corrode people's confidence in the government and in elections and make people decide to opt out of voting altogether when they feel like their vote won't be counted or that the system is so rigged against them that there is no kind of accountability for the kinds of these local changes and subtle—more subtle changes that are getting made in previously pre-cleared jurisdictions.

Ms. MUCARSEL-POWELL. Thank you, Ms. Gupta.

And I just wanted to follow up on Mr. Gaetz's comments about Amendment Four. You know, as we all know, Floridians approved this amendment to the state constitution so that we can restore the franchise to most former felons.

How does H.R. 1 ensure that Amendment Four is effectively and quickly implemented? Ms. Ifill.

Ms. IFILL. Well, it is certainly a complement to the Florida—to the Florida law that recently passed and I think it is really an important one. I heard Mr. Gaetz's colloquy with my—with my colleague and I, to be honest, was mystified by it.

As I understand it, in Florida, for example, formerly incarcerated persons can contribute to campaigns, which means a wealthy former felon like Jeffrey Epstein, who has been in the news very much, can and does contribute large sums of money to political campaigns.

I am not sure why we would regard someone who had served their time for a crime that they had committed and been convicted of voting—why we would consider that more pernicious than the ability to contribute to campaigns.

We live in an American system of justice in which once you have paid your debt to society you should be restored as a citizen. That means that you should be able to get a driver's license. That means that you should be able to get a job.

That means that you shouldn't be banned by the misuse of criminal backgrounds checks from being able to do a job and it also means that you ought to be able to cloak yourself in the ultimate expression of citizenship in a democracy, which is the ability to cast a ballot and vote.

So I don't see the making a distinction in terms of the crime. Our criminal justice system should ensure that someone is released only when we feel confident that that person is no longer a threat to society, and if our criminal justice system has made that determination then it seems to me it is entirely appropriate for that person to return and also receive the franchise along with their other citizenship rights.

Thank you.

Ms. MUCARSEL-POWELL. Thank you, Ms. Ifill.

Mr. RICHMOND. The time of the gentlelady from Florida has expired. I now recognize the other gentlelady from Florida, Mrs. Demings, for five minutes.

Mrs. DEMINGS. Thank you so much, Mr. Chairman, and thank you to all of our witnesses for joining us today. I know it has been a long day but, believe me, it is an important day. For the time that I was able to be here I was mystified too, Ms. Ifill, by some of the things that were said.

For someone who spent 27 years in law enforcement and then to hear my colleague from Florida talk about when a person has paid their debt to society, that is decided by a judge that they still should be further disenfranchised.

Let me just start here. You know, someone said that the only thing necessary for the triumph of evil is that good men do nothing. Now, I have heard it said several times that we live in the greatest country in the world and, believe me, I know that we do.

But America—when we are deciding what we need to do, moving forward, many times America has to take a look backwards and our past in this area is painful and it is ugly and it is deep.

Let me just, in case we—because we are the decision makers and you all help us make those decisions—let me just kind of remind you about black and brown people who simply wanted to exercise the right to vote, were—many of them were the victims of hangings, beatings, burnings, bombings, dismemberments, disfigurements, all for wanting to exercise their basic right to vote.

And then when America became more sophisticated, we moved from physical harming to poll tax and literacy tests, questions like how many bubbles are on a bar of soap or how many feathers on a duck.

We further, in the greatest country in the world, did everything that we could, those who were in decision-making positions, to humiliate, to embarrass, to disenfranchise.

How long will we have to still, as we sit here in 2019, continue to have to defend a person's right to cast their vote? The good man who made the decision, and women, with the Voters Rights Act of 1965 didn't do so because there wasn't a problem, and when we talk about that was old and that is in the past, no, that was in my lifetime and it was actually in the lifetime of several of the members who sit here on this panel.

They did so because there was a significant problem, particularly in Southern states, for which I am a representative of one of them. And so if we are serious about America being the greatest country in the world, then we all should play a role in making it easier for our citizens, regardless of their race, their sexual orientation, their gender, to exercise that basic right.

I am proud of Florida in spite of the role that my colleague called earlier—four people who were violent felons. Well, a judge decided they had paid their debt to society. I would also like to know the race of those four individuals and we are going to check into that.

But let me ask Ms. Gupta. As we try to identify ways for people to continue to vote, could you talk a little bit about independent redistricting commissions and how effective they have been?

Ms. GUPTA. Sure. Thank you, Congresswoman.

Independent redistricting commissions exist right now, for example, in California, Arizona, Colorado. We heard from members of Congress in Pennsylvania talk about the ruling that declared that the way that Pennsylvania was drawing district lines was tantamount to unlawful gerrymandering. They will now also have an independent commission.

A number of states in November, just this past November—"red" states, "blue" states—actually created independent redistricting commissions out of a recognition that voters, frankly, are fed up with unlawful gerrymandering.

And these redistricting commissions they have been authorized by the Supreme Court which, as I said, decided that it is perfectly okay for legislators to make sure that they aren't participating in a drawing of their boundary lines, and in places like California, Arizona, and Colorado that have had these commissions for a while we have seen improvements in representation and competiveness of elections and in voter trust. And so this is why these provisions in H.R. 1 are so important.

Mr. RICHMOND. Thank you. The time of the gentlelady has expired. We have votes. We will go on to Ms. Escobar, the other gentlelady from Texas, who is recognized for five minutes.

Ms. ESCOBAR. Thank you, Mr. Chairman.

It is my privilege to serve on this committee and I would like to thank and express my gratitude to Chairman Nadler and to Representative Sarbanes for this outstanding bill, and thanks to all of you on the panel for spending time with us today to answer our questions and to be sure to share what you know with the American public.

I come from El Paso, Texas, a great community on the U.S.-Mexico border—the safe and secure U.S.-Mexico border—a community that is 80 to 85 percent Latino in a state that really has played a significant role in trying to suppress turnout.

Texas is one of the states that has most aggressively moved to purge the rolls and the voter ID law—thank you for challenging the voter ID law. It has proven problematic for a number of reasons and for one reason that I want to bring to light here today just to shed more light on the myriad of issues that we have heard about today.

But our local county elections offices, which are already strained and have very few resources, when they have to continue to adapt to these changing laws they have to use the precious few resources that they have in order to open up more polls and to hire more staffing and move it to educating people about the changes that have occurred with voter ID.

My own county elections office in El Paso thankfully has a leader at the helm, Lisa Wise, very interested in increasing turnout, educating voters. But it stretches precious resources in a very thin way. And when you have misinformation on top of these laws, it creates an even worse situation.

And, Ms. Ifill, you mentioned our new secretary of state and the letter and the press release and kind of the subsequent fallout that occurred after he essentially tried to scare the state of Texas about folks voting who maybe should not vote.

Can you share with us what the consequences of doing something like that are? When people sound that kind of alarm, as you mentioned, without transparency, without information, without backup, what happens? What are the consequences?

Ms. IFILL. Well, first of all. For voters, themselves, it scares people into, you know, being afraid of participating in the political process because they don't know if they are going to be checked. They don't know if they may have said something or written something that was inaccurate.

You know, when you fill out these registration forms under penalty of perjury, you know, the fear that maybe you got something wrong that you thought was right really frightens people.

Many people, particularly in the Latino community, live in mixed homes. By mixed, I mean some people are documented and some people are undocumented, and so the fear of exposing relatives or other people to legal authorities or that this may in some way be opening up some new investigative unit that might frighten voters.

But here is the other thing that it does. It also emboldens and empowers those people who want to challenge the right of Latino voters and minority voters to participate in the political process.

It emboldens those individuals who are white supremacists in some instances, who are racists in other instances, who believe that they have the right to challenge anybody at the polls.

It makes them feel that they have the state at their back in making the kind of unfounded challenges that many of them make and that intimidates voters from participating in the political process when they are challenged in that way or when they see challenges happening at the polling place.

It is frightening, it is intimidating, and the secretary of state should exercise more responsibility before unleashing that kind of panic.

Ms. ESCOBAR. Thank you very much. I yield.

Mr. RICHMOND. Well, thank you.

Before I conclude the panels, let me just say, and to Mr. Adams and Mr. Spakovsky, we are all a product of our life experiences and I won't assign any ulterior motives to you or any hidden agenda.

But I will just say that my life experiences are much different than yours. Minorities had to fight for the right to vote. Women had to fight for the right to vote. We were not born with it. That is what makes the right so precious and why we fight so hard to protect it.

But I do agree with my colleague, Mr. Collins, from the other side of the aisle that the goal is for everybody to vote in a very meaningful fashion. But my fear is that we have run around this country talking about voter fraud and we have hyped up a problem that does not exist, all in an effort to justify adding a little bit more fear to those people who had to fight for that right.

So my mother, who is from the poorest place in the country, one of 15 brothers and sisters, who does not miss an election not because her son is in Congress but because she had to fight and march for the right to vote.

So I would just hope that you take that for what it is and just giving you the benefit of my life experiences.

And to Ms. Gupta and Ms. Ifill, Ms. Turberville and Mr. Noti, thank you all for being here. Mr. Adams and Mr. Spaskowsky, I didn't say thank you for being here. So thank you for being here, also for being distinguished witnesses at today's hearing.

Without objections, all Members have five legislative days to submit additional written questions for the witnesses or additional materials for the record.

The hearing is adjourned.

[Whereupon, at 2:24 p.m., the committee was adjourned.]

APPENDIX

The Heritage Foundation
LEADERSHIP FOR AMERICA

BACKGROUNDER

No. 2780 | MARCH 27, 2013

Mandatory Voter Registration: How Universal Registration Threatens Electoral Integrity

Hans A. von Spakovsky

Abstract

There is no question that the U.S. voter registration system could be improved. However, the answer to America's voter registration problems is not federal mandates or federal interference in election administration. Indeed, the federal government has almost no experience administering elections; states administer elections in the laboratories of democracy. As a result of this exercise in federalism, states are implementing numerous improvements to the voter registration system—and they are doing it at less cost to our treasury, our Constitution, and the integrity of our elections than mandatory universal registration.

> It has been said that for every complex problem there is a solution that is clear, simple, and wrong. Washington soon may seek a complex solution—preemption of states' responsibility; federal micromanagement of elections; eventual coercion of lackadaisical citizens—to the nonproblem of people choosing not to vote.
>
> —George F. Will[1]

Mandatory voter registration (MVR), previously termed "universal" registration, could significantly damage the integrity of America's voter registration system. The "voter registration modernization"[2] concept of automatically registering individuals through information contained in various existing government databases would throw the current system into chaos.

Specifically, voter registration modernization could result in the registration of large numbers of ineligible voters as well as multiple or duplicate registrations of the same individuals. When combined with the accompanying proposal that states allow any individuals who are not automatically

Key Points

- Mandatory voter registration (previously termed "universal" registration) could significantly damage the integrity of America's voter registration system.
- Census Bureau reports demonstrate that the major reason individuals failed to register was that they were not "interested in the election/not involved in politics," not because they were disenfranchised.
- Electoral reforms—such as easing voter registration through motor-voter legislation, same-day registration, or uncoupling registration from jury duty—have had at best a negligible net effect on voter participation.
- It is rather ironic that many of the same organizations pushing to register individuals automatically from government databases oppose states' attempts to verify the accuracy of the information provided by individuals registering to vote by comparing to those same databases.
- States are implementing numerous improvements in their voter registration systems and at less cost to our treasury, our Constitution, and the integrity of our elections than mandatory universal registration.

This paper, in its entirety, can be found at **http://report.heritage.org/bg2780**

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Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

registered to register and vote on Election Day, MVR presents a sure formula for registration and voter fraud that could damage the integrity of elections.

Automatically registering individuals to vote without their permission would also violate their basic right to choose whether they wish to participate in the U.S. political process. Indeed, this new scheme threatens one of American's most cherished liberties: the freedom to be left alone by the government.

A "Solution" in Search of a Problem

Lack of registration is not the reason people do not vote. Ideological organizations such as FairVote and the Brennan Center for Justice are proposing that states automatically register all individuals to vote using existing government databases. Such proposals are based on the false premise that large numbers of Americans do not vote "for no other reason than they are not registered to vote."[3] Yet after every federal election, the U.S. Census Bureau publishes reports on the levels of registration and voting, including surveys of individuals who do not vote, that *disprove* the claims that the major reason individuals do not vote is a lack of registration opportunities.[4]

> Proposals that states automatically register all individuals to vote using "existing government databases" are based on the false premise that large numbers of Americans do not vote "for no other reason than they are not registered to vote."

For example, of the 146 million people who the Census Bureau reported were registered to vote in 2008, 15 million (10 percent) did not vote. Of those who did not vote, only 6 percent cited registration problems as the reason for not participating. Rather, the vast majority of these registered but nonvoters said they did not vote for reasons ranging from forgetting to vote to not liking the candidates or the campaign issues or simply not being interested.

With regard to those individuals who are not registered to vote, the Census Bureau's 2008 report demonstrates that the major reason individuals failed to register was that they were not "interested in the election/not involved in politics." That represented *46 percent* of the individuals in the Census Bureau's survey. Another 35 percent of individuals did not register for a variety of reasons such as not being eligible to vote, thinking their vote would not make a difference, not meeting residency requirements, or difficulty with English.

Thinking that their vote would not make a difference is quite true in some cases even if the rest of us enjoy and encourage civic participation for its own sake: "[E]ven a smart and hardworking person can rationally decide not to pay much attention to politics. No matter how well-informed a person is, his or her vote has only a tiny chance of affecting the outcome of an election."[5]

Only 4 percent of individuals reported not registering to vote because they did "not know where or how to register." This may be true, or it could be a convenient excuse for many who are too embarrassed to tell a pollster the truth given how easy it is to register by mail, at the many locations where registration is available such as libraries and numerous government offices and agencies, or (in many states) by using the Internet.

1. George F. Will, *Mandatory Voting: Is This the Obama Administration's Goal?* Investor's Business Daily, Dec. 18, 2012, *available at* http://news.investors.com/ibd-editorials-on-the-right/121812-637540-no-evidence-automatic-voter-registration-needed.htm?p=full.
2. The Brennan Center's first paper on this concept in 2008 was entitled "Universal Voter Registration." In 2009, the Center issued an almost identical paper in which the title had been changed to "Voter Registration Modernization." Apparently, "modernization" was believed to be a better term than "universal" for advocacy on this issue. The latest reissue of this paper, "The Case for Voter Registration Modernization," appeared in 2013 and keeps the modernization language.
3. FairVote, *7 Ways to Universal Voter Registration*, http://www.fairvote.org/7-ways-to-universal-voter-registration.
4. U.S. Census Bureau, Voting and Registration in the Election of November 2008, Table 6 (2012), *available at* http://www.census.gov/prod/2010pubs/p20-562.pdf . Since this is a survey of registration and turnout as reported by voters, it may vary from actual registration and turnout reported by state election officials.
5. Ilya Somin, *Are American Voters Stupid? Maybe Not*, South China Morning Post, Sept. 27, 2004, *available at* http://www.cato.org/publications/commentary/are-american-voters-stupid-maybe-not.

The Census Bureau's 2010 report indicates similar results.[6] Only 3.3 percent of individuals reported not voting because of supposed registration difficulties. Given the tendency of many people not to take responsibility for their own failings or perceived failings, the actual number of people who did not vote because of registration difficulties may be even smaller. The overwhelming majority of those who did not vote said they were not interested (16 percent); were too busy (27 percent); forgot to vote (8 percent); did not like the candidates or the campaign issues (9 percent); or had various other reasons.[7]

Registration problems do not disproportionately affect minorities and low-income citizens. Among the tiny percentage of voters who said they did not vote because of "registration problems," there was also almost no racial differential. For instance, the percentage of whites who claimed they did not vote because of a registration problem was 3.2 percent, compared to 3.3 percent of blacks and only 2.8 percent of Hispanics.

There is little evidence to support the oft-repeated assertion that "voter-initiated registration" has a "disproportionate impact on low-income citizens and those who are less educated."[8] In fact, the Census surveys show otherwise. For example, in 2008, the percentage of registered voters who did not vote because of "registration problems" was 6 percent; among voters with a bachelor's degree or more, the percentage was 7.4 percent compared to only 3.2 percent for those with an educational attainment of "less than high school graduate." Furthermore, those attaining "high school graduate or GED" had a rate of 5.8 percent.

The Census survey, in other words, actually demonstrated that less-educated voters had fewer registration problems. The 2010 survey reported similar results for those who did not vote due to registration problems: less than high school, 2.5 percent; high school graduate, 2.6 percent; bachelor's degree or more, 4.3 percent.

With regard to income, the 2010 Census survey demonstrated no discernible "disproportionate impact." For example, the percentage of voters with a family income of $100,000 to $149,000 who did not vote because of purported registration problems was 3.5 percent; the percentage of those with an income of $15,000 to $19,999 who claimed registration problems was only 1.9 percent; and the percentage of voters with an income of $10,000 to $14,999 who supposedly had registration problems was 2.8 percent, just slightly more than the 2.6 percent reported by individuals making more than $150,000.

The claim that "the single greatest cause of voting problems in the United States" is the voter registration system is false. The greatest causes of individuals not registering and not voting are their lack of interest in politics and candidates and other reasons that have nothing whatsoever to do with registration or lack of registration.

Thus, according to the federal government's own surveys, the claim that "the single greatest cause of voting problems in the United States"[9] is the voter registration system is false. The greatest causes of individuals not registering and not voting are their lack of interest in politics and candidates and other reasons that have nothing whatsoever to do with registration or lack of registration.

Experience with the National Voter Registration Act of 1993 shows that voter registration is not a barrier to voting. The push to pass the National Voter Registration Act (NVRA) of 1993 was based on the same, similarly flawed premise: that voter registration is a barrier to voting. Before its implementation, "many researchers were optimistic about NVRA's projected impact on voter turnout"; but while the act "did lead to millions of

6. U.S. Census Bureau, *Voting and Registration in the Election of November 2010—Detailed Tables* (Oct. 2011), http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html.

7. *Id.* at Table 10.

8. Wendy Weiser et al., Brennan Ctr. for Justice, Voter Registration Modernization (2009), *available at* http://www.brennancenter.org/page/-/publications/VRM.Proposal.2008.pdf.

9. *Id.* at 1.

new registered voters," it apparently made "no significant change in voter turnout."[10] In other words, the NVRA only led to an increase in the number of registered voters who do not vote.

Other researchers point out that overall registration levels have not increased substantially since passage of the NVRA. The Census Bureau's 2008 report shows that the reported voter registration rate in 1996—three years after the NVRA became law—was 70.9 percent. The reported registration rate in 2008 was 71 percent—an increase of only one-tenth of 1 percent after the NVRA had been in effect for 15 years.[11] In 2008, the highest level of turnout according to the Census Bureau was among non-Hispanic Whites (66 percent) and blacks (65 percent); turnout among Asians was 48 percent, and turnout among Hispanics was 50 percent.[12]

The experience with the NVRA shows the basic flaw in the underlying assumptions that led to its passage: that registration "barriers" were somehow the reason for the claimed decline in voter turnout. Research shows "that the motivation to vote is especially internal: people register because they *plan* to vote. Therefore people who are registered are very *likely* to vote. However, people who have no interest in voting do not register to vote."[13]

One detailed study of nonvoters concluded that it is "[a]nother misconception about nonvoters...that they would vote if only the [registration] process was easier."[14] The study concluded that the reason people do not vote is because for many of them, "voting is neither duty nor ritual." They are not interested in politics, or are cynical about its outcomes, or do not believe their votes will make a difference (public choice scholarship confirms that such cynicism is often well-founded).

In other words, there are "competing strains of alienation and complacency" among the ranks of nonvoters.[15] Consequently, electoral reforms—"such as easing voter registration through motor-voter legislation, same-day registration, or uncoupling registration from jury duty—have had, at best, a negligible net effect on voter participation."[16] Those with greater faith in government's efficiency and efficacy may be more optimistic about its ability to have a positive impact on American's lives. In the long run, however, that faith may do more to undermine civic virtue than a healthy cynicism about government bureaucracy.

MVR's Numerous Practical Problems

Various recommendations made for a federally imposed, national mandate would *require* states and local governments to:

- Use existing state and federal government databases to automatically (and permanently) register all citizens to vote.
- Create an overriding policy to ensure that voters left off the rolls can register and vote on Election Day.
- Require U.S. citizens to register to vote when completing taxes or actively opt out of the process.
- Tie Post Office change-of-address forms to the voter registration database.
- Require state or local governments to send every residence a notice of those registered at that location; residents could then make changes as needed and return the updated form.
- Provide every U.S. citizen upon birth or naturalization a voter registration number similar to a Social Security number, to be used in all elections and activated when a voter turns 18.[17]

10. Jason Marisam, *Voter Turnout: From Cost to Cooperation*, 21 St. Thomas L.R. 190, 202-03 (2008).
11. U.S. Census Bureau, *supra* note 4, at Table 1.
12. *Id.* at Table 2.
13. Randall D. Lloyd, *Motor Voter: A Dismal Failure*, Nevada Journal (Feb. 1999), *available at* http://nj.npri.org/nj99/02/vote.htm.
14. Jack C. Doppelt & Ellen Shearer, Nonvoters: America's No-Shows 214 (1999).
15. *Id.* at 220.
16. *Id.* at 219.
17. FairVote, *supra* note 3; *see also* Weiser, *supra* note 8.

Some of the groundwork for these proposals and federalization of the voter registration process was laid at a Senate Rules Committee hearing by Senator Charles E. Schumer (D–NY) on March 11, 2009.[18] Senator Schumer advocated overhauling America's voter registration system in favor of the "Voter Registration Modernization" proposal from the Brennan Center.[19] This proposal shifts the responsibility of voter registration from the individual to the government, leading to the erosion of distinctions between state and federal responsibilities in election management and the responsibility of individuals to take the steps required to participate in the election process.

The push for mandatory voter registration has accelerated recently. In December 2012, a month after the November election, the leaders of more than three dozen liberal advocacy groups met in Washington for an off-the-record meeting (though covered by *Mother Jones* in some detail) to plan strategy on election-related issues. One of the top three goals was mandating "voter registration modernization" and same-day voter registration; at the same time, one of the other goals agreed on was to oppose any efforts to improve election integrity through voter identification and proof-of-citizenship requirements.[20]

At a speech in Boston on December 11, 2012, Attorney General Eric Holder voiced the Obama Administration's support for automatic registration.[21] The head of the Justice Department's Civil Rights Division, Thomas Perez, said on November 16, 2012, that "all eligible citizens can and should be automatically registered to vote" based on compiling "from databases that already exist." Perez also claimed that one of the "biggest barriers to voting in the country today is our antiquated registration system."[22] The Brennan Center's 2008 proposal was relaunched in January 2013 when the Brennan Center issued another report on "voter registration modernization," and on January 23, 2013, Representative John Lewis (D–GA) introduced the Voter Empowerment Act (VEA).[23]

These mandates involve numerous practical difficulties. The most common proposal—for states to use existing government databases "to build"[24] their voter rolls—presents several immediate problems.

First, many government databases may lack a signature, which is required for voter registration and essential for verifying both petitions for candidates and ballot initiatives, as well as requests for absentee ballots and voted absentee ballots that are received by election officials.

As an enormous unfunded mandate on the states, these proposals would prove costly: a diversion of limited government resources for little to no appreciable increase in voter participation rates.

Second, using government databases such as "motor vehicle departments, income tax authorities, and social service agencies," as recommended by the Brennan Center, would fail to differentiate citizens from non-citizens. All states, for example,

18. *Voter Registration: Assessing Current Problems: Hearing Before the S. Comm. on Rules & Admin.*, 112th Cong. (2009) (statement of Sen. Schumer, Chairman, S. Comm. on Rules & Admin.), *available at* http://www.rules.senate.gov/public/index.cfm?p=CommitteeHearings&ContentRecord_id=c33b5ae8-aee8-413e-85db-a256ce6169f6&Statement_id=f96f308a-48ab-4f47-affa-969a8e28aac3&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=1983a2a8-4fc3-4062-a50e-7997351c154b&MonthDisplay=3&YearDisplay=2009.

19. Wendy Weiser et al., Brennan Ctr. for Justice, Universal Voter Registration (2008), *available at* http://brennan.3cdn.net/9bd05fbb9b75fc4cc8_lom6bnevg.pdf; Weiser, *supra* note 8.

20. Andy Kroll, *Revealed: The Massive New Liberal Plan to Remake American Politics*, Mother Jones (Jan. 9, 2013), http://www.motherjones.com/politics/2013/01/democracy-initiative-campaign-finance-filibuster-sierra-club-greenpeace-naacp.

21. Scott Malone & David Ingram, *U.S. Should Automatically Register Voters: Attorney General*, Reuters (Dec. 12, 2012), http://www.reuters.com/article/2012/12/12/us-usa-vote-holder-idUSBRE8BA1EN20121212.

22. Thomas Perez, Assistant Attorney General for Civil Rights, Address at the George Washington University Law School Symposium (Nov. 16, 2012), *available at* http://www.justice.gov/crt/opa/pr/speeches/2012/crt-speech-121116.html.

23. H.R. 12 is also cosponsored by Reps. Steny Hoyer (D–MD), James Clyburn (D–SC), John Conyers (D–MI), and Robert Brady (D–PA).

24. Weiser, *supra* note 8 at 8.

provide driver's licenses to aliens who are legally in the United States, and several states provide driver's licenses to illegal aliens. Many individuals who reside in the United States but are not citizens also file tax returns, which would allow individuals who filed with "income tax authorities" the ability to register to vote. It would also lead to duplicate and multiple registrations of individuals listed on different government databases, such as individuals who own property or pay taxes in more than one state.

Third, as an enormous unfunded mandate on the states, these proposals would prove costly: a diversion of limited government resources for little to no appreciable increase in voter participation rates.

In addition to DMV, social service, and income tax agencies, the VEA would require automatic registration of individuals from state agencies that provide benefits under Title III of the Social Security Act, that maintain records on students enrolled at secondary schools, that are responsible for administering criminal convictions, or that determine mental competence. Additionally, automatic registration would be required from the federal offices of the U.S. Immigration and Customs Enforcement Bureau, the Social Security Administration, the Federal Bureau of Prisons, the U.S. Probation Service, the Department of Veterans Affairs, the Defense Manpower Data Center of the Department of Defense, and the Indian Health Services and Centers for Medicare and Medicaid Services of the Department of Health and Human Services.

State registration lists are transparent—such lists are available to candidates, political parties, and the public—but federal databases lack such transparency, and election officials and the public therefore cannot verify the accuracy of such lists.

No transaction with any such agency could be completed "until the individual has indicated whether he or she wishes to register to vote." Every time an individual applied for services or assistance, and "with each recertification, renewal, or change of address relating to such services or assistance," the agency would have to ask the individual about registering to vote and could not provide any requested service or assistance until the registration issue had been addressed.[25]

Proponents of mandatory registration from government databases oppose even limited use of such databases to maintain accurate voter rolls. It is rather ironic that many of the organizations pushing for automatic registration of individuals based on government databases oppose states' attempts to verify the citizenship, identity, and accuracy of the information provided by individuals registering to vote by comparing them to other government databases.[26] In 2007, for example, the Brennan Center, along with the National Association for the Advancement of Colored People (NAACP) and the Advancement Project, sued Florida for running database comparisons on registered voters' information with "the state driver's license database or the Social Security Administration's database."[27] In a related press release, the Brennan Center complained about "common database errors" and opposed matching as "an error-laden practice."[28]

Furthermore, in 2006, the Brennan Center and other so-called civil rights organizations sued the state of Washington, claiming that attempting to match voter registration information with other government databases violated the Voting Rights Act and the U.S. Constitution and would disenfranchise voters.[29] In fact, the Brennan Center issued a report in 2006 complaining about the supposedly

25. Voter Empowerment Act of 2013, H.R. 12, 113th Cong., § 111 (2013).
26. *See, e.g.,* Arcia v. Detzner, -- F.Supp.2d. --, 2012 WL 6212564 (S.D. Fla. 2012).
27. Florida State Conference of NAACP v. Browning, 522 F.3d 1153, 1155 (11th Cir. 2008).
28. Press Release, BerlinRosen Public Affairs, Voting Rights Advocates Challenge Florida Registration Law in Federal Court (Sept. 17, 2007).
29. Washington Ass'n of Churches v. Reed, 492 F.Supp.2d 1264 (W.D. Wash. 2006).

"wide variety of common database matching errors" caused by "data entry" mistakes.[30] Yet the Center now wants to use those same supposedly inaccurate databases to register voters automatically.

As Colorado Secretary of State Scott Gessler pointed out during a January 2013 discussion at The Heritage Foundation, there is no question that there are inaccuracies in state voter registration rolls. However, federal databases are also riddled with errors that may eclipse inconsistencies at the state level. It is important to note that state registration lists are transparent—such lists are available to candidates, political parties, and the public—but federal databases lack such transparency, and election officials and the public therefore cannot verify the accuracy of such lists.

Gessler has witnessed many inaccuracies in Social Security Administration information as well as the National Change of Address (NCOA) database used by the U.S. Postal Service. For example, the NCOA reports a move only if an individual informs the Postal Service of a move. Errors can also occur if the NCOA database classifies everyone at a particular address as having moved when only one person in the household has moved. Gessler believes these federal databases are valuable when they are being used by states to check the information contained in state voter registration lists, since any discrepancy can be researched and corrections made, but to use federal information to automatically register individuals to vote would be to court disaster.

The Brennan Center says that many of these government databases "already include all the information necessary to determine voter eligibility, and those that do not can easily be modified to include that information."[31] However, as just one example, many of these databases do not contain citizenship information—a basic requirement for eligibility to vote. Organizations such as the Brennan Center have opposed states requiring proof of citizenship from registrants that would provide "that information."

Even worse, in 2012, a number of civil rights organizations and the Department of Justice sued Florida in an unsuccessful attempt to stop the state's verification of citizenship status through database comparisons.[32] Florida had to sue the federal government to get access to Department of Homeland Security (DHS) immigration databases to which it is entitled under federal immigration law to get citizenship information. DHS has also fought states through administrative measures, such as using bureaucratic red tape to prevent states from accessing its own databases—something Secretary Gessler experienced firsthand in Colorado.

As the trail of litigation makes clear, these organizations would fight any implementation of an automatic registration program that would allow states first to compare the information in one database with the information in other state and federal databases to ensure that the information is accurate and that only eligible individuals are being registered.

MVR makes maintenance of existing registration lists even more difficult. The VEA introduced by Representative Lewis would make it difficult—even more so than it already is—for states to maintain accurate voter registration lists. For example, the legislation would amend the NVRA to *prevent* states from requiring further documentation of new registrants—documentation, such as proof of citizenship, that might be needed to determine eligibility. Section 104 of the bill requires states to register anyone who has provided the state with a "valid voter registration form" that has been "completed" and "attested" by the applicant. The bill also prohibits the "transfer" of information from "the computerized Statewide voter registration list to any source agency."[33] Election officials would not even be allowed to retain the "identity of the specific source agency through which an individual consented to register to vote" after the individual is added to the statewide voter registration list.[34]

Consequently, if election officials later determined that registration information was inaccurate

30. Justin Levitt et al., Brennan Ctr. for Justice, Making the List: Database Matching and Verification Processes for Voter Registration (May 24, 2006), *available at* http://brennan.3cdn.net/96ee05284dfb6a6d5d_j4m6b1cjs.pdf.

31. Weiser, *supra* note 8.

32. United States v. Florida, 870 F.Supp.2d 1346 (N.D. Fla. June 28, 2012); *Arcia*, 2012 WL 6212564.

33. Voter Empowerment Act of 2013 § 112(b)(3).

34. *Id.* § 112(d).

or even fraudulent, they would be *unable to notify whatever state or federal agency provided them with information on that registrant*, making it impossible for the source agencies to investigate possible fraud in the state and federal programs they are responsible for administering. Lewis's bill would even give noncitizens a get-out-of-jail-free card: It provides that any ineligible individual who becomes registered to vote "shall not be subject to any penalty" for registering "including the imposition of a fine or term of imprisonment, adverse treatment in any immigration or naturalization proceeding, or the denial of any status under immigration laws."[35] In fact, government officials would be prohibited from using "the information received by" election officials "to attempt to determine the citizenship status of any individual for immigration enforcement."[36]

The Lewis bill also prohibits comparison of voter registration information "with any existing commercial list or database" at the risk of imprisonment for not more than one year and subject to fines.[37] Many commercial databases are *more* accurate than government databases. There is no reason for such a prohibition—let alone such criminal penalties—other than to remove a valuable tool that could otherwise be used by state officials to deter fraud.

Supporters of a federal mandate for automatic and same-day registration rarely, if ever, mention that Canada has had such a system in place since 1997. This registration system is administered by Elections Canada, which is responsible for conducting all federal elections and referenda. The United States, for a number of good reasons, has no such equivalent federal agency, but one is particularly relevant to the current registration debate: America's system of dual sovereignty is constitutionally guaranteed, and elections traditionally have been administered by the states. Canadians are automatically registered from a host of government databases similar to those proposed in the VEA, including the Canada Revenue Agency, Citizenship and Immigration Canada, National Defense, provincial and territorial driver's license and vital statistics agencies, and provincial electoral agencies.[38] (Canadians can also still register and vote on Election Day.)

Yet Canada's automatic registration system has had no effect in increasing turnout. Even before the implementation of Canada's new system in 1997, Canadians voted in larger numbers than Americans, but Canada has still seen a steady *decline* in turnout since the 1970s.[39]

The reasons that Canadian voters who have been automatically registered by the government give for not voting are similar to justifications given by U.S. voters: 28 percent were not interested; 23 percent were too busy; and the rest said "they were out of town, ill or didn't like any of the candidates."[40] Automatic voter registration is no panacea for declining turnout or the unwillingness of individuals to participate in the voting process. Thus, it seems clear that Canada's approach would cause considerable mischief in America's state-administered election system while providing no benefit in terms of voter turnout.

MVR raises serious privacy concerns. Requiring individuals who would not register on their own to "'opt-out' from registration" if they want "to remain unregistered for whatever reason"[41] interferes with the basic right of individuals to decide whether—and to what extent—to participate in the political and democratic process. While society might hope that all citizens will vote, each and every American has the liberty not to do so for whatever reason. Americans who choose not to vote should not have to act every time they make a

35. *Id.* § 112(d) and §112(f)(1) (although this section does not "waive the liability of any individual who knowingly provides false information to any person regarding the individual's eligibility").

36. *Id.* § 112(f)(2).

37. *Id.* § 112(j) and (k).

38. *See* Elections Canada, http://www.elections.ca.

39. Conference Board of Canada, *How Canada Performs: Voter Turnout*, http://www.conferenceboard.ca/hcp/details/society/voter-turnout.aspx?pf=true.

40. John Ibbitson, *The Alarming Decline in Voter Turnout*, THE GLOBE & MAIL (Oct. 14, 2011), http://www.theglobeandmail.com/news/politics/the-alarming-decline-in-voter-turnout/article4247507/.

41. WEISER *supra* note, 8 at 9.

transaction with a government agency to avoid registration or to remove themselves from a government list that they had no interest in joining in the first place, particularly if it involves investigation of their citizenship, felon status, and other factors that are important to eligibility.

Even if individuals can ask to be removed from the registration list after the database information has been transferred to election officials, such automatic registration raises serious privacy concerns. Voter registration lists are public documents that are (and should be) accessible to journalists, candidates, political parties, and individual citizens. In fact, this transparency is an important component of our election process since these lists are often bought by candidates and political parties for the purposes of identifying voters for political campaigns and organizing get-out-the-vote programs for Election Day.

In contrast, not only are state governments obligated to keep the information in many types of other databases maintained by government agencies private, but information on individuals such as police officers, government officials, or victims of domestic violence must be kept confidential. Automatic voter registration could reveal information such as residential addresses, thereby violating the privacy of individuals who have registered for various other types of government benefits. The VEA does require that such information be kept confidential, but that may be very difficult for election officials to do when they are receiving large amounts of information on hundreds of thousands of individuals from other government databases. The source agencies, which may otherwise be required by law to keep all of their client information confidential, may not be aware that certain clients are police officers or victims of domestic violence—individuals with specific privacy requirements.

A Slippery Slope: Permanent Registration

The Brennan Center and others are also proposing that the federal government require states to institute statewide permanent registration. This requirement would mandate that "once a voter is on the rolls, she would be permanently registered within the state and able to vote without re-registering even if she moved within the state or changed her name."[42]

Already, the National Voter Registration Act has curtailed states' ability to clean up bloated voter registration rolls by removing ineligible voters who have moved or died. Making registrations permanent would exacerbate this problem. In fact, many states became so fearful of lawsuits by the Justice Department to enforce these NVRA restrictions that they simply stopped maintaining the integrity of their voter registration rolls.

The U.S. Postal Service's NCOA is supposedly so inaccurate that liberal civil rights organizations have objected to its use by private parties trying to investigate the validity of voter registrations.

Citizens have a responsibility to inform state election officials when they change their residence or become ineligible to vote for other reasons, such as being convicted of a felony. Notifying election officials of a change of address within a state is especially important because election officials estimate the number of ballots needed at a polling place based on the number of registered voters and past turnout. Allowing individuals who are registered elsewhere in a state but who failed to notify election officials of their move to vote at a new precinct would undermine election officials' ability both to estimate how many ballots are needed and to ensure a smooth voting experience without long lines. Indeed, underestimating the number of ballots needed or the number of voters expected at a given precinct makes it more likely that some voters will be disenfranchised.

Furthermore, the proposal on permanency would require government agencies like state Departments of Motor Vehicles, the Social Security Administration, or the Post Office to provide updated address information to election officials in order to change the registration addresses of registered voters. Again, such a proposal smacks of hypocrisy: The U.S. Postal Service's NCOA is supposedly so inaccurate that liberal civil rights organizations have objected to its use by private parties trying to investigate the validity of voter registrations.

42. WEISER, *supra* note 8, at 10.

"Vote Caging." These groups even have coined a term—"vote caging"—to describe this practice. Specifically, they claim that private parties' use of the U.S. Postal Service's practice of returning non-forwardable mail to challenge the eligibility of voters constitutes voter suppression even if its records show that the individual no longer resides at the registered address.[43] Indeed, a number of bills have been sponsored in Congress that would make reliance on the U.S. Postal Service's mail service in this manner a federal offense. Not surprisingly, Section 301 of Representative Lewis's VEA would prohibit such "vote caging." If the NCOA database is so inaccurate, why are some suggesting that it be used to pad the voter rolls?

The real problem with such a system is that without a unique identifier, it would be very difficult to match many of these records.[44] The only such unique identifier is a Social Security number. Only a handful of states require that an individual registering to vote provide a Social Security number, and these states, such as Virginia, are allowed to do so only because they were grandfathered into the federal Privacy Act of 1974, which restricts the use of Social Security numbers. Any states that did not require a Social Security number to register when that act was passed cannot implement such a requirement today.[45] When the Help America Vote Act of 2002 was being debated in Congress, a proposal to allow all states to require a full Social Security number from new voter registrants was defeated.

The proposal to provide every U.S. citizen upon birth or naturalization a voter registration number similar to a Social Security number, to be used in all elections and activated when a voter turns 18, would require the creation of a new federal bureaucracy. A more logical approach would be simply to amend federal law to allow all states to require that any individual registering to vote must provide his or her Social Security number. However, in the current political climate, such reform has little chance. Furthermore, political concerns aside, the use of Social Security numbers for voter registration raises valid privacy issues.

To the extent that state voter registration lists can be linked to state DMV records and other state databases, states should—and often do—conduct regular database matching to update registration information as individuals move, die, or become ineligible. But due to the inherent inaccuracies in all such databases, as well as the inability to keep up with all changes in the status of individual voters, states should not be prohibited from removing voters who do not vote in a certain number of federal elections—after they are sent notice of the impending removal. That failure to vote is one indication that a voter has moved or otherwise become ineligible without notifying election officials.

Election-Day or Same-Day Registration

Election-Day registration is highly vulnerable to organized election fraud. The proposal for a federally mandated "fail-safe" that would allow anyone to register and vote on Election Day raises constitutional concerns and is poor public policy.[46] Indeed, such policy is a prescription for fraud,

Allowing a voter to both register and vote on Election Day makes it nearly impossible to prevent duplicate votes in different areas or to verify the accuracy of any information provided by a voter. Election officials are unable to check the authenticity of a registration or the eligibility and qualifications of a registrant by comparing the registration information to other state and federal databases that provide information not just on identity, but also on citizenship status and whether the individual in question is a felon whose voting rights have been suspended. Since Election Day registrants cast

43. Project Vote, *Voter Caging*, http://projectvote.org/voter-caging.html.

44. Additionally, a change of mailing address does not always mean that an individual has changed his or her residential address for residency and voting purposes.

45. *See* 5 U.S.C. § 552(a) note (Disclosure of Social Security number); *see also* Schwier v. Cox, 340 F.3d 1284 (11th Cir. 2003).

46. Voter Empowerment Act of 2013 § 121. Currently, eight states (Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin, and Wyoming) and the District of Columbia allow Election Day registration. Two additional states have passed Election Day legislation; Connecticut's new law will take effect on July 1, 2013, and California's law will take effect on January 1 of the year following the year the secretary of state certifies that the state has a statewide voter registration system that complies with the Help America Vote Act of 2002 (no sooner than January 2014). National Conference of State Legislatures, *Same Day Registration*, http://www.ncsl.org/legislatures-elections/elections/same-day-registration.aspx.

a regular ballot, even if election officials determine that the registration was invalid after the election, they have no means of discounting the ballot.

For those states entering into cooperative agreements to compare their voter registration lists to identify individuals registered in more than one state, same-day registration would also eliminate that safeguard. In fact, many of the same organizations that are proposing this type of "fail-safe" have vigorously fought Wisconsin's effort to begin providing some verification of Election Day registrants by requiring such individuals to show a photo ID. After a comprehensive investigation of voter fraud in the 2004 election, the Milwaukee Police Department concluded that the "one thing that could eliminate a large percentage of fraud or the appearance of fraudulent voting in any given Election is the elimination of the On-Site or Same-Day voter registration system."[47]

In 1986, voters in Oregon got rid of same-day registration after the Rajneeshee cult tried to take over a local county by not only engineering a bioterrorist attack using salmonella to sicken hundreds of residents (and potential voters), but also planning to bring in large numbers of nonresidents (many of them homeless) on Election Day to flood the polls with ineligible voters. As Kansas Secretary of State Kris Kobach said at The Heritage Foundation in January 2013, double voting becomes almost impossible to stop with same-day registration. Voters can just make up names and false addresses and go from polling place to polling place to vote. Kobach was not aware of any state where the registration system is so automated that the temporary poll workers who staff precincts on Election Day could check the identities and residential addresses of instant voters against other state databases. Election Day registration invites fraud.

Election-Day registration is not likely to increase voter participation or turnout. Most important, however, is that what some call "convenience voting," which includes "mail voting, no excuse absentee voting, early voting and even election-day registration," may actually hurt turnout.[48] The general election voter turnout in 2008 was the highest in a presidential election since 1960. However, an American University study reported that of "the 12 states which had turnout declines in 2008 as compared to 2004, 10 had some form of convenience voting. Of the 13 states which had the greatest increases in turnout, seven had none of the forms of convenience voting."[49] In fact, four of the eight states with Election Day registration reported *lower* turnout in 2008, when turnout generally went up in the rest of the country, than they had reported in 2004. The state with the largest decrease in turnout in 2008 was Maine (minus 3.6 percentage points), which also has Election Day registration.

Pouring huge amounts of information, much of it full of errors and mistakes, from federal databases into state voter registration databases would only make the current problems exponentially worse. States are solving the problems that exist in registration lists; additional federal bureaucracy will not help.

Similarly, a study by the Maine Heritage Policy Center found that Election Day registration in Maine had "had no recognizable impact on voter turnout" since its implementation in 1973. In fact, the three election years in which Maine had its "lowest turnout years since 1960 occurred after EDR was implemented."[50] Nationwide, turnout in the 2012 election was generally down from 2008, dropping a little

47. Milwaukee Police Dept., Report of the Investigation into the November 2, 2004, General Election in the City of Milwaukee 26 (2008), *available at* http://media2.620wtmj.com/breakingnews/ElectionResults_2004_VoterFraudInvestigation_MPD-SIU-A2474926.pdf.

48. American University News, African-Americans, Anger, Fear and Youth Propel Turnout to Highest Level Since 1960, 14 (Dec. 17, 2008), *available at* http://www.american.edu/research/news/loader.cfm?csModule=security/getfile&pageid=23907.

49. *Id.*

50. Maine Heritage Policy Ctr., Protecting the Integrity of Maine's Elections: Election-Day Registration in Maine 4 (2011), *available at* http://www.mainepolicy.org/wp-content/uploads/The-Maine-View-Same-Day-Voter-Registration-100511.pdf.

over 5 percentage points, yet the turnout in Maine went down over 8 percentage points.[51]

Curtis Gans of the Center for the Study of the American Electorate has concluded that states that adopt "convenience voting" reforms "have a worse performance in the aggregate than those which do not." The only temporary exception is for Election Day registration, which apparently helps turnout only "in its initial application and for a few elections thereafter." In fact, in election years where turnout generally increases, "the increase in states with convenience voting" is smaller than the increase in those states that have not adopted such measures, while "in years of decrease, the decreases in the states [with convenience voting] are greater."[52]

Election Day registration, particularly with its increased risk of ballot fraud, is not the answer to low turnout or registration.

Alternative Approaches to Registration Reform

States can help to ensure voting roll accuracy. There is no question that the U.S voter registration system could be improved. As the Pew Center on the States found, one of every eight registrations in the United States is "no longer valid or [is] significantly inaccurate."[53] Over 1.8 million deceased voters remain registered, and almost 3 million people are registered in more than one state. However, the answer to these problems is not federal mandates or federal interference in election administration, which should be reserved to the states, consistent with America's decentralized election administration system.

According to Kansas Secretary of State Kris Kobach, federal mandates would be "completely unworkable" and would "make a mess" of state voter registration databases. States have already begun to implement state-based, bipartisan remedies to voter registration problems that preserve the balance of power between states and the federal government while maximizing new registration technology in order to ease, rather than remove, an individual's responsibility to register himself.

For example, Secretary Kobach has initiated the "Interstate Voter Registration Crosscheck Program" to "increase the number of eligible citizens who register to vote" while ensuring "that accurate and current voter registration rolls are maintained."[54] As of January 10, 2013, 21 states are participating in this program,[55] comparing their voter registration lists to detect multiple registrations (and votes) by the same individual in different states. By the end of 2012, 15 states had compared over 45 million records, turning up hundreds of thousands of potentially duplicate registrations.

For those voters who registered in a new state because they moved but neglected to notify election officials in the state of their former residence, this program gives them an opportunity to correct their registration. For those who intentionally register in more than one state to commit fraud, it helps states to discover violations of the law that threaten the integrity of elections—violations that in the past have been almost impossible to detect. Prosecutions of individuals who were found to have voted in two different states under this program, according to Kobach, have already been initiated.

Similarly, the Pew Center on the States is working on a project with seven states—Colorado, Delaware, Maryland, Nevada, Utah, Virginia, and Washington—to improve the accuracy of voter registration lists and improve voter registration rates. This initiative consists of comparing registration lists with "other data sources to broaden the base of information used to update and verify voter rolls," using the same proven data-matching techniques developed in private industry "to ensure accuracy and security," and developing new ways for voters to

51. Bipartisan Policy Ctr., 2012 Election Turnout Dips Below 2008 and 2004 Levels: Number of Eligible Voters Increases By Eight Million, Five Million Fewer Votes Cast 2 (2012), *available at* http://bipartisanpolicy.org/sites/default/files/2012%20Voter%20Turnout%20Full%20Report.pdf.

52. American University News, *supra* note 48.

53. Pew Ctr on the States, Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade 1 (2012), *available at* http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Upgrading_Voter_Registration.pdf.

54. Kris Kobach, Kansas Secretary of State, Presentation at Meeting of Nat'l Ass'n of State Election Directors (Jan. 26, 2013).

55. Arizona, Arkansas, Colorado, Illinois, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, Oklahoma, South Dakota, and Tennessee.

submit registration information to "minimize manual data entry" errors.[56]

After a long struggle with the Obama Administration, states such as Florida and Colorado are also starting to gain access to the Department of Homeland Security's records on aliens in order to check the citizenship status of registered voters. However, as Secretary Gessler noted while speaking at The Heritage Foundation, the DHS records are incomplete and contain errors. While access to the DHS database is needed, such access is no substitute for, or nearly as effective as, requiring individuals registering to vote or voting to provide proof of identity or citizenship as Georgia, Alabama, and Arizona have done.

Pouring huge amounts of information, much of it full of errors and mistakes, from federal databases into state voter registration databases would only make the current problems exponentially worse. States are solving the problems that exist in registration lists; additional federal bureaucracy will not help.

Moreover, the U.S. Election Assistance Commission, created by the Help America Vote Act of 2002, is one of the most dysfunctional agencies in the federal government and does not have the resources, personnel, or knowledge to direct states. These proposals that supposedly are intended to help states improve the accuracy and validity of state voter registration lists could instead sabotage the progress that states are already making.

States are improving the voter registration process. The National Voter Registration Act made voter registration easy: It requires voter registration at state DMV, welfare, and disability agencies and military recruitment offices, as well as mandating mail-in registration. Yet states have been initiating new measures to make registration even simpler. States like Colorado, Louisiana, and Georgia have implemented online registration that allows individuals who already have a state driver's license to register to vote over the Internet. Colorado voters can register using the state's online voter registration system through their computers, phones, or tablets. And Louisiana has implemented a smartphone application that allows voters to access information about their registration, polling location, voting district, and sample ballots.

In 2012, Colorado Secretary of State Gessler sent notices to 700,000 Coloradans who might be eligible to vote but were not yet registered to encourage and help them to register for the upcoming election.[57] By Election Day, Colorado voter registration reached a record level: 440,888 more voters registered than in 2008, a 13.7 percent increase. Colorado's increase in turnout is even more notable when considering that most of the nation saw a decrease in turnout in 2012 compared to the 2008 election. Secretary Gessler attributes this increase to the deployment of "new technologies and systems such as multi-state data matching, electronic ballot delivery for military and overseas voters, and high-speed Ballot on Demand printers."[58]

Conclusion

The federal government and Members of Congress should respect differences among states. America is not homogenous, and one size does not fit all, especially when it comes to issues like voter registration. Citizens in different states have different needs, desires, and values; therefore, it makes little sense for the federal government to micromanage state voter registration systems. Indeed, the federal government has almost no experience administering elections; states are the experts on voting and, as such, are already implementing new programs and systems to improve the accuracy, effectiveness, and ease of the voter registration process.

Requiring automatic registration from government databases risks the integrity of the election process and improperly shifts the responsibility for registering from the individual to the government. States are already using federalism and their unique responsibilities in the voting process as originally intended: to experiment in the laboratories of democracy. The improvements these states are implementing come at less cost—to our treasury,

56. Pew Ctr. on the States, *supra* note 53.

57. Press Release, Scott Gessler, Colorado Secretary of State, Colorado Registers Another Successful Election: Voters Exceed 2008 Turnout (Nov. 9, 2012).

58. Colorado Secretary of State Scott Gessler, 2012 General Election Review: A Colorado Success Story (Feb. 7, 2013).

our Constitution, and the integrity of our elections—than mandatory universal registration.

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The Heritage Foundation

LEGAL MEMORANDUM

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Felon Voting and Unconstitutional Congressional Overreach

Hans A. von Spakovsky and Roger Clegg

Abstract

Both the original Constitution and the Fourteenth Amendment specifically delegate to the states the right to determine the qualifications of voters and to disqualify anyone who participates "in rebellion, or other crime." Congress cannot override the Constitution through legislation and has no authority to restore the voting rights of felons for federal elections. The American people and their freely elected state representatives must make their own decisions in their own states about when felons should have their civil rights restored, including the right to vote. Requiring a waiting period and an application process is fair and reasonable given the high recidivism rate among felons. Any legislation passed by Congress taking away that power is both unconstitutional and unwise public policy.

Whether—or when—felons should have their voting rights restored is a public policy issue that is open to debate, but there is no question that the authority to decide this issue lies with the states, not with Congress.

A federal bill such as S. 2550, sponsored by Senator Rand Paul (R–KY)—which would restore the right to vote to nonviolent felons after they have served their term of imprisonment and no more than one-year of probation[1]—is a blatant example of congressional overreach that invades power specifically reserved to the states by the Constitution.

The Consequences of Felony Convictions

Various consequences attach to a criminal felony conviction.

- There may be (and usually are) prison or jail sentences.

Key Points

- There is no question that the authority to decide whether (or when) felons should have their voting rights restored lies with the states, not with Congress.
- A federal bill such as S. 2550, which would restore the right to vote to nonviolent felons after they have served their term of imprisonment and no more than one year of probation, invades power specifically reserved to the states by the Constitution.
- Automatic felon re-enfranchisement is unwise public policy. It sends the message that Americans do not consider criminal behavior so serious that the right to vote should be denied because of it. Those who are unwilling to follow the law cannot demand a right to make it. Not allowing them to vote tells criminals that committing a serious crime puts them outside the circle of responsible citizens until they show they have turned over a new leaf. Being readmitted to the circle should not be automatic.

This paper, in its entirety, can be found at **http://report.heritage.org/lm145**

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Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

- There are other direct penalties such as fines, court costs, restitution, and possible probation and parole requirements.

- In addition to losing the right to vote in 48 states,[2] felons face additional penalties imposed by states, such as the inability to work as a police officer, to hold certain elected offices, or to serve on a jury.[3]

- Under both federal and most state laws, felons also cannot possess a gun.[4]

In short, the initial time in prison is not and has never been the only way a felon "pays his debt to society."[5]

Of the 48 states that disenfranchise individuals upon conviction for a felony offense, most do not return the right to vote until any term of probation or parole has been fully completed. Furthermore, some states, such as Florida, Iowa, Kentucky, and Virginia, require felons to apply for restoration of their civil rights, including voting, through the pardon process.[6]

The Proposed Federal Legislation

S. 2550 provides that the right of an individual to vote in any federal election:

> shall not be denied or abridged because that individual has been convicted of a non-violent criminal offense, unless, at the time of the election, the individual
>
> (1) is serving a sentence in a correctional institution or facility; or
>
> (2) ... is serving a term of probation.

Accordingly, under this proposal, nonviolent felons must be allowed to vote once they are no longer in prison unless they are on probation, in which case they still get their right to vote restored:

> (1) on the date on which the term of probation ends, if the term of probation is less than 1 year; or
>
> (2) on the date that is 1 year after the date on which the individual begins serving the term of probation, if the term of probation is 1 year or longer.

The bill gives both the U.S. attorney general and private parties the ability to enforce this requirement through civil litigation.

Bills proposed in prior Congresses have gone even further. For example, in 2009, Representative John Conyers (D–MI) sponsored H.R. 3335, which would have restored the right of all felons to vote in federal elections the moment their prison sentence was completed.[7] Just as in H.R. 3335, the definition of "correctional institution or facility" contained in Senator Paul's bill does not include "any residential community treatment center (or similar public or private facility)."

Under S. 2550, if the felon is in a halfway house or other type of "residential community treatment center" but not under probation, or if he is past the one-year probation time limit but still has not completed other requirements of his sentence such as paying restitution to victims or criminal fines, he would still get to vote. In other words, states would be forced to allow individuals who intentionally broke the law to vote for those who make the laws—and in some cases enforce the laws—even though they have not completed all of the terms and conditions of their sentences.

1. S. 2550, Civil Rights Voting Restoration Act of 2014, 113th Cong. (2013–2014) (this bill is cosponsored by Sen. Harry Reid (D–NV); *see also* H.R. 5719, sponsored by Rep. Frederica S. Wilson (D–FL).
2. In Vermont and Maine, felons are allowed to vote from prison.
3. *See* U.S. Dept. of Justice, Office of the Pardon Attorney, Civil Disabilities of Convicted Felons: A State-by-State Survey (Oct. 1992), *available at* https://www.ncjrs.gov/pdffiles1/Digitization/171656NCJRS.pdf.
4. 18 U.S.C. § 922(g); *see, e.g.*, Tex. Pe. Code Ann. § 46.04 ("A person who has been convicted of a felony commits an offense if he possesses a firearm"); Va. Code § 18.2-308.2; and Fl. Statutes § 790.23.
5. One of the authors explains why this metaphor is a misleading one. *See* Roger Clegg, *The Fox Is Guarding the Henhouse*, Center for Equal Opportunity (May 6, 2013), http://www.ceousa.org/issues/693-the-fox-is-guarding-the-henhouse.
6. *See* National Conference of State Legislatures, *Felon Voting Rights*, http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx (last visited Jan. 13, 2015).
7. H.R. 3335, Democracy Restoration Act of 2009, 111th Cong. (2009–2010).

The Fourteenth Amendment and the (Non-Racist) History of Felon Disenfranchisement

S. 2550 represents an unconstitutional intrusion into the rights of the states. Congress does not have the authority to force states to restore the voting rights of convicted felons—even in federal elections. Section 2 of the Fourteenth Amendment specifically provides that states may abridge the right to vote of citizens "for participation in rebellion, or other crime." The Fourteenth Amendment recognized a process that goes back to ancient Greece and Rome, as even opponents of felon disenfranchisement have recognized.[8] The claim that state laws that take away the right of felons to vote are all rooted in racial discrimination is simply historically inaccurate: Even before the Civil War, when many black Americans were slaves and could not vote, most states took away the rights of voters who were convicted of crimes.[9]

It should be kept in mind that the Fourteenth Amendment, like the Fifteenth Amendment, was one of the key post–Civil War amendments sponsored and passed by Republicans, the party of Abraham Lincoln and abolition, to help secure the rights of black Americans. Those same Members of Congress deliberately protected the right of states to withhold the right to vote from citizens who were convicted of serious crimes against their fellow citizens, because "the framers of the Civil War Amendments saw nothing racially discriminatory about felon disenfranchisement. To the contrary, they recognized the power of the states to prohibit felons from voting."[10]

A key source for proponents of felon voting, a 2002 article by University of Minnesota Professor Christopher Uggen and Northwestern University Professor Jeff Manza, concedes that "[r]estrictions [on felon voting] were first adopted by some states in the post-Revolutionary era, and by the eve of the Civil War some two dozen states had statutes barring felons from voting or had felon disenfranchisement provisions in their state constitutions."[11] That means that over 70 percent of the states had these laws by 1861—when most blacks could not vote because either they were still enslaved or they lived in northern states that denied them the franchise based on their race. In 1855, only five states, all in New England, did not exclude blacks from voting because of their race.[12]

While it is true that during the period from 1890 to 1910, five Southern states passed race-targeted felon-disenfranchisement laws, a graphic in the article by Uggen and Manza demonstrates that over 80 percent of the states in the United States (which was increasing in size as western territories became states) already had felon-disenfranchisement laws.[13]

Alexander Keyssar's book *The Right to Vote*—cited in the Uggen and Manza article (Keyssar also supports felon enfranchisement)—notes that outside the South, the disenfranchisement laws "lacked socially distinct targets and generally were passed in a matter-of-fact fashion."[14] Even for the post–Civil War South, Keyssar admits that in some states, "felon disfranchisement provisions were first enacted [by] Republican governments that supported black voting rights."[15] To quote Uggen and Manza, "In general, some type of restriction on felons' voting rights gradually came to be adopted by almost every state, and at present 48 of the 50 states bar felons—in most cases including those on probation or parole—from voting."[16]

8. Human Rights Watch & The Sentencing Project, Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States (1998).

9. Roger Clegg, George T. Conway III, & Kenneth K. Lee, *The Case Against Felon Voting*, 2 U. St. Thomas J.L. & Pub. Pol'y 1, 4 (2008); for an exposition of this faulty claim, see Brentin Mock, *The Racist History Behind Felony Disenfranchisement Laws*, Demos (Feb. 13, 2014), http://www.demos.org/blog/2/13/14/racist-history-behind-felony-disenfranchisement-laws.

10. *Id.*

11. Christopher Uggen and Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 American Sociological Rev. 777, 781 (2002).

12. Alexander Keyssar, The Right to Vote: The Contested History of Democracy in the United States 55 (2000).

13. Uggen & Manza, *supra* note 11, at 795.

14. Keyssar, *supra* note 12, at 162.

15. Alexander Keyssar, *Did States Restrict the Voting Rights of Felons on Account of Racism?* Hist. News Network (Oct. 4, 2004), http://hnn.us/articles/7635.html.

16. Uggen & Manza, *supra* note 11, at 781.

As for the five Southern states that tried to use these laws during Reconstruction and afterward specifically in order to disenfranchise black voters, those laws have all been amended[17]—as indeed they had to be since they otherwise would have been struck down, as the Supreme Court of the United States struck down Alabama's law in *Hunter v. Underwood*.[18]

If there were evidence that such discriminatory laws were still on the books, there are many well-funded civil rights advocacy organizations, as well as the U.S. Department of Justice, that would be eager to challenge them. The fact that no such challenges are being brought indicates that such evidence likely does not exist.

One other important note: In the *Hunter* case, the Supreme Court specifically noted that "[p]roof of racially discriminatory intent is required to show a violation of the Equal Protection Clause." No such showing of intentional discrimination can be made with regard to such state laws today, and it would not be sufficient for challengers to prove that such laws only have a "racially disproportionate impact."[19]

For this reason, Congress also lacks authority to ban state felony disenfranchisement laws under either Section 5 of the Fourteenth Amendment or Section 2 of the Fifteenth Amendment.[20] Under existing state laws, criminals lose their right to vote because of their own actions in violating the law, not because of their race.

Article I of the Constitution and Felon Voting

Under the U.S. Constitution, if Congress is not acting pursuant to a specific grant of power given to it in Article I or some other constitutional provision, it is acting unconstitutionally. The federal government does not have the inherent power to do whatever it wants: It is a government of limited and enumerated powers,[21] and there is no authority in the Constitution for Congress to force states to allow felons to vote, particularly in light of the language and limitations of the Fourteenth Amendment.

In fact, the Constitution gives the states authority to determine the qualifications of voters in those states. Article I, Section 2, Clause 1 provides that voters for Members of the House of Representatives "shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." The Seventeenth Amendment provides the same state qualification for voters for Members of the Senate. In other words, the qualifications or eligibility requirements that states apply to their residents voting for state legislators must be applied to those same residents voting for Members of Congress, thereby explicitly giving states the ability to determine the qualifications for individuals voting in federal elections.

Congress is given the authority under the Elections Clause in Section 4 of Article I to alter the "Times, Places and Manner of holding Elections for Senators and Representatives," but that power does

17. *See* Roger Clegg, *Who Should Vote?* 6 Tex. Rev. L. & Pol. 159, 171 n.4 (2001). For more on the non-racist history of felon disenfranchisement in the United States—from the Founding, up to the Civil War, after the Civil War (with the limited exceptions noted), including the Reconstruction Congress, on to the present day—*see* Roger Clegg, George T. Conway III, & Kenneth K. Lee, *The Bullet and the Ballot? The Case for Felon Disenfranchisement Statutes*, 14 J. Gender Soc. Pol'y & L. 1, 5–8 (2006); John Dinan, *The Adoption of Criminal Disenfranchisement Provisions in the United States: Lessons from the State Constitutional Convention Debates*, 9 J. Pol'y Hist. 282 (2007); Richard M. Re & Christopher M. Re, *Voting and Vice: Criminal Disenfranchisement and the Reconstruction Amendments*, 121 Yale L.J. 1584 (2012); Michael B. Mukasey, *What Holder Isn't Saying About Letting Felons Vote*, The Wall Street Journal, Feb. 14, 2014; George Brooks, *Felon Disenfranchisement: Law, History, Policy, and Politics*, 32 Fordham Urban L.J. 101 (2004). Much of this was presented to Congress in *Hearing on H.R. 3335, the Democracy Restoration Act of 2009 Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. (2010) (testimonies of Roger Clegg and Hans von Spakovsky), *available at* http://www.brennancenter.org/legislation/testimony-prof-burt-neuborne-support-hr-3335-democracy-restoration-act; *see also* Debating Reform: Conflicting Perspectives on How to Fix the American Political System 70–77 (Richard Ellis & Michael Nelson eds., 2013).

18. 471 U.S. 222 (1985). This case involved Alabama's 1901 Constitution, which disenfranchised persons convicted not just of felonies, but of misdemeanors "involving moral turpitude," a catch-all phrase that was used by state officials specifically to target black Alabamians.

19. A law may be entirely neutral in intention and yet affect some classes or groups of individuals more than others; thus, it may unintentionally have a racially disproportionate effect.

20. *See, e.g.*, City of Boerne v. Flores, 521 U.S. 507 (1997).

21. *See* U.S. v. Lopez, 514 U.S. 549 (1995).

not extend to the "qualifications" of voters. James Madison and Alexander Hamilton in *The Federalist Papers* support this view, which is the most natural reading of the text. For example, in *Federalist* No. 52, Madison stated that to have left such qualifications open to "the regulation of the Congress" would be improper. Likewise, in *Federalist* No. 60, Hamilton argues that prescribing voting qualifications "forms no part of the power to be conferred upon the national government" by the Elections Clause, which is "expressly restricted to the regulation of the times, the places, and the manner of elections."

Contrary to the claim made by some,[22] the Supreme Court's 1970 decision in *Oregon v. Mitchell* does not provide any support for a federal felon voting law.[23] In a fractured series of opinions, five Justices voted to uphold legislation that required states to allow 18-year-olds to vote in federal elections, but eight Justices rejected—four "specifically" and four "implicitly"—the argument that Congress had the authority under Article I, Section 4 to make such changes.[24] Only Justice Hugo Black thought Congress had that authority. Justice Black wrote one opinion, Justice William Douglas another, and Justice William Brennan a third, in which he was joined by Justices Byron White and Thurgood Marshall. None of those writing or joining one of these opinions joined any of the others, and four other Justices—John Marshall Harlan, Potter Stewart, Harry Blackmun, and Chief Justice Warren Burger—dissented.

Other than Justice Black, the remaining four non-dissenting Justices relied on interpretations of Congress's enforcement authority under the Fourteenth and Fifteenth Amendments that are inconsistent with the Supreme Court's subsequent rulings in *Richardson v. Ramirez* and *City of Boerne v. Flores*.[25]

- In *Richardson v. Ramirez*, the Court specifically rejected a challenge under the Equal Protection Clause to a state's felon disenfranchisement law.
- In *City of Boerne v. Flores*, the Court ruled that since the Fourteenth Amendment bans only laws that are deliberately discriminatory, Congress cannot pass legislation under the Amendment's enforcement clause aimed at laws that have only a disproportionate effect on a religious minority group: Congress's exercise of power under the Amendment's enforcement clause must have "congruence and proportionality" with the underlying constitutional guarantee.

In any event, the issue was superseded six months later with the ratification of the Twenty-Sixth Amendment, which provided that "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

Misguided claims by a few proponents of felony enfranchisement notwithstanding, Congress cannot rely on Article I, Section 4 for any authority on felon voting. Any doubt on this point was laid to rest in 2013, when the Supreme Court confirmed in *Arizona v. Inter Tribal Council of Arizona* that only states, not Congress, have the authority to determine the qualifications of federal voters.[26] The majority opinion by Justice Antonin Scalia, which was joined by the Court's four liberal justices as well as Chief Justice John Roberts and Justice Anthony Kennedy, stated:

> Arizona is correct that the Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them. The Constitution prescribes a straightforward rule for the composition of the federal electorate. Article I, § 2, cl. 1, provides that electors in each State for the House of Representatives "shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature," and the Seventeenth Amendment adopts the same criterion for senatorial elections. Cf. also Art. II, § 1, cl. 2 ("Each State shall appoint,

22. *See, e.g., Hearing on H.R. 3335, the Democracy Restoration Act of 2009 Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. (2010) (testimony of Burt Neuborne).
23. Oregon v. Mitchell, 400 U.S. 112 (1970).
24. Congressional Research Service, Annotated Constitution (discussion of Article I, Section 4, at n.346), http://www.law.cornell.edu/anncon/html/art1frag18_user.html (last visited Jan. 13, 2015).
25. Richardson v. Ramirez, 418 U.S. 24 (1974); City of Boerne v. Flores, 521 U.S. 507 (1997).
26. 133 S. Ct. 2247 (2013).

in such Manner as the Legislature thereof may direct," presidential electors). One cannot read the Elections Clause as treating implicitly what these other constitutional provisions regulate explicitly. "It is difficult to see how words could be clearer in stating what Congress can control and what it cannot control. Surely nothing in these provisions lends itself to the view that voting qualifications in federal elections are to be set by Congress."

Prescribing voting qualifications, therefore, "forms no part of the power to be conferred upon the national government" by the Elections Clause, which is "expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections." This allocation of authority sprang from the Framers' aversion to concentrated power. A Congress empowered to regulate the qualifications of its own electorate, Madison warned, could "by degrees subvert the Constitution." At the same time, by tying the federal franchise to the state franchise instead of simply placing it within the unfettered discretion of state legislatures, the Framers avoided "render[ing] too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone."[27]

Moreover, although Justices Samuel Alito and Clarence Thomas dissented from the judgment on other grounds, they agreed with the majority that the Constitution gives states, not Congress, the authority to determine the qualifications of voters. Justice Thomas stated, "I think that both the plain text and the history of the Voter Qualifications Clause ... and the Seventeenth Amendment authorize States to determine the qualifications of voters in federal elections."[28] Justice Alito added that "[u]nder the Constitution, the States, not Congress, have the authority to establish the qualifications of voters in elections for Members of Congress."[29]

Other Arguments Against Felon Voting

States cannot limit voting qualifications based on race or sex because of the explicit prohibitions of the Fifteenth and Nineteenth Amendments; however, the Fourteenth Amendment specifically allows them to limit those qualifications based on criminal convictions.

As suggested in the *Arizona* case, when it comes to presidential elections, Congress has even less authority. Article II, Section 1 provides that states "shall appoint, in such Manner as the Legislature thereof may direct," the electors of the Electoral College. Congress can determine only "the Time of chusing the Electors, and the Day on which they shall give their Votes." Thus, under these provisions, Congress has no authority to tell the states that they must allow felons to vote in presidential elections.

The Equal Protection Clause of Section 1 of the Fourteenth Amendment likewise provides Congress with no authority on this issue. The Supreme Court threw out an equal protection challenge to California's felon disenfranchisement law in 1974, concluding, "Those who framed and adopted the Fourteenth Amendment could not have intended to prohibit outright in § 1 of that Amendment that which was expressly exempted from the lesser sanction of reduced representation imposed by § 2 of the Amendment."[30]

Finally, claims that state felon disenfranchisement laws violate the Voting Rights Act also have been dismissed in the courts. What is more, as the Eleventh Circuit said when it concluded that Section 2 of the Voting Rights Act did not apply to Florida's voting rules for felons, any contrary view would raise "serious constitutional problems because such an interpretation allows a congressional statute to override the text of the Constitution."[31]

The bottom line is that S. 2550 is unconstitutional and invades power specifically reserved to the states by the Fourteenth Amendment and by Article I and other sections of the Constitution. It is a telling point that Attorney General Eric Holder, who

27. Arizona, 133 S. Ct. at 2257-2258 (citations omitted).
28. *Id.* at 2262.
29. *Id.* at 2271 (citations omitted).
30. Richardson v. Ramirez, 418 U.S. 24, 43 (1974).
31. Johnson v. Florida, 405 F.3d 1214, 1229 (2005) ("Congress has expressed its intent to *exclude* felon disenfranchisement provisions from Voting Rights Act scrutiny" *Id.* at 1234). *See also* Hayden v. Pataki, 449 F.3d 305 (2nd Cir. 2006); Simmons v. Galvin, 575 F.3d 24 (1st Cir. 2009); Farrakhan v. Gregoire, 623 F.3d 990 (9th Cir. 2010).

wants the voting rights of felons restored, has called on the states to act, not Congress.[32] Apparently, even Holder recognizes that Congress clearly lacks this authority because, despite his own policy views, "the Obama administration has not advocated" for such congressional legislation.[33]

It also must be noted that it makes good sense to leave the issue of felon disenfranchisement—and felon re-enfranchisement—to the states as a matter of federalism. As even S. 2550 recognizes, not all crimes are equal, even among felony offenses. Just as one cannot presume that all felons are to be mistrusted with the ballot, it would be wrong to assume that all convicted felons can be trusted to vote in a responsible manner and therefore should be allowed to vote. Rather, it would be more prudent to distinguish among various crimes, between crimes recently committed and crimes committed in the distant past, and among those who have committed many crimes and those who have committed only one.

Such line-drawing is precisely why the matter should be left to the states and why it should be addressed on a case-by-case or even a category-by-category basis. It would be impossible for Congress to undertake this effort even if it had the authority to do so, which it does not: Every state has its own array of criminal offenses with wide ranges of punishment, and these offenses are constantly changing. It would also be difficult for Congress to draft a statute that drew intelligent distinctions based on how recently a crime was committed or the number of crimes committed. Accordingly, it is prudent for Congress to leave such determinations to the states.

S. 2550's crude attempt at line-drawing, allowing disenfranchisement only for a "crime of violence," illustrates the problem. It would not allow disenfranchisement for treason, espionage, bribing public officials, or voter fraud and other election crimes—crimes that go to the heart of the democratic process—let alone, say, selling heroin or methamphetamine to minors.

Policy Arguments in Favor of Felon Disenfranchisement

Those who are not willing to follow the law cannot claim a right to make the law for everyone else. And when an individual votes, he or she is indeed either making the law—either directly in a ballot initiative or referendum or indirectly by choosing lawmakers—or deciding who will enforce the law by choosing local prosecutors, sheriffs, and judges.

Not everyone in the United States may vote: Thus, children, noncitizens, and those who are adjudicated to be mentally incompetent are not allowed to vote. This nation maintains certain minimum, objective standards of responsibility, trustworthiness, and commitment to our laws for those who are allowed to participate in the solemn enterprise of self-government. It is not unreasonable to suppose that those who, regardless of their race, have committed serious crimes against their fellow citizens may also be presumed to lack this responsibility, trustworthiness, and commitment to America's laws.

Is it too much to demand that those who would make the laws for others—who would participate in self-government—be willing to follow those laws themselves? While some may think it is, it is certainly not unreasonable for others to disagree.

In November 2000, for example, a ballot initiative removed Massachusetts from the list of states allowing felons in prison to vote, leaving only Vermont and Maine. Francis Marini, Republican leader of the state house at the time, criticized the state's repealed practice because it made "no sense." As Marini questioned, "We incarcerate people and we take away their right to run their own lives and leave them with the ability to influence how we run our lives?"[34]

Thus, even if Congress had the constitutional authority to pass this legislation, there are sound public policy reasons why it should not do so. The loss of civil rights is part of the sanction that our society has determined should be applied to criminals. While some states automatically restore the right to vote after a felon has completed all of the terms of his sentence, others require individual applications. States are and should be entitled to make their own decisions on this issue—a prerogative that includes implementing procedures to ensure that those who injure or murder their fellow citizens, steal, or damage our democracy by committing election crimes or engaging in public corruption like bribery have dem-

32. Matt Apuzzo, *Holder Urges States to Lift Bans on Felons' Voting*, The New York Times (Feb. 11, 2014).

33. *Id.*

34. "Jailhouse Vote," The Wall Street Journal (Dec. 7, 1999), http://www.ncpa.org/sub/dpd/index.php?Article_ID=10780.

onstrated that they can now be trusted again to exercise all of the rights of full citizenship.

Virginia, for example, has set up an application process for certain felons to apply for the restoration of their civil rights, including the right to vote. The process applies to felons convicted of a violent crime, a crime against a minor, or an election law offense, and application cannot be made until three years after the sentence and any applicable probation or parole have ended.[35] Thus, Virginia's process allows for an individualized review in which the state can determine whether such felons have fully served their sentences and presented some evidence to demonstrate that they have changed their ways.

Such requirements are perfectly reasonable, particularly since a large percentage of felons are rearrested and reincarcerated within a short time after they are released from prison. According to the U.S. Department of Justice, a study of felons in 30 states revealed that two-thirds (67.8 percent) were arrested for a new crime within three years, and three-quarters (76.6 percent) were rearrested within five years.[36] In fact, more than a third of all prisoners who were rearrested within five years of release were arrested within the first six months after release, with more than half arrested by the end of the first year—within the very time that S. 2550 wants to automatically restore their right to vote. The high recidivism rate of felons provides strong support for states such as Virginia that require both a waiting period and an individualized application process.

In Virginia, felons applying for restoration of their voting rights must also show that they have paid "all court costs, fines, penalties and restitution." S. 2550 would ignore and override this process, particularly at the expense of victims who are still owed restitution, and grant relief on a wholesale basis without considering whether someone deserves a restoration of his rights.

Finally, it is particularly odd that this proposed legislation is limited only to the restoration of convicted criminals' right to vote. Senator Paul has stated that the effort to restore felon voting rights is "about helping people get their lives back on track, about enabling them to provide for their families, about breaking the cycle of violence and poverty."[37] Similarly, the findings in H.R. 3335 state that this legislation would reintegrate "offenders into free society, helping to enhance public safety." The findings also say that felon disenfranchisement laws serve "no compelling State interest" for felons "who are living and working in the community."

If that is correct, then why does neither H.R. 3335 nor S. 2550 propose to restore all of the other civil rights that a convicted criminal loses in many states? A whole host of "collateral consequences" imposed by states and the federal government, such as limitations on types of employment, access to financial aid, and housing restrictions, arguably pose far greater impediments to reintegration into society than are imposed by felony disenfranchisement laws.

For instance, if convicted criminals can be trusted to exercise the right to vote, and if restoring that ability will help to integrate such criminals back into society, then why are their rights to public employment not restored? Many states prohibit felons from working as police officers or school teachers; if they can be trusted with the right to vote, why do the sponsors of these bills not trust them to work in law enforcement or as teachers in our public schools?

State and federal laws also prohibit felons from owning or even possessing a gun. If restoring the right of felons to vote helps to reintegrate them into society, why does Senator Paul's bill not also amend federal law to allow them once again to own a gun? In fact, Senator Paul has specifically said that it is "Absolutely, untrue" that his goal is also to restore Second Amendment rights for felons.[38]

This proposed legislation assumes that felons can be trusted enough to require the automatic restoration of their right to vote but not enough to automatically restore their right to own a gun or all of the other rights that were taken away when they were convicted of a "nonviolent" crime. While plausible

35. See Commonwealth of Virginia, *Restoration of Rights*, https://commonwealth.virginia.gov/judicial-system/restoration-of-rights/ (last visited Jan. 13, 2015).

36. Alexis D. Cooper, Matthew R. Durose, & Howard N. Snyder, Recidivism of Prisoners Released in 30 states in 2005: Patterns from 2005 to 2010, 1.

37. Sen. Rand Paul Homepage, *Courier Journal Response: Rand Paul Explains His Views on Restoring Felon Rights* (Sept. 23, 2014), http://www.paul.senate.gov/?p=news&id=969.

38. *Id.*

arguments could possibly be made for this differential, proponents of the restoration of voting rights for felons are silent on this issue and do not explain why felons can be trusted to exercise their right to vote properly but not to sit on a jury or work as a police officer or public school teacher.

Answering the Policy Arguments Against Felon Disenfranchisement

The policy arguments in favor of automatically restoring the rights of all felons to vote are unpersuasive.

"We let everyone else vote." Again, this is simply not true. America also denies the vote to children, noncitizens, and the mentally incompetent because they, like felons, fail to meet the objective, minimal standards of responsibility, trustworthiness, and commitment to our laws that we require of those who want to participate in the government not only of themselves, but also of their fellow Americans.

"Once released from prison, a felon has paid his debt to society and is entitled to the full rights of citizenship." This rationale would apply only to felons who are no longer in prison, of course, and might not apply with respect to felons on parole or probation, but even for these "former" felons, the argument is not persuasive. While serving a sentence discharges a felon's "debt to society" in the sense that his basic right to live in society is restored, serving a sentence does not require society to forget what he has done or bar society from making reasonable judgments based on his past crimes.

For example, as noted, federal law prohibits felons from possessing firearms or serving on juries, which does not seem unreasonable. In fact, as also previously noted, there is a whole range of "civil disabilities" (known as collateral consequences) for felons after their release from prison that apply as a result of federal and state law, listed in a 144-page binder (plus two appendices) published by the U.S. Justice Department's Office of the Pardon Attorney.[39] Society is not required—nor should it be required—to ignore someone's criminal record once he gets out of prison.

Finally, it should be noted that many of those who want felons re-enfranchised believe that even those who are still in prison should have the right to vote. For example, Marc Mauer, executive director of the Sentencing Project, the leading advocacy organization against disenfranchisement, believes that "people in prison should have the right to vote"—not just felons who have completed their sentences and been released.[40]

This suggests that even those who favor felon re-enfranchisement do not believe that serving one's time in prison automatically "earns" the restoration of one's right to vote. They believe, as we do, that serving one's sentence and being allowed to vote are separate issues. If they felt that one necessarily followed from the other, then they presumably would agree that if an individual has not paid his debt to society, then he should not be able to vote.

"These laws have a disproportionate racial impact." Undoubtedly, the reason that there is heightened interest in this subject is that a large percentage of felons are African Americans, although in absolute numbers, more whites are affected by felon disenfranchisement than blacks. That is because whites represent a majority of the individuals in state and federal prisons, according to the U.S. Justice Department, and have held that majority since Justice began keeping such records in 1926.[41]

The racial impact of these laws is irrelevant as a constitutional matter. It should also be irrelevant as a matter of policy. Legislators should determine, based on non-racial considerations, what the qualifications or disqualifications for voting are and then let the chips fall where they may. In *The Souls of Black Folk*, W.E.B. Du Bois wrote: "Draw lines of crime, of incompetency, of vice, as tightly and uncompromisingly as you will, for these things must be proscribed; but a color-line not only does not accomplish this

39. U.S. Dept. of Justice, Office of the Pardon Attorney, *supra* note 3. The American Bar Association has a useful map listing all collateral consequences imposed by the federal government and the states. *See* American Bar Association, Collateral Consequences Map, http://www.abacollateralconsequences.org/map/ (last visited Jan. 13, 2015).

40. *See Should Ex-Felons Be Allowed to Vote? Debate Club*, LEGAL AFFAIRS (Nov. 3, 2004), http://www.legalaffairs.org/webexclusive/debateclub_disenfranchisement1104.msp.

41. PATRICK A. LANGAN, RACE OF PRISONERS ADMITTED TO STATE AND FEDERAL INSTITUTIONS, 1926–86, *available at* http://www.bjs.gov/content/pub/pdf/rpasfi2686.pdf.

purpose, but thwarts it."[42] As a federal court said in an unsuccessful lawsuit against Florida's felon voting law:

> [Black ex-felons had] not been denied the right to vote because of an immutable characteristic but because of their own criminal acts. This is also true of the non-African American class members. Thus, it is not racial discrimination that deprives felons, black or white, of their right to vote but their own decision to commit an act for which they assume the risks of detection and punishment.[43]

The fact that these statutes disproportionately disenfranchise men and young people is not cited as a reason for changing them—as "sexist" or "ageist"—nor does it matter that some racial or ethnic groups may be more affected than others. That criminals are "overrepresented" in some groups at some point in time and "underrepresented" in others is no reason to change the laws. This will probably always be the case, with the groups changing over time and with the country's demography. If large numbers of young people, black people, or males are committing crimes, then our efforts should be focused on solving those problems. The answer to that problem is not to increase the political power of criminals.

Much has been made of the high percentage of criminals—and, thus, disenfranchised people—in some communities, but the fact that the effects of disenfranchisement may be concentrated in particular neighborhoods is actually an argument in the laws' favor. If these laws did not exist, there would be a real danger of creating an anti–law enforcement voting bloc in local municipal elections, for example, which is hardly in the interests of a neighborhood's law-abiding citizens who are victimized by such felons.

Indeed, the people whose votes will be diluted the most if criminals are allowed to vote will be law-abiding people in high-crime areas—people who are themselves often disproportionately poor and minority. Liberal civil-rights groups lobbying against felon disenfranchisement seem to have less concern for those victims.

"We should welcome felons back into the community." Because the racial and other arguments are so unpersuasive, it is more and more frequently argued that re-enfranchising felons is a good way to reintegrate them into society. Attorney General Eric Holder has even claimed that felon disenfranchisement laws promote recidivism. As former Attorney General Michael Mukasey has pointed out, however, that claim, which derives from a study in Florida, is flawed:

> Florida has had, and indeed has broadened, a system that requires felons to go through an application process before their voting rights are restored. Obviously, those who are motivated to navigate such a process self-select as a group less likely to repeat their crimes. Suggesting that the automatic restoration of voting rights to all felons would lower recidivism is rather like suggesting that we can raise the incomes of all college students if we automatically grant them a college degree—because statistics show that people with college degrees have higher incomes than those without them.[44]

Reintegration of felons into the community is an important goal, and this paper recognizes that restoration of voting rights can be a part of that process. Conversely, it is also important not to suggest to felons that it is hopeless for them to want to rejoin that community.

But restoration of voting rights should be done carefully and on a case-by-case basis once the felon can establish in fact that he has turned over a new leaf. When that has been shown, then holding a ceremony—rather like a naturalization ceremony—in which the felon's voting rights are fully restored would be moving and meaningful. Restoration, however, should not be automatic, because the change of heart cannot be presumed. After all, the unfortunate truth is that most people who walk out of prison will be walking back in eventually.

Automatic felon re-enfranchisement sends a bad message: It says that Americans do not consider criminal behavior so serious that the right to vote should be denied because of it. Not allowing crimi-

42. W.E.B. Du Bois, *The Souls of Black Folk* 113 (Dover Publications 1994).

43. Johnson v. Bush, 214 F.Supp.2d 1333, 1341 (S.D. FL. 2002), *affirmed* 405 F.3d 1214 (11th Cir. 2005).

44. Mukasey, *supra* note 17.

nals to vote is also a form of punishment and a method of stigmatization that tells criminals that committing a serious crime puts them outside the circle of responsible citizens. Being readmitted to the circle should not be automatic.

While it is true that a disproportionate number of African Americans are being disenfranchised for committing serious crimes, their victims also are disproportionately black. The logical focus of an organization like the NAACP should be on discouraging the commission of such crimes rather than minimizing their consequences.

Conclusion

Congress does not have the power to force states to allow felons to vote in federal elections. The Constitution, including the Fourteenth Amendment, specifically delegates to the states the right to determine the qualifications of voters and to disqualify anyone who participates "in rebellion, or other crime." Congress cannot override the Constitution through legislation and has no authority to restore the voting rights of felons for federal elections.

Thus, the American people and their freely elected state representatives must make their own decisions in their own states on when felons should have their civil rights restored. This includes the right to vote. Requiring a waiting period and an application process is fair and reasonable given the high recidivism rate found among felons. Any legislation passed by Congress to take away that power is both unconstitutional and unwise public policy.

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The Costs of Early Voting

Hans A. von Spakovsky

Abstract

Although voters may find early voting convenient, turnout data show that early voting may actually decrease turnout, not increase it. Early voting raises the costs of political campaigns, since expensive get-out-the-vote efforts must be spread out over a longer period of time. There is also no question that when voters cast their ballots weeks before Election Day, they do so without the same access to knowledge about the candidates and the issues as those who vote on Election Day. When there are late-breaking developments in campaigns that could be important to the choices made by voters, those who have voted early cannot change their votes.

Until the late 1980s, Americans had two ways to vote: (1) in person on Election Day, or (2) absentee ballots sent through the mail or voted in person at county election departments prior to Election Day. Early voting—in-person voting in a limited number of locations prior to Election Day—was first implemented by a state (Texas) almost 30 years ago and has been pushed by proponents as a way of increasing turnout by making voting more convenient.

But while voters may find early voting more convenient, turnout data show that early voting may actually *decrease* turnout, not increase it. Early voting raises the costs of political campaigns, since expensive get-out-the-vote efforts must be spread out over a longer period of time. There is also no question that when voters cast their ballots weeks before Election Day, they do so without the same access to knowledge about the candidates and the issues as those who vote on Election Day. When there are late-breaking developments in campaigns that could be important to the choices

Key Points

- Contrary to what might be expected, studies show that early voting not only does not increase turnout, it may actually decrease it.
- This practice spreads out the voting period over a longer period of time during which voters may be casting their ballots without all of the information about candidates and issues that may become available by Election Day.
- Early voting periods also increase the cost of political campaigns because any candidate who limits spending on voter mobilization to the last few days before Election Day instead of engaging in expensive get-out-the-vote efforts during the entire early voting period will be at a serious disadvantage.
- Early voting is an election reform that should be reconsidered by states. Its disadvantages seem to outweigh its benefits.

This paper, in its entirety, can be found at **http://report.heritage.org/lm218**

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made by voters, those who have voted early cannot change their votes.

The Development and Legality of Absentee Ballots

In-person voting on Election Day had been the traditional way of voting since the beginnings of the republic. Initially, "the Colonies mostly continued the English traditions of voting by a show of hands or by voice—*viva voce* voting."[1] Voting remained "public until 1883 when the States began to adopt the Australian secret ballot," and the states gradually changed to paper ballots.[2]

Limited absentee balloting started during the Civil War. Wisconsin was the first state to legalize absentee voting in 1862 to allow its soldiers to vote wherever they were stationed. Ohio passed its law allowing absentee soldiers to vote in 1863.[3]

Nineteen states enacted "laws allowing soldiers the right to vote by absentee ballot."[4] This was particularly important during the 1864 presidential election and explains why 19th-century Democrats generally opposed allowing absentee ballots: "[T]hey suspected loyal soldiers would vote for the party of Lincoln."[5] Lincoln won 78 percent of the ballots cast by soldiers in 1864,[6] even though their ballots were only a small percentage of the total votes cast. Of the 50,000 Ohio soldiers who voted absentee in 1864, 41,000 voted for President Lincoln.[7]

Absentee voting slowly advanced throughout the 1900s. Today, every state will mail an absentee ballot to a voter who requests one, and those ballots can be returned by mail or in person. At its beginning, states required a reason for absentee balloting, such as an unavoidable absence or a religious observance. Twenty states still require an excuse for absentee voting such as illness or employment that prevents the voter from getting to a polling location on Election Day. No-excuse absentee balloting is only a relatively recent phenomenon.[8] Twenty-seven states and the District of Columbia now allow "no fault" absentee voting: No excuse is required. Three states mail ballots to every eligible voter.[9]

It is important to understand, however, that absentee voting is a privilege, not a right. The U.S. Supreme Court established in *McDonald v. Board of Election Commissioners* that the "right to vote" does *not* include a constitutional "right to receive absentee ballots."[10] States have, through legislation, made absentee ballots available to voters, and the federal government has done the same through federal law for members of the uniformed services and citizens of the United States who reside abroad.[11]

The Development and Legality of Early Voting

Texas was the first state to adopt early voting in 1988.[12] It has now spread to 37 states and the District of Columbia (including three states that mail ballots to all voters).[13]

According to the National Conference of State Legislatures, the early voting period may start from as long as 45 days before an election to as late as the Friday before Election Day.[14] The amount of time provided for early voting ranges "in length from four days to 45 days." The average is 19 days.[15]

The number of voters casting their ballots through early voting has risen steadily. In the early 1990s, about 7 percent of voters cast their ballots early.[16] In the 2016 election, according to the annual report to Congress of the U.S. Election Assistance Commission, 41.3 percent of all ballots were cast before Election Day. Of the total turnout, 17.2 percent of ballots were cast through in-person early voting and 23.7 percent were cast through by-mail absentee voting.[17]

In the 2016 election, more than 60 percent of the ballots cast in Arizona, Florida, Montana, North Carolina, Nevada, Oregon, and Texas were through in-person early voting. The number of early voting sites in various states varied greatly. There were on "average, 6.1 early voting sites per 100,000 voters."[18]

As with absentee ballots, the "Constitution does not require *any* opportunities for early voting and as many as thirteen states offer just one day for voting: Election Day."[19] In a lawsuit filed by the Ohio Democratic Party, it claimed that the state legislature violated both the Voting Rights Act and the Equal Protection Clause of the Fourteenth Amendment when it reduced the number of early voting days from 35 to "only" 29, even though 29 days of early voting is the tenth-longest among all the states. Because Ohio initially provided 35 days of early voting, the Democratic Party argued that "this prior accommodation..., which also created a six-day 'Golden Week' opportunity for same-day registration and voting—established a federal floor that Ohio may add to but never subtract from."[20]

The Sixth Circuit Court of Appeals dismissed this claim, calling it "an astonishing proposition."[21] As the court explained:

> Adopting plaintiffs' theory of disenfranchisement would create a "one-way ratchet" that would discourage states from ever increasing early voting opportunities, lest they be prohibited by federal courts from later modifying their election procedures in response to changing circumstances. Further, while the challenged regulation may slightly diminish the convenience of registration and voting, it applies even-handedly to all voters, and, despite the change, Ohio continues to provide generous, reasonable, and accessible voting options to all Ohioans. The issue is not whether some voter somewhere would benefit from six additional days of early voting or from the opportunity to register and vote at the same time. Rather, the issue is whether the challenged law results in a cognizable injury under the Constitution or the Voting Rights Act. We conclude that it does not.[22]

In fact, the undisputed factual record in the case showed "that it's easy to vote in Ohio. Very easy, actually." Having only 29 days to vote or a period in which one can register and vote at the same time "can hardly be deemed to impose a true 'burden' on any person's right to vote."[23] This is particularly true when compared to other states like Kentucky and Michigan that do not allow any early voting and *are under no constitutional requirement to do so.*

The fact that there was evidence in the case that "some African-American voters *may prefer* voting" early or "avoiding the mail, or saving on postage, or voting after a nine-to-five day" did not provide a basis for a federal lawsuit or a violation of the law. To the extent the reduction in early voting days impacted such preferences, "its 'burden' clearly results more from a 'matter of choice rather than a state-created obstacle.'" The Equal Protection Clause "simply cannot be reasonably understood as demanding recognition and accommodation of such variable personal preferences, even if the preferences are shown to be shared in higher numbers by members of identifiable segments of the voting public."[24]

The court rejected the challengers' claim that Ohio was engaging in invidious discrimination because it was denying them *"a more convenient* method of exercising the franchise."[25] Such a claim would "disregard the Constitution's clear mandate that the states (and not the courts) establish election protocols, instead reading the document to require all states to maximize voting convenience." The Sixth Circuit warned that under this conception of the federal courts' role, "little stretch of imagination is needed to fast-forward and envision a regime of judicially-mandated voting by text message or Tweet (assuming of course, that cell phones and Twitter handles are not disparately possessed by identifiable segments of the voting population)."[26]

Similarly, in 2012 a federal district court ruled against a claim that a reduction in the early voting period in Florida was a violation of the Voting Rights Act or the Constitution.[27] Although the parties in the case agreed there "is no fundamental right to an early voting option," the plaintiffs challenged the reduction of early voting days from 12 to eight.[28] But the fact that more minority voters preferred early voting did "not demonstrate that the changes will deny minorities equal access to the polls."[29]

Furthermore, many states do not have any form of early voting. The court noted:

> [By extending] [p]laintiffs' theory to its next logical step, it would seem that if a state with a higher percentage of registered African-American voters than Florida did not implement an early voting program a Section 2 [of the Voting Rights Act] violation would occur because African-American voters in that state would have less of an opportunity to vote than voters in Florida. It would also follow that a Section 2 violation could occur in Florida if a state with a lower percentage of African-American voters employed an early voting system...that lasts three weeks instead of the two week system currently used in Florida. This simply cannot be the standard for establishing a Section 2 violation.[30]

In a questionable opinion, however, a three-judge panel of the Fourth Circuit Court of Appeals threw out North Carolina's reduction in the number of early voting days from 17 to 10 (among other election reforms) on the unsubstantiated claim that it was discriminatory both in purpose and effect.[31] In effect, the Fourth Circuit panel took the "preferences" that the Sixth Circuit said were simply matters of choice of voters—such as whether to vote on Election Day or during an early voting period—and converted them into a legal right.

The Effect of Early Voting

For proponents of early voting who believe that giving voters more time to vote will increase turnout, various studies show that the exact opposite seems to be true: Early voting may actually *hurt* turnout.

In 2008, American University released a report on the general election that concluded that the efforts of states to increase turnout by implementing different forms of "convenience" voting such as no-excuse absentee balloting and early voting were a "failure."[32] The campaign of President Barack Obama spurred "the highest general election voter turnout since 1960" and an increase of 2.4 percentage points over 2004.[33] Yet of the 12 states that saw turnout declines in 2008 over the 2004 election, "ten had some form of convenience voting." Of the 13 states with the largest increase in turnout, "seven had none of the forms of convenience voting."[34]

These findings by American University corroborated what it had found in prior elections (with the exception of 1998) that states that "adopt these reforms have a worse performance in the aggregate than those which do not." In fact, "in years of turnout increase, the increases in states with convenience voting...are lesser than the states which have not so adopted. And in years of decrease, the decreases in these states are greater."[35]

In 2013, another study released by professors from the University of Wisconsin came to a similar conclusion by comparing early voting states to those without early voting. A statistical analysis of turnout in the 2004 and 2008 presidential elections showed that early voting led to lower turnout.[36] The "clearest finding" was that "early voting lowers the likelihood of turnout by three to four percentage points." In fact, the longer the window of early voting, the greater the effect on lowering turnout.[37]

As the study concluded, this "result is counter-intuitive, and it certainly runs against the grain of conventional wisdom." However, the fact that early voting "actually *decreases* turnout...[is] an unanticipated consequence that has significant implications for policy and for theories of how state governments can influence turnout."[38]

As an example, Nevada implemented early voting at the beginning of the 1990s. By the 2000 election, voters in Clark County were casting more votes during the early voting period than on Election Day. Today, twice as many voters in Nevada vote early as vote on Election Day. Yet in the 2016 election, the turnout in Nevada of the voting eligible population was only 57.3 percent, almost 3 percentage points *below* the national average of 60.2 percent.[39] In 2012, the state's turnout was 1.6 percentage points below the national average, and in 2008 it was 4.6 percentage points below the national average. As the *Las Vegas Review-Journal* has pointed out, "Nevada trends don't look much different" than what the Wisconsin study showed.[40]

Interestingly enough, the Sixth Circuit Court of Appeals pointed out in *Ohio Democratic Party v. Husted* that the turnout data in that case did not support the claims being made by the challengers that reducing the early voting period in Ohio would reduce turnout, specifically of African-American voters. In fact, the "statistical evidence" from the 2014 election when the reduction was in place ran "directly contrary to the [lower court's] speculative conclusion that the [law] would have a disparate adverse impact on African Americans' participation." Instead, African-Americans registered at higher rates than whites, and their turnout, according to an expert cited by the Sixth Circuit, "either exceeds or is the same as white turnout in Ohio." Most importantly, the challengers were unable to dispute that those who had previously voted on an early voting day that had been eliminated "were not less likely to vote in 2014 than someone who had voted on a preserved day."[41]

Similarly, in the North Carolina case where the Fourth Circuit ruled against the state's reduction of early voting from 17 to 10 days, turnout actually *increased* while the reduction was in force. As the district court (which had ruled in favor of the state) pointed out, the reduction in the early voting period was in effect in the 2014 primary and general election.[42] In the May 19 primary, the turnout of registered white voters "increased from 15.6% to 17.4%; among registered African American voters, it increased from 11.4% to 13.4%; and among registered Hispanic voters, it increased from 2.9% to 3.3%," when compared to the 2010 midterm primary election.[43]

The same results were seen in the 2014 general election. In comparison to the 2010 election, "voter participation increased: among registered white voters, it increased from 45.7% to 46.8%; among registered African American voters, it increased from 40.4% to 42.2%; and among registered Hispanic voters, it increased from 19.9% to 20.5%." In fact,

with 10 days of early voting as opposed to 17, African-American turnout increased "more than other groups in 2014," and the general election "saw the smallest white-African American [sic] turnout disparity in any midterm election from 2002 to 2014."[44]

Even the experts retained by the challengers in the North Carolina case admitted that early voting does not increase turnout. The district court pointed out that one of the experts opined, in a peer-reviewed publication, that the "research thus far has already disproved one commonly made assertion, that early voting increases turnout. It does not." Early voting may be more convenient but it "pal[es] in significance to such effects as feelings of citizen empowerment, interest in and concern about the election, and political mobilization by parties, candidates, and other political organizations."[45]

The court also cited another expert hired by the plaintiffs who wrote that early voting results "in lower net turnout.... Our unambiguous empirical claims are based on multiple data sources and methods: despite being a popular election reform, early voting depresses net voter turnout."[46]

The reasons that early voting seems to hurt turnout have not been conclusively determined. However, one reasonable inference is that allowing voters to vote over an extended period of time before Election Day has "the effect of diffusing mobilization activities."[47] Campaigns and political parties spend an enormous amount of time and resources on get-out-the-vote (GOTV) efforts just before Election Day. If those GOTV efforts are spread out over several weeks, they will not have the same intensity and may not be as effective in reminding and convincing individuals to cast a ballot.

The Wisconsin study suggested the same thing, that early voting reduces "the civic significance of elections for individuals" and alters "the incentives for political campaigns to invest in mobilization." As the report says, "rather than building up to a frenzied election day in which media coverage and interpersonal conversation revolve around politics, early voting makes voting a more private and less intense process." This lessens the "social pressure" to vote, as well as "guidance on how and where to vote." All of these "reductions in stimulation—both strategic and nonstrategic mobilization—are greater than the modest positive benefits of additional convenience that accrue largely to those who would vote in any case."[48] And that seems to be the key factor—early voting just provides more convenience for those who are going to vote anyway instead of stimulating non-voters to vote.

The Other Dangers of Early Voting

Early voting also poses another danger: "[T]he most significant is the danger that something may occur on the last few days of the electoral season" after tens of millions of citizens have cast an irrevocable vote.[49] Early voters are voting with a different set of facts than those who vote on Election Day:

> They may cast their ballots without the knowledge that comes from later candidate debates (think of the all-important Kennedy–Nixon debates, which ran from late September 1960 until late October); without further media scrutiny of candidates; or without seeing how they respond to unexpected national or international events—the proverbial "October surprise."[50]

A recent example of this danger was demonstrated in a special election for Montana's lone congressional race in 2017. Just one day before the May 25 election, one of the two candidates, Republican Greg Gianforte, was charged with misdemeanor assault against a reporter for the *Guardian* newspaper. Two of the state's largest newspapers, the *Billings Gazette* and the *Missoulian*, withdrew their endorsements that same Wednesday evening before the Thursday election.[51] But by that time, 70 percent of Montanans had already cast their vote[52] and had no opportunity—if they thought this incident was important to their choice—to change their votes.

Gianforte won the election by 5.6 percentage points and a little over 21,000 votes.[53] Tom Nichols, a professor at the U.S. Naval War College, wrote a commentary in the *New York Times* whose title captured the concern that early voting raises: "Now Montana Knows Why Early Voting Is Bad."[54]

Similarly, 2016 Republican candidate Senator Marco Rubio (FL) dropped out of the Republican nomination race a week before the Arizona presidential-preference primary. Yet because Arizona allows early voting by mail, he still came in third. John Kasich, who came in fourth, was behind Rubio by only 6,339 votes.[55] As CNN put it, Kasich was beaten by "Rubio's ghost in Arizona," leading "some to question the utility of allowing weeks of early voting in a highly volatile primary in which candidates tend to

abruptly leave the race if they have a poor showing in a key state."[56] (Rubio dropped out because Donald Trump had beaten him in his home state of Florida.)

The 2016 general election saw three presidential debates between the Republican and Democratic Party nominees, Donald Trump and Hillary Clinton, respectively, starting with the first on September 26, 2016, and the other two occurring in October.[57] That meant that millions of voters throughout the country cast their ballots in early voting states before they had even seen all of the debates between the candidates. As J. Christian Adams of the Public Interest Legal Foundation says, "[E]arly voting produces less-informed voters." After they cast their early ballots, "they check out of the national debate. They won't care about the televised debates, they won't consider options, and won't fully participate in the political process."[58]

It also seems straightforward that early voting will increase the cost of political campaigns. When so many citizens vote early, any candidate who limits spending on voter mobilization to the last few days before Election Day (instead of engaging in expensive GOTV efforts during the entire early voting period) will be at a serious disadvantage.

Conclusion

Contrary to what might be expected, studies show that early voting not only does not increase turnout but may actually decrease it. When combined with the fact that it spreads out the voting period over a longer period of time during which voters may be casting their ballots without all of the information about candidates and issues that may become available by Election Day, early voting is an election reform that should be reconsidered by states. Its disadvantages seem to outweigh its benefits.

Curtis Gans, the long-time analyst of American elections who founded the Committee for the Study of the American Electorate, once said that, with the exception of those who cannot physically get to the polls, "the nation would be safer if everyone voted on the same day."[59] The failure to do so "weakens civic cohesiveness."[60] Or as another election expert says, "[E]arly voting destroys one of America's last surviving common cultural experiences—turning out as a single nation on a single day to elect our leaders."[61]

As American University said in its 2008 report, early voting and other forms of "convenience" voting address a real problem—low turnout—but "with the wrong solutions." The "participation problem is, at heart, not procedural but motivational."[62]

The problem is that "in a variety of ways, events, politics, leaders, education, communications, and values have damped the religion of civic engagement and responsibility. We will not get that back by treating would-be voters as spoiled children.... These devices are extremely popular, but popularity is not the same as wisdom[,] and in this case, it is antithetical. It's time to consider rolling them back."[63]

*—**Hans A. von Spakovsky** is a Senior Legal Fellow in the Edwin Meese III Center for Legal and Judicial Studies, of the Institute for Constitutional Government, at The Heritage Foundation.*

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Former Eatonville mayor found guilty of voting fraud, election violations

ADVERTISEMENT

A jury Friday night found former Eatonville Mayor Anthony Grant guilty of several charges, including a felony voting-fraud charge.

By Ryan Gillespie
Orlando Sentinel

MAY 19, 2017, 11:05 PM

A jury on Friday night convicted former Eatonville Mayor Anthony Grant of a felony voting-fraud charge, as well as a felony election violation and misdemeanor absentee-voting violation.

After the verdict was read, Grant spoke quietly with his brother and other family members gathered in the courtroom. A few minutes later, he was placed in handcuffs and taken to the Orange County Jail.

Grant was found not guilty of two other charges in the trial involving him and two former campaign aides, Mia Nowells and James Randolph.

Jurors determined Nowells was guilty of coercing a voter to select Grant, but not guilty of the other three charges she faced. Randolph was found not guilty as well.

Leaving the courthouse late Friday, Grant's family said the conviction surprised them because they said prosecutors didn't have evidence.

"We're still hopeful," said a woman who described herself as Grant's niece. "We were very surprised because they had no evidence. ...It was a witch hunt."

Another niece chimed in: "It ain't over until God says it's over."

The attorneys for Grant and Nowells declined to speak with reporters.

"We are pleased with the jury's verdict. These cases are important to maintaining the community's trust in our voting process," said Eryka Washington, a spokeswoman for the State Attorney's Office.

Grant has been a major part of Eatonville politics for about two decades, serving as mayor of the small town from 1994 to 2009.

He ran for the seat again in 2015 against Bruce Mount, and that's when trouble arose, prosecutors say. Grant won the election despite receiving 15 fewer votes at the polls because he trounced Mount in absentee votes, receiving 196 to Mount's 69.

Jurors began deliberations about 1 p.m. Friday, and the verdict was read a few minutes before 9 p.m.

They concluded the longtime elected official should have known that Mildred McKnight wasn't an Eatonville resident when he showed up at her Rosemont apartment to bring a form to request an absentee ballot.

McKnight testified this week that "Rosemont is my home," and prosecutor Richard Wallsh stressed that comment to jurors. Wallsh showed jurors a lease she signed for the apartment in 2011, but the defense claimed she had voted in four elections in Eatonville since then.

Grant took the stand Thursday and said he never asked McKnight where she lived. Prosecutors alleged it was because he didn't want to know the answer.

"Mr. Grant ran this election to win. ... He wanted everyone's votes," Wallsh said in his closing statement. "I can't think of a more clear example of willful blindness."

Jurors also convicted Grant of coercing Danielle Jones into voting for him.

Jones testified this week that she intended to "Christmas tree" her ballot. She said she wanted to vote for Grant but didn't want to vote for the entire team he campaigned with.

The former mayor was also found guilty of accepting a pecuniary benefit for possessing more than two absentee ballots. The benefit, prosecutors said, was becoming mayor.

The charge Nowells was convicted of was for influencing Latoya Jackson to vote for Grant.

After the election, Grant's opponent Mount was concerned about the number of absentee votes and filed a lawsuit seeking a new election. It was tossed out on a technicality.

However, the Florida Department of Law Enforcement launched an investigation of its own into Grant's victory.

Grant was arrested on the charges last year and was suspended from his post by the governor the next day.

A grand jury formally charged Grant, Nowells and Randolph with various elections and absentee-ballot violations last year, according to a 25-count indictment.

The offenses were pared down this week, with prosecutors declining to pursue several and Orange-Osceola Circuit Judge Keith Carsten tossing out several more Thursday.

It's not clear how much jail time Grant could face. He will likely remain in custody until his sentencing, and a date for that hasn't been set.

Have a news tip? You can call Ryan at 407-420-5002, email him at rygillespie@orlandosentinel.com, follow him on Twitter @byryangillespie and like his coverage on Facebook @byryangillespie.

Former Eatonville mayor, aides testify in voter fraud trial »

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U.S. Department of Justice
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May 29, 2014

Seattle Man Pleads Guilty to Voter Intimidation and Identification Fraud for Letters Sent to Florida Residents in Conjunction with the 2012 Federal Elections

WASHINGTON—James Webb Baker Jr., 58, of Seattle, pleaded guilty today to one count of voter intimidation and one count of identification fraud in the U.S. District Court for the Middle District of Florida. Prior to the 2012 federal elections, Baker created and sent 200 fake voter eligibility letters to Republican Party donors across Florida that questioned the recipients' citizenship status. During the plea hearing, Baker admitted that he intended the letters to look as if they were written by county elections officials and that his purpose in sending the letters was to intimidate the recipients and interfere with their right to vote.

According to the evidence presented in court proceedings and documents, in October 2012, Baker read about the efforts of the Florida governor and the Florida secretary of state to remove the names of voters from the official Florida county lists of eligible voters. Angered by what he believed to be an attempt to suppress voter turnout, specifically of Hispanic voters who would vote for candidates of the Democratic Party, Baker created "false" or "copycat" voter eligibility letters of the actual letters sent by county officials. Baker sent his letters, which questioned the recipient's eligibility to vote, to 200 Republican Party donors. The letters required the recipients to complete a voter eligibility form within 15 days or else their name would be removed from the voter registration rolls. Baker inserted a line of text in bold stating that a non-registered voter who casts a vote may be subject to criminal sanctions.

The letters looked almost identical to official county Supervisor of Elections letters and included the county official's name, letterhead, address, and contact information. During the plea proceedings, Baker admitted to making several changes to the original official letters in order to stress the threats that the recipients would lose their right to vote and/or be imprisoned if they did not first document their citizenship and right to vote in person to the registrar.

"Protecting the right to vote is one of the department's top priorities," said Acting Assistant Attorney General Jocelyn Samuels for the Civil Rights Division. "The Civil Rights Division is strongly committed to comprehensive and vigorous enforcement of laws that protect the rights of every American to vote free from intimidation, coercion, or threats."

"My office is committed to aggressively protecting the integrity of the election process," said U.S. Attorney A. Lee Bentley, III for the Middle District of Florida. "Each citizen must be able to vote without intimidation or discrimination and to have that vote counted. It is imperative that those who have specific information about intimidation, discrimination, or election fraud make that information available immediately to my office, the FBI, or the Civil Rights Division."

"This joint investigative effort is yet another example of the fortitude and commitment of our collective agencies to protect our citizen's individual and constitutional rights," said FBI Special Agent in Charge Paul Wysopal for the FBI Tampa Field Office.

"This case was complex," said Florida Department of Law Enforcement Commissioner Gerald Bailey. "It required the expertise and dedication of FDLE Executive Investigations, crime lab analysts, and intelligence analysts. Their efforts led to the identification and conviction of Baker. My thanks to each of them."

"Using the U.S. mail to threaten or intimidate voters will not be tolerated," said Inspector in Charge Brad Kleinknecht with the Seattle Division of the U.S. Postal Inspection Service. "The Postal Inspection Service, along with its law enforcement partners, will continue to investigate all cases of this nature to ensure the U.S. mail continues to play a key role our nation's election process."

This case was investigated by the FBI, U.S. Postal Inspection Service, and the Florida Department of Law Enforcement. It is being prosecuted by Special Litigation Counsel Mark Blumburg and Trial Attorney William E. Nolan of the Civil Rights Division, and Assistant U.S. Attorney Robert A. Mosakowski of the U.S. Attorney's Office for the Middle District of Florida.

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The Palm Beach Post
REAL NEWS STARTS HERE

Pahokee sex offender faces murder charges after alibi unravels

By Daphne Duret
Posted Jan 12, 2012 at 12:01 AM
Updated Jan 12, 2012 at 11:47 PM

An unraveled alibi and DNA on a towel has a 39-year-old sex offender facing first-degree murder charges on accusations he strangled and bludgeoned a woman whose half-naked body was found under a tree in Pahokee last year.

Deputies say James Harmon emerged quickly as a potential suspect in 52-year-old Ophelia Redden's January 2011 death after several witnesses told them they last saw Redden with Harmon and another man outside the Pahokee liquor store.

A passerby found Redden lying face down under a tree near the 500 block of State Market Road, wearing a bra and underwear pulled down to her knees.

Harmon, of Pahokee, initially told deputies he last saw Redden locked in an intimate embrace with that second man and caught a ride home. His wife Patti gave him an alibi, saying he returned home around 10 p.m. the night of the murder and watched a movie with her before they fell asleep.

Deputies arrested Harmon in February on a probation violation and for allegedly failing to register as a sex offender. Department of corrections records show he served 13 years in prison for a 1991 attempted sexual battery and burglary.

Harmon's wife eventually told investigators that Harmon came home between 2 and 3 a.m. the night of Redden's murder and told her to make up the story about the movie. Investigators say they caught Harmon admitting the lie in several jailhouse calls to his wife.

"We talked about what you were supposed to tell them for me to get out of this [expletive]," deputies say Harmon told his wife in a recorded call. "You were supposed to stick to the story."

Harmon's wife told investigators she provided Harmon with the alibi because she was afraid of him.

Detectives working the case, meanwhile, had matched Harmon's DNA to a blue towel found stuffed in Redden's purse, which was found in a nearby canal and also contained the shirt and pants Redden was wearing when she was last seen.

Other witnesses placed Harmon, known in Pahokee as Nardo, in the area where Redden's body was found around the time of the murder.

A life-long friend of Redden's told investigators that a week before she was killed, Redden complained to him that Harmon had been asking to have sex with her.

The witness told police that Harmon had threatened to rape her when she refused.

Detectives arrested Harmon Thursday at the Palm Beach County jail, where he remains incarcerated on the probation violation. A hearing in that case is scheduled for Jan. 19.

Staff researcher Niels Heimeriks contributed to this story.

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STATE OF FLORIDA

UNIFORM COMMITMENT TO CUSTODY OF DEPARTMENT OF CORRECTIONS

The Circuit Court of Palm Beach County, Florida
In the Fifteenth Judicial Circuit Term, 2011, in the case of

State of Florida

-vs-

JAMES B HARMON
Defendant

Case No. 50-1992-CF-000131-AXXX-WB

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE SHERIFF OF THE ABOVE-REFERENCED COUNTY AND THE DEPARTMENT OF CORRECTIONS, GREETINGS:

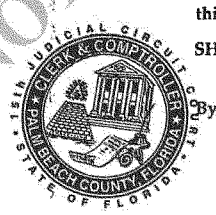
The above-named defendant having been duly charged, convicted and adjudicated guilty, and sentenced for the offense(s) set forth in the attached certified copies of the Indictment(s)/Information(s), Original Judgment(s), Adjudicating Guilt, and Sentencing Order(s). In addition to the Original Judgment, if judicial supervision has been revoked subsequent to the entry of the judgment adjudicating guilt, a certified copy of the order revoking supervision (rather than a duplicative judgment adjudicating guilt) is also attached in support of this commitment.

Now therefore, this is to command you, the Sheriff, to take and keep and, within a reasonable time after receiving this commitment, deliver the defendant into the custody of the Department of Corrections; and this is to command you, the Secretary of the Department of Corrections, to keep and imprison the defendant for the term of the sentence. Herein fail not.

WITNESS the Clerk, and the Seal thereof,

this the 1st of May, 2012.

SHARON R. BOCK, CLERK



By: _____
dfelder
Deputy Clerk

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IN THE CIRCUIT/COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

50-1992-CF-000131-AXXX-WB

JAMES B HARMON

RECEIPT OF LAW ENFORCEMENT AGENCY
I certify receipt of Commitment on the above-named defendant.

RECEIVED BY: [illegible] **Date:** 05-02-12

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Rough Arrest Only: N

ARREST / NOTICE TO APPEAR
Juvenile Referral Report

1. Arrest 2. N.T.A. 3. Request for Warrant 4. Request for Capias: 3

Juvenile: N

ADMINISTRATION

OBTS Number:

Agency ORI Number: FL0500000

Agency Name: PALM BEACH COUNTY SHERIFF'S OFFICE

Agency Report Number: 06- 11-036058

Charge Type: (Check as many as apply.) ☒ 1. Felony ☐ 2. Traffic Felony ☐ 3. Misdemeanor ☐ 4. Traffic Misdemeanor ☐ 5. Ordinance ☐ 6. Other

Weapon Seized/Type: 1. Yes 2. No *

Multiple Clearance Indicator: 01

Location of Arrest (Including Name of Business): Filing For Arrest Warrant

Location of Offense (Business Name, Address): 308 Pelican Lake Drive Apt-B Pahokee, Florida 33476

Date of Arrest | Time of Arrest | Booking Date | Booking Time | Jail Date | Jail Time | Location of Vehicle: NA

DEFENDANT

Name (Last, First, Middle): Harmon, James Bernardo

Alias (Name, DOB, Soc. Sec. #, Etc.)

Race: W - White, I - American Indian, B - Black, O - Oriental/Asian: B

Sex: M

Date of Birth: 08/23/1972

Height: 5-09

Weight: 165

Eye Color: Brown

Hair Color: Black

Complexion: Dark

Build: Med

Scars, Marks, Tattoos, Unique Physical Features (Location, Type, Description)

Marital Status: Unknown

Religion: Unknown

Indication of: Alcohol Influence ☐ ☐ ☒ Drug Influence ☐ ☐ ☒ (Y N Unk.)

Local Address (Street, Apt. Number): LKA: 308 Pelican Lake Drive Apt-B | (City): Pahokee | (State): Florida | (Zip): 33476 | Phone: ( ) | Residence Type: 1. City 2. County 3. Florida 4. Out of State: 2

Permanent Address (Street, Apt. Number) | (City) | (State) | (Zip) | Phone: ( ) | Address Source: FDLE Records

Business Address (Street, Apt. Number) | (City) | (State) | (Zip) | Phone: ( ) | Occupation: Unknown

D/L Number, State: H655442723090 / Florida

Soc. Sec. Number: [redacted]

INS Number: NA

Place of Birth: Florida

Citizenship: U.S.

CO-DEF

Co-Defendant Name (Last, First, Middle): None | Race | Sex | Date of Birth | ☐ 1. Arrested ☐ 2. At Large ☐ 3. Felony ☐ 4. Misdemeanor ☐ 5. Juvenile

Co-Defendant Name (Last, First, Middle) | Race | Sex | Date of Birth | ☐ 1. Arrested ☐ 2. At Large ☐ 3. Felony ☐ 4. Misdemeanor ☐ 5. Juvenile

JUVENILE

☐ Parent ☐ Legal Custodian ☐ Other | Name (Last) | (First) | (Middle) | Residence Phone

Address (Street, Apt. Number) | (City) | (State) | (Zip) | Business Phone

Notified by: (Name) | Date | Time | Juvenile Disposition: 1. Handled/Processed within Dept. and Released 2. TOT HRS/CYF 3. Incarcerated

Released To: (Name) | Relationship | FCIC/NCIC | Date | Time

The above address was provided by defendant and/or defendant's parents. The child and/or parent was told to keep the Juvenile Court Clerk's Office informed of any change of address: ☐ Yes, by: (Name) ☐ No: (Reason)

School Attended | Grade

CODE

Recovery Information: 0. N/A 1. Voluntary 2. Located Not Returned 3. Hospitalized 4. HRS Custody 5. Law Enforcement Custody 6. Returned to Parent 7. Deceased 8. Other

Drug Activity: N. N/A, P. Possess, S. Sell, B. Buy, T. Traffic, R. Smuggle, D. Deliver, E. Use, K. Dispense/Distribute, M. Manufacture/Produce/Cultivate, Z. Other

Drug Type: N. N/A, A. Amphetamine, B. Barbituate, C. Cocaine, E. Heroin, H. Hallucinogen, M. Marijuana, O. Opium/Deriv., P. Paraphernalia/Equipment, S. Synthetic, U. Unknown, Z. Other

CHARGE

Charge Description: Failure to Properly Register as a Sexual Offender | Counts: 1 | Domestic Violence ☐ Yes ☒ No | Statute Violation Number: 943.0435 | Violation of ORD #: NA

Drug Activity: N | Drug Type: N | Amount/Unit: NA | Offense #: 11-036058 | Warrant/Capias Number: NA | Bond: NA

CHARGE

Charge Description | Counts | Domestic Violence ☐ Yes ☒ No | Statute Violation Number | Violation of ORD #

Drug Activity | Drug Type | Amount/Unit | Offense # | Warrant/Capias Number | Bond

CHARGE

Charge Description | Counts | Domestic Violence ☐ Yes ☐ No | Statute Violation Number | Violation of ORD #

Drug Activity | Drug Type | Amount/Unit | Offense # | Warrant/Capias Number | Bond

CHARGE

Charge Description | Counts | Domestic Violence ☐ Yes ☐ No | Statute Violation Number | Violation of ORD #

Drug Activity | Drug Type | Amount/Unit | Offense # | Warrant/Capias Number | Bond

NOTICE TO APPEAR

☐ Instruction No.
☐ Mandatory Appearance in Court
☐ Instruction No.
You need not appear in Court but must comply with instructions on reverse side.

Location (Court, Room Number, Address)

Court Date and Time: Month Day Year Time A.M. P.M.

I AGREE TO APPEAR AT THE TIME AND PLACE DESIGNATED TO ANSWER THE OFFENSE CHARGED OR TO PAY THE FINE SUBSCRIBED. I UNDERSTAND THAT SHOULD I WILLFULLY FAIL TO APPEAR BEFORE THE COURT AS REQUIRED BY THIS NOTICE TO APPEAR, THAT I MAY BE HELD IN CONTEMPT OF COURT AND A WARRANT FOR MY ARREST SHALL BE ISSUED.

Signature of Defendant (or Juvenile and Parent/Custodian) | Date Signed

ADMIN.

HOLD for other Agency
Name:

☐ Dangerous ☐ Resisted Arrest
☐ Suicidal ☐ Other:

Intake Deputy | I.D. # | Pouch #

Signature of Arresting Officer

Name of Arresting Officer (Print): PBSO Det. Kevin Umphrey I.D.# 6898 | I.D. #

Transporting Officer | I.D. # | Agency

Name Verification (Printed by Arrestee) (PRINT)

Witness here is subject signed with an "X".

PAGE 1 OF 1

DISTRIBUTION: 1st WHITE - COURT 2nd WHITE - RECORDS GREEN - STATE ATTY. YELLOW - CID PINK - JAIL (Rough Arrest) GOLD - DEFENDANT (Misd.) or BLOTTER (Felony)

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FILED FEB 9 2011 CLERK OF THE CIRCUIT COURT PALM BEACH COUNTY

SCANNED FEB - 9 2011

PALM BEACH COUNTY SHERIFF'S OFFICE
PROBABLE CAUSE AFFIDAVIT

OBTS
Charge Type [3] 1. Arrest 2. N.T.A 3. Request for Warrant
4. Request for Capias

Agency ORI Number: FL0500000 Agency Report 11-036058

Charge Type: [*] **Felony** [ ] Misdemeanor

Special Notes: **Sexual Offender**

Defendant: **Harmon, James Bernardo** Race: B Sex: M DOB: 08/23/1972

Charge(s):
1. Failure to Properly Register as a Sexual Offender FSS: 943.0435 - 1 count.

Victim: **State of Florida**

The undersigned certifies and swears that he/she has just and reasonable Grounds to believe, and does believe that the above named Defendant Committed the following violation of law.
The person taken into custody,
[ ] committed the below acts in my presence.
[ ] confessed to _____ admitting to the above acts.
[ ] was observed by _____ who told _____ that he/she saw the arrested person commit the below acts.
[*] was found to have committed the below acts, resulting from my (described) investigation.

It has been determined that James Bernardo Harmon (B/M, DOB 08/23/1972) qualified as a "Sexual offender" pursuant to F.S.S. 943.0435(2). On 06/25/1992 Harmon was adjudicated guilty of 1) Sexual Battery with a Weapon, FSS 794.011(3), Life Felony and 2) Armed Burglary, FSS 810.02(1)(2)(B), First Degree Felony, in the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Court Case No. 92-15486 CF A06. Harmon was sentenced to 25 years in the Department of Corrections.

Subsequent to his release from the Department of Corrections, Harmon registered as a Sexual Offender with the Palm Beach County Sheriff's Office on three occasions. The most recent registration was on 11/29/2010. At the time of this registration Harmon signed the NOTICE OF SEXUAL PREDATOR AND SEXUAL OFFENDER OBLIGATIONS which includes the following:

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NOTICE OF SEXUAL PREDATOR AND SEXUAL OFFENDER OBLIGATIONS

As a Sexual Predator (F.S. 775.21) or Sexual Offender (F.S. 943.0435; 944.607; or 985.481) I understand that I am required by law to abide by the following: **Permanent residence"** means a place where the person abides, lodges, or resides for 5 or more consecutive days. **"Temporary residence"** means a place where the person abides, lodges, or resides, including but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. **"Transient Residence"** means a place or county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

FAILURE TO COMPLY WITH ANY OF THE FOLLOWING REQUIREMENTS IS A FELONY OF THE THIRD DEGREE (UNLESS OTHERWISE NOTED).

1. I MUST report **in person** to the local Sheriff's Office within 48 hours of establishing or maintaining a residence in this state, within 48 hours of release from custody and/or supervision of Department of Corrections (DOC), Department of Children and Family Services (DCFS), or Department of Juvenile Justice (DJJ), or in the county of conviction within 48 hours of conviction if not under custody and/or supervision of DOC to register my temporary, transient, or permanent address and other information specified in statute. {F.S. 943.0435(2)(a); 775.21(6)(e)1}.

2. At initial registration, I MUST provide the following information to the department: name, date of birth, social security number, race, sex, height, weight, hair and eye color, photograph, home telephone number and any cellular telephone number, any electronic mail address and any instant message name required to be provided pursuant to paragraph s.943.0435(4)(d) F.S., address of legal residence, address of any current temporary residence, if no permanent or temporary residence, any transient residence within the state, dates of any current or known future temporary residence within the state or out of state, occupation and place of employment, date and place of each conviction, fingerprints, and a brief description of the crime or crimes committed. {F.S. 943.0435(2)(b); 775.21(6)(a)1}.

3. Within 48 hours after the initial report required as stated in requirement #2 above, I MUST report **in person** to the driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and provide proof of initial

registration as a sexual offender or predator to secure or renew a valid Florida driver's license or identification card displaying one of the following designations: "775.21, F.S." or "943.0435, F.S.", unless a driver's license or identification card with such designation was previously secured or updated. The sexual offender shall submit to the taking of a photograph for use by the department in maintaining current records of sexual offenders. {F.S. 943.0435(3); 775.21(6)(f)}.

4. Each time my driver's license or identification card is subject to renewal, or within 48 hours after any change in my permanent, temporary, or transient residence or change in name made by marriage or other legal process, I MUST report **in person** to a driver's license office to update my driver's license or identification card and ensure that the driver's license or identification card displays the designations as identified in requirement #3. {F.S. 943.0435(4)(a); 775.21(6)g1}.

5. If I am enrolled, employed or carrying on a vocation at an institution of higher education in Florida, I MUST provide the name, address and county of each institution including each campus, enrollment or employment status, including each change in enrollment or employment status, i.e. commencement or termination, **in person** at the Sheriff's Office; OR, for a sexual offender on supervision with the Florida (DOC) or (DJJ), this information must be reported to the sexual offender's probation officer, within 48 hours after any change in status. {F.S. 943.0435(2)(b)2; 775.21(6)(a)b}.

6. I MUST report any electronic mail address or instant message name, prior to using such, during registration/reregistration or by providing all updates through the online system maintained by the Florida Department of Law Enforcement. {F.S.943.0435(4)(d); 775.21(6)(g)4}.

7. If I vacate a permanent, temporary, or transient residence, and do not have another permanent, temporary, or transient residence, I MUST report **in person** to the Sheriff's Office in the county where I am located within 48 hours. {F.S.943.0435(4) (b); 775.21(6)(g)2}.

8. If I report that I have vacated a permanent, temporary, or transient residence and then remain at that residence, I MUST report **in person** to the Sheriff's Office where I reported vacating my residence. Failure to report this information is a felony of the second degree. {F.S. 943.0435(4)(c); 775.21(6)(g)3}.

Registration No: 342834 Person Number: 51748

SCANNED FEB - 9 2011

9. I understand that my address will be verified by county, state or local law enforcement agencies. {F.S.943.0435(6);775.21(8)}.
10. If I intend on establishing a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida, I MUST report **in person** to the Sheriff's Office of the county of my current residence within 48

hours before the date that I intend to leave this state to establish residence in another state or jurisdiction. {F.S. 943.0435(7); 775.21(6)(i)}.

11. If I intend to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida and later decide to remain in this state, I MUST report **in person** to the Sheriff's Office to which I reported my intention of leaving the state within 48 hours after the intended departure date. Failure to report this information is a felony in the second degree. {F.S. 943.0435(8); 775.21(6)(j)}.

12. I MUST report **in person** either twice a year (during the month of my birth and during the 6th month following my birth month) or four times a year (once during the month of my birth and every 3rd month thereafter), depending upon my offense/designation, to the Sheriff's Office in the county in which I reside or am otherwise located to reregister. {F.S. 943.0435(14)(a); 775.21(8)(a)}.

13. If I live in another state, but work or attend school in Florida, I MUST register my work or school address as a temporary address within 48 hours by reporting in person to the local Sheriff's Office.{F.S. 943.0435(2); 775.21(6)(a)1b}.

14. I MUST respond to any address verification correspondence from FDLE within three weeks of the date of the correspondence. {F.S. 943.0435(14)(c)4; 775.21(10)(a)}.

15. If I am employed, carry on a vocation, am a student, or become a resident of another state, I am on notice that I may have a requirement to register under the laws of that state.

16. I MUST maintain registration for the duration of my life. {F.S. 943.0435(11); 775.21(6)(l)}.

At the time of this registration, Harmon reported his current permanent address as being 308 Pelican Lake Drive #B in Pahokee, Florida. The reported start date for this address was 06/10/2010. Harmon was previously verified to be residing at this reported address. This location is predominantly a Sexual Offender/Sexual Predator Community known as Miracle Park / Matthew 25 Ministries. Harmon is also on probation and is supervised by the Department of Corrections / Probation and Parole.

On 02/08/2011 I was contacted by Janet Tenbarge, the Resident Manager at Miracle Park / Matthew 25 Ministries. Ms. Tenbarge advised me that Harmon had left the community on Thursday (02/03/2011) and has not been seen since. Ms. Tenbarge was unaware of Harmon's whereabouts, but stated that he reportedly left the State of Florida. Tenbarge agreed to complete a PBSO Address Verification Affidavit confirming the above reported information.

SCANNED FEB -9 2011

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I then contacted the Department of Corrections Probation Office and spoke with Probation Officer Herron. I was advised that Harmon recent absconded from his address and that his actions constituted a violation of his probation. Officer Herron advised that an arrest warrant was being sought. Officer Herron advised that a relative of Harmon reported to probation that Harmon had left the State of Florida. No further information was available concerning Harmon's whereabouts.

I checked Harmon's Florida Identification Card record (H655442723090) and confirmed that it still had his reported address of 308 B Pelican Lake Drive in Pahokee, Florida. No new address had been reported through DHSMV.

I checked the United States Department of Justice National Sex Offender Registry for any records pertaining to Harmon. I discovered three entries for Harmon and each displayed his current permanent address at 308 Pelican Lake Drive Apt-B in Pahokee, Florida. There were no records indicating that Harmon had registered in another jurisdiction.

On 02/09/2011 I met with Harmon's roommate George Smith. Smith advised that he last saw Harmon at their residence on Thursday (02/03/2011). Smith stated that he has not seen Harmon since and doesn't know his whereabouts.

Based on all the above information, Harmon has vacated his reported current permanent address located at 308 Pelican Lake Drive Apt-B in Pahokee, Florida. Harmon vacated this address on or about 02/03/2011. Harmon has absconded from this address, and has failed to properly register as required by Florida Statute 943.0435.

State of Florida, County of Palm Beach

The foregoing instrument was SWORN TO OR AFFIRMED AND SUBSCRIBED

BEFORE ME this 02/09/2011

By **Detective Kevin Umphrey, I.D. 6898**, who is personally known to me.

Notary Public/Clerk of Court/Officer (F.S.S. 117.10)

Signature of Arresting/Investigating Officer
Name of Officer: **Detective Kevin Umphrey**, I.D. 6898

SCANNED FEB - 9 2011

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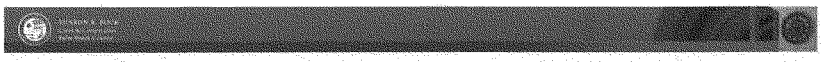


Search Criteria Search Results

Search Criteria

Last Name / Company Name:	Harmon
First Name:	james
Court Type:	All - Court Types
Case Type:	All - Case Types
Name Search Type:	Exact Name Search
One Row Per Case:	True

- Cases that have a status of Sealed / Nonpublic may not be viewed
- Juvenile, Adoption, Mental Health (except Risk Protection Orders) and Tuberculosis cases: not available in eCaseView
- Family, Guardianship and Probate cases: Only the attorney of record can see document images

Any case that is highlighted yellow within the search results has an open warrant

Search Results

45 records returned. Click on a column name to sort the results by that column's data.

Page Size: 25

1 2 3

Case Number	Court Type	Case Type	Arrest Date	File Date	Case Style	Status
50-2018-TR-048593-AXXX-SB	Traffic Infractions	TRAFFIC INFRACTION		04/11/2018	HARMON, JAMES JEFFREY	Closed
50-2015-CC-003090-	County Civil	EVICTION (COUNTY CIVIL)		03/20/2015	HARMON, JAMES M V LYLE, MARY J	Closed

XXXX-MB						
50-2015-CC-000220-XXXX-NB	County Civil	EVICTION (COUNTY CIVIL)		01/09/2015	HARMON, JAMES M V LYLE, MARY JANE	Closed
50-2013-CA-001361-XXXX-MB	Circuit Civil	OTHER NEGLIGENCE		01/25/2013	REDDEN, SHANTORIA V BIG LAKE INVESTMENTS INC	Closed
50-2012-CF-000439-AXXX-MB	Felony	FELONY	01/12/2012	01/13/2012	HARMON, JAMES B	Disposed
50-2011-ML-001510-XXXX-NB	Marriage License	MARRIAGE LICENSE		11/28/2011	HARMON, JAMES MAPP - HINTON, DANIELLE M	Closed
50-2011-CF-004885-AXXX-MB	Felony	FELONY		05/10/2011	HARMON, JAMES HOWARD J	Open
50-2011-CF-001497-AXXX-WB	Felony	FELONY	02/15/2011	02/09/2011	HARMON, JAMES B	Disposed
50-2010-TR-	Traffic Infractions	TRAFFIC INFRACTION		02/26/2010	HARMON, JAMES EDWARD	Disposed

049316-AXXX-NB						
50-2010-ML-000145-XXXX-WB	Marriage License	MARRIAGE LICENSE		09/20/2010	HARMON, JAMES BERNARDO - GOINS, PATTY ANN	Closed
50-2009-TR-115772-AXXX-SB	Traffic Infractions	TRAFFIC INFRACTION		05/14/2009	HARMON, JAMES LEWIS	Open
50-2009-TR-016441-AXXX-NB	Traffic Infractions	TRAFFIC INFRACTION		01/26/2009	HARMON, JAMES K	Closed
50-2008-WO-001706-XXXX-MB	WILL ONLY	WILL ONLY		11/25/2008	HARMON, JAMES LOUIS	Closed
50-2008-CP-006092-XXXX-SB	Probate/Guardianship	SUMMARY ADMINISTRATION =>$1000		12/23/2008	HARMON, JAMES L	Closed
50-2008-CO-007114-AXXX-SB	County Ordinance	PALM BEACH COUNTY ORDINANCE	06/08/2008	06/09/2008	HARMON, JAMES	Closed
50-2008-	Circuit Civil	OTHER CIRCUIT		08/06/2008	BASSOFF, MORTON G V	Closed

CA-023977-XXXX-MB				HARMON, RHONDA	
50-2006-TR-014947-AXXX-MB	Traffic Infractions	TRAFFIC INFRACTION	01/17/2006	HARMON, JAMES M	Closed
50-2005-CF-004124-AXXX-MB	Felony	RYCE ACT	03/30/2005	HARMON, JAMES B	Closed
50-2004-ML-003236-XXXX-MB	Marriage License	MARRIAGE LICENSE (W/DISCOUNT)	10/27/2004	HARMON, JAMES JEFFREY V ALDAMA, GLORIA	Closed
50-2004-CA-008652-XXXX-MB	Circuit Civil	REAL PROPERTY/FORECLOSURE	09/14/2004	DEUTSCHE BANK NATIONAL TRUST COMPANY V HARMON, JAMES K	Closed

Case 16-1994-CF-005374-AXXX-MA

Agency	JACKSONVILLE BEACH POLICE DEPARTMENT	Department	Felony
Division	CR-D	Case Status	DISPOSED
SAO Number	94CF017052AD	Offense Date	5/13/1994
File Date	6/3/1994	Incident Number	1994-0000000
Officer		State Attorney	Villa, Suzanne Farhat
Public Defender	Andux, Gonzalo		

Parties

Name / DOB / DL / ID #	Party Type Race / Sex	Address
ANTHONY NATHAN BREWTON DOB: 2/3/1972 Offender: 2000-019678 JSO ID: 446282	DEFENDANT B / M	5020 CLEVELAND JACKSONVILLE, FLO

Attorneys

Attorney	Address	For Parties
Andux, Gonzalo Public Defender (525286)	Public Defendar's Office Jacksonville, FL	
Villa, Suzanne Farhat State Attorney (60976)	State Attorney's Office Jacksonville, FL	

Charges

Initial		Prosecutor		Court	
Count	Statute #	Statute Description w/Qualifier			
	Plea	Status	Level	Action	Minimum Fine
1	S794.011(3)	SEXUAL BATTERY DEADLY WEAPON OR SERIOUS INJURY - VICTIM 12 OR OLDER			
	NOT GUILTY	SAME	FL	ADJUDICATED GUILTY	---

Fees

Date	Description	Assessed	Paid	Balance
10/13/1994	HISTORICAL CRIMINAL FEE	$293.00	$0.00	$293.00

Court Events

Date	Time	Type	Location	Courtroom	Cancelled
6/7/1994	9:00 AM	ARRAIGNMENT DATE	330 E BAY ST (CIRCUIT)	4	
6/21/1994	9:00 AM	PASSED FOR PRETRIAL	330 E BAY ST (CIRCUIT)	4	
6/21/1994	9:00 AM	PASSED FOR HEARING ON MOTION	330 E BAY ST (CIRCUIT)	4	
7/6/1994	9:00 AM	PASSED FOR PRETRIAL	330 E BAY ST (CIRCUIT)	4	
7/21/1994	9:00 AM	PASSED FOR PRETRIAL	330 E BAY ST (CIRCUIT)	4	
8/19/1994	9:00 AM	PASSED FOR PRETRIAL	330 E BAY ST (CIRCUIT)	4	
10/13/1994	9:00 AM	DISPOSITION	330 E BAY ST (CIRCUIT)	4	
10/17/1994	9:00 AM	PASSED FOR TRIAL	330 E BAY ST (CIRCUIT)	4	

4/5/2000	9:00 AM	APPEARANCE DATE (VIOL. OF PROB.)	330 E BAY ST (CIRCUIT)	6	
6/29/2000	9:00 AM	APPEARANCE DATE (VIOL. OF PROB.)	330 E BAY ST (CIRCUIT)	6	
7/5/2000	9:00 AM	PASSED FOR PRETRIAL - VOP	330 E BAY ST (CIRCUIT)	8	
8/3/2000	9:00 AM	PASSED FOR PRETRIAL	330 E BAY ST (CIRCUIT)	8	
8/31/2000	9:00 AM	PASSED FOR PRETRIAL	330 E BAY ST (CIRCUIT)	8	
9/15/2000	9:00 AM	PASSED FOR HEARING ON MOTION	330 E BAY ST (CIRCUIT)	8	
9/29/2000	9:00 AM	PASSED FOR HEARING ON MOTION	330 E BAY ST (CIRCUIT)	8	
10/10/2000	9:00 AM	PASSED FOR PRETRIAL - VOP	330 E BAY ST (CIRCUIT)	8	
10/16/2000	9:00 AM	PASSED FOR PRETRIAL - VOP	330 E BAY ST (CIRCUIT)	8	
11/6/2000	9:00 AM	PASSED FOR PRETRIAL - VOP	330 E BAY ST (CIRCUIT)	8	
11/20/2000	9:00 AM	SENTENCE DEFERRED	330 E BAY ST (CIRCUIT)	8	

Dockets

Line / Document	Count	Effective Entered	Description	Pages	Image
1	--	5/16/1994 6/6/1994	ARREST & BOOKING REPORT 940163512		
2	--	5/17/1994 6/6/1994	BOND SET AT 0.00		
3	--	5/17/1994 6/6/1994	MOTION ON BOND		
4	--	5/17/1994 6/6/1994	FINDING OF PROBABLE CAUSE ,		
5	--	5/17/1994 6/6/1994	DEFENDANTS CLAIM OF RIGHTS		
6	--	5/17/1994 6/6/1994	AFFIDAVIT & ORDER OF INSOLVENCY & APPT. OF PUB. DEF.		
7	--	6/3/1994 6/6/1994	INFO FILED FOR SEX BT DW V 12>		
8	--	6/3/1994 6/6/1994	FELONY INFORMATION SHEET		
9	--	6/3/1994 6/6/1994	ARRAIGNMENT DATE 06/07/1994 4 09:00 00		
10	--	6/7/1994 6/8/1994	ASST. STATE ATTY. KINSEY, YVETTE		
11	--	6/7/1994 6/8/1994	ASST. PUB. DEF. COOK-HUNOLD, CYNTHIA		
12	--	6/7/1994 6/8/1994	DEF. W/READING OF INFO & PLEAD NG		
13	--	6/7/1994 6/8/1994	PASSED FOR PRETRIAL 06/21/1994 4 09:00 00		
14	--	6/9/1994 6/10/1994	NOTICE OF DISCOVERY		
15	--	6/9/1994 6/10/1994	MOT. FOR STATEMENT OF PARTICULARS		
16	--	6/10/1994 6/10/1994	FIRST AMENDED RESPONSE TO DEMAND FOR DISCOVERY		
17	--	6/10/1994 6/10/1994	STATEMENT OF PART & DEM FOR NOT OF INTENT TO CLAIM ALIBI		
18	--	6/10/1994 6/10/1994	RESPONSE TO DEMAND & DEMAND FOR RECIPROCAL DISCOVERY		
19	--	6/10/1994 6/10/1994	PASSED FOR HEARING ON MOTION 06/21/1994 4 09:00 00		

20	--	6/10/1994 6/10/1994	PER GORDON-PHONE		
21	--	6/21/1994 6/21/1994	NOTICE OF TAKING DEPOSITION		
22	--	6/21/1994 6/22/1994	ASST. STATE ATTY. KINSEY, YVETTE		
23	--	6/21/1994 6/22/1994	ASST. PUB. DEF. YAZGI, SUSAN		
24	--	6/21/1994 6/22/1994	PASSED FOR PRETRIAL 07/06/1994 4 09:00 00		
25	--	6/24/1994 6/24/1994	WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D		
26	--	6/24/1994 6/24/1994	WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D		
27	--	6/30/1994 7/1/1994	NOTICE OF TAKING DEPOSITION		
28	--	7/5/1994 7/6/1994	WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D		
29	--	7/5/1994 7/6/1994	(2)		
30	--	7/6/1994 7/7/1994	ASST. STATE ATTY. KINSEY, YVETTE		
31	--	7/6/1994 7/7/1994	ASST. PUB. DEF. COOK-HUNOLD, CYNTHIA		
32	--	7/6/1994 7/7/1994	PASSED FOR PRETRIAL 07/21/1994 4 09:00 00		
33	--	7/11/1994 7/11/1994	WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D		
34	--	7/11/1994 7/11/1994	(2)		
35	--	7/14/1994 7/14/1994	NOTICE OF TAKING DEPOSITION		
36	--	7/14/1994 7/15/1994	FIRST ADDITIONAL RESPONSE TO DEMAND FOR DISCOVERY		
37	--	7/19/1994 7/19/1994	DISCLOSURE TO PROSECUTION		
38	--	7/20/1994 7/20/1994	NOTICE OF TAKING DEPOSITION		
39	--	7/20/1994 7/20/1994	FIRST SUPPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY		
40	--	7/21/1994 7/21/1994	WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D		
41	--	7/21/1994 7/21/1994	WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D		
42	--	7/21/1994 7/22/1994	ASST. STATE ATTY. KINSEY, YVETTE		
43	--	7/21/1994 7/22/1994	ASST. PUB. DEF. COOK-HUNOLD, CYNTHIA		
44	--	7/21/1994 7/22/1994	PASSED FOR PRETRIAL 08/19/1994 4 09:00 00		
45	--	7/22/1994 7/22/1994	WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D		
46	--	7/22/1994 7/22/1994	(3)		
47	--	7/22/1994 7/25/1994	WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D		
48	--	8/19/1994 8/22/1994	ASST. STATE ATTY. KINSEY, YVETTE		

49	--	8/19/1994 8/22/1994	ASST. PUB. DEF. COOK-HUNOLD, CYNTHIA		
50	--	8/19/1994 8/22/1994	PASSED FOR TRIAL 10/17/1994 4 09:00 00		
51	--	8/25/1994 8/26/1994	PRAE, FOR WITNESS SUBPOENA- S		
52	--	9/6/1994 9/6/1994	PRAE, FOR WITNESS SUBPOENA- S		
53	--	9/7/1994 9/8/1994	NOTICE OF TAKING DEPOSITION		
54	--	9/9/1994 9/9/1994	WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D		
55	--	9/9/1994 9/9/1994	NOTICE OF TAKING DEPOSITION		
56	--	9/13/1994 9/14/1994	NOTICE OF TAKING DEPOSITION		
57	--	9/16/1994 9/16/1994	WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D		
58	--	9/19/1994 9/20/1994	MOTION FOR APPOINTMENT OF		
59	--	9/19/1994 9/20/1994	GUARDIAN AD LITEM		
60	--	9/19/1994 9/20/1994	ORDER APPOINTING GURADIAN		
61	--	9/19/1994 9/20/1994	AD LITEM		
62	--	9/20/1994 9/20/1994	NOTICE OF TAKING DEPOSITION		
63	--	9/22/1994 9/23/1994	NOTICE OF ACCEPTANCE OF		
64	--	9/22/1994 9/23/1994	GUARDIAN AD LITEM		
65	--	9/26/1994 9/26/1994	WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D		
66	--	9/27/1994 9/28/1994	FIRST SUPPLEMENTAL RESPONSE TO DEMAND FOR DISCOVERY		
67	--	10/6/1994 10/10/1994	ORDER SETTING CASE FOR FINAL		
68	--	10/6/1994 10/10/1994	PRETRIAL		
69	--	10/10/1994 10/10/1994	PRAE, FOR WITNESS SUBPOENA- D		
70	--	10/12/1994 10/12/1994	WITNESS SUBPOENA(S) FOR D		
71	--	10/12/1994 10/12/1994	FOR TRIAL (S)		
72	--	10/12/1994 10/12/1994	DISPOSITION 10/13/1994 4 09:00 00		
73	--	10/12/1994 10/12/1994	PER STATE-PHONE		
74	--	10/13/1994 10/14/1994	ASST. STATE ATTY. KINSEY, YVETTE		
75	--	10/13/1994 10/14/1994	ASST. PUB. DEF. COOK-HUNOLD, CYNTHIA		
76	--	10/13/1994 10/14/1994	DEF. PERMITTED TO W/D PLEA OF NOT GUILTY AND PLEA GUILTY		
77	--	10/13/1994 10/14/1994	TO SEXUAL BATTERY BY THREAT,		

78	--	10/13/1994 10/14/1994	A LESSER INCLUDED OFFENSE		
79	--	10/13/1994 10/14/1994	ACKNOWLEDGE. OF RIGHTS & VOLUNTARINESS OF ENTRY OF PLEA		
80	--	10/13/1994 10/14/1994	DEF. ADJUDGED GUILTY - FINGERPRINTS TAKEN		
81	--	10/13/1994 10/14/1994	JUDGEMENT AND SENTENCE TO STATE PRISON FOR 8 YEARS		
82	--	10/13/1994 10/14/1994	WITH CREDIT FOR 151 DAYS,		
83	--	10/13/1994 10/14/1994	FOLLOWED BY 3 YEARS PROBATION		
84	--	10/13/1994 10/14/1994	WITH SPECIAL CONDITIONS: PAY		
85	--	10/13/1994 10/14/1994	VICTIM'S COUNSELING, PAY		
86	--	10/13/1994 10/14/1994	$150.00 SATC, PSYCHO SEXUAL		
87	--	10/13/1994 10/14/1994	COUNSELING, NO UNSUPERVISED		
88	--	10/13/1994 10/14/1994	CONTACT WITH MINORS, NO		
89	--	10/13/1994 10/14/1994	CONTACT WITH VICTIM		
90	--	10/13/1994 10/14/1994	CRIMINAL JUSTICE TRUST FUND I000000300		
91	--	10/13/1994 10/14/1994	COURT ASSESSES C.C.T. FUND - 50.00		
92	--	10/13/1994 10/14/1994	COURT ASSESSES FELONY COST - 200.00		
93	--	10/13/1994 10/14/1994	SENTENCING GUIDELINES		
94	--	10/13/1994 10/14/1994	REQUEST FOR & P.D. LIEN ENTERED 200.00		
95	--	10/13/1994 10/14/1994	PD LIEN NOT SPECIAL CONDITION		
96	--	10/13/1994 10/14/1994	OF PROBATION		
97	--	10/13/1994 10/14/1994	ORDER DEEMING DEFENDANT		
98	--	10/13/1994 10/14/1994	SEXUAL PREDATOR		
99	--	10/13/1994 10/14/1994	ORDER FOR HIV TESTING		
100	--	10/14/1994 10/17/1994	LETTER TO JUDGE-PROPER PERSON		
101	--	10/17/1994 10/17/1994	WITNESS SUBPOENA(S) FOR D		
102	--	10/17/1994 10/17/1994	FOR TRIAL		
103	--	10/18/1994 10/18/1994	ORDER DENYING RESTITUTION		
104	--	10/18/1994 10/20/1994	JDGMT SENT & ORD PLACING DEF ON PROB DURING PORT OF SENT		
105	--	10/19/1994 10/19/1994	COMMITMENT CHECKLIST SENT		
106	--	10/21/1994 10/25/1994	JUDGMENT & SENTENCE RECORDED BOOK 7960 PAGE 1078		

107	--	10/21/1994 10/25/1994	RECORDING NUMBER 94167483		
108	--	2/1/1995 2/1/1995	EX PARTE MOTION FOR DISCHARGE		
109	--	2/1/1995 2/1/1995	OF GUARDIAN AD LITEM		
110	--	2/1/1995 2/1/1995	ORDER FOR DISCHARGE OF		
111	--	2/1/1995 2/1/1995	GUARDIAN AD LITEM		
112	--	7/8/1996 7/15/1996	MOT. FOR REDUCTION OF SENTENCE (3.800)		
113	--	7/8/1996 7/15/1996	LETTER TO JUDGE		
114	--	7/12/1996 7/15/1996	ORDER DENYING MOT. FOR REDUCTION OF SENTENCE		
115	--	3/7/2000 3/7/2000	AFFIDAVIT & WARRANT ISSUED FOR VIOL. OF PROB.		
116	--	3/7/2000 3/7/2000	BOND SET AT 15003.00		
117	--	3/7/2000 3/7/2000	EXT. CODE - O		
118	--	3/9/2000 3/9/2000	RECEIPT FOR WARRANT		
119	--	3/9/2000 3/9/2000	CONTROL NUMBER 790322		
120	--	3/16/2000 3/24/2000	ARREST & BOOKING REPORT 000098013		
121	--	3/17/2000 3/24/2000	APPLICATION FOR PUB. DEF. AND AFFIDAV. OF INSOLVENCY		
122	--	3/17/2000 3/24/2000	ORDER DETERM. ELIGIBILITY FOR COURT APPOINTED COUNSEL		
123	--	3/17/2000 3/24/2000	DEFENDANTS CLAIM OF RIGHTS		
124	--	3/17/2000 3/24/2000	APPEARANCE DATE (VIOL. OF PROB.) 04/05/2000 6 09:00 00		
125	--	3/20/2000 3/20/2000	WARRANT RETURNED - SERVED		
126	--	3/27/2000 3/27/2000	AMENDED AFFIDAVIT FOR VIOLATION OF PROBATION		
127	--	4/3/2000 4/3/2000	LETTER TO JUDGE-PROPER PERSON		
128	--	4/3/2000 4/3/2000	NO RESPONSE		
129	--	4/5/2000 4/6/2000	ASST. STATE ATTY. BROWN, RICHARD		
130	--	4/5/2000 4/6/2000	ASST. PUB. DEF. SHOEMAKER, FRANK		
131	--	4/5/2000 4/6/2000	AMENDED AFFIDAVIT SERVED AND		
132	--	4/5/2000 4/6/2000	DISCHARGED		
133	--	4/5/2000 4/6/2000	PROBATION CONTINUED		
134	--	6/6/2000 6/6/2000	AFFIDAVIT & WARRANT ISSUED FOR VIOL. OF PROB.		
135	--	6/6/2000 6/6/2000	BOND SET AT 0.00		

136	--	6/6/2000 6/6/2000	EXT. CODE - O		
137	--	6/6/2000 6/6/2000	RECEIPT FOR WARRANT		
138	--	6/6/2000 6/6/2000	CONTROL NUMBER 802079		
139	--	6/8/2000 6/15/2000	ARREST & BOOKING REPORT 000196784		
140	--	6/9/2000 6/15/2000	DEFENDANTS CLAIM OF RIGHTS		
141	--	6/9/2000 6/15/2000	APPLICATION FOR PUB. DEF. AND AFFIDAV. OF INSOLVENCY		
142	--	6/9/2000 6/15/2000	ORDER DETERM. ELIGIBILITY FOR COURT APPOINTED COUNSEL		
143	--	6/9/2000 6/15/2000	PD APP FEE IMPOSED 40.00		
144	--	6/9/2000 6/15/2000	APPEARANCE DATE (VIOL. OF PROB.) 06/29/2000 6 09:00 00		
145	--	6/12/2000 6/12/2000	WARRANT RETURNED - SERVED		
146	--	6/22/2000 6/22/2000	AFFIDAVIT VIOLATION OF PROB.		
147	--	6/29/2000 6/30/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
148	--	6/29/2000 6/30/2000	ASST. PUB. DEF. ANDUX, GONZALO		
149	--	6/29/2000 6/30/2000	TRANSFER TO DIV. D		
150	--	6/29/2000 6/30/2000	FROM CR-C CALENDAR OF 6-29-00		
151	--	6/29/2000 6/30/2000	AFFIDAVIT SERVED - DEF. DENIES ALLEGATIONS		
152	--	6/29/2000 6/30/2000	PASSED FOR PRETRIAL - VOP 07/05/2000 8 09:00 00		
153	--	7/5/2000 7/6/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
154	--	7/5/2000 7/6/2000	ASST. PUB. DEF. ANDUX, GONZALO		
155	--	7/5/2000 7/6/2000	PASSED FOR PRETRIAL 08/03/2000 8 09:00 00		
156	--	7/5/2000 7/6/2000	TRIAL DATE - 10/16/2000		
157	--	8/3/2000 8/7/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
158	--	8/3/2000 8/7/2000	ASST. PUB. DEF. ANDUX, GONZALO		
159	--	8/3/2000 8/7/2000	DEFT'S ORAL WAIVER OF		
160	--	8/3/2000 8/7/2000	APPEARANCE		
161	--	8/3/2000 8/7/2000	PASSED FOR PRETRIAL 08/31/2000 8 09:00 00		
162	--	8/31/2000 9/1/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
163	--	8/31/2000 9/1/2000	ASST. PUB. DEF. ANDUX, GONZALO		
164	--	8/31/2000 9/1/2000	PASSED FOR HEARING ON MOTION 09/15/2000 8 09:00 00		

165	--	9/15/2000 9/18/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
166	--	9/15/2000 9/18/2000	ASST. PUB. DEF. ANDUX, GONZALO		
167	--	9/15/2000 9/18/2000	PASSED FOR HEARING ON MOTION 09/29/2000 8 09:00 00		
168	--	9/29/2000 10/2/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
169	--	9/29/2000 10/2/2000	ASST. PUB. DEF. ANDUX, GONZALO		
170	--	9/29/2000 10/2/2000	PASSED FOR PRETRIAL - VOP 10/10/2000 8 09:00 00		
171	--	10/10/2000 10/11/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
172	--	10/10/2000 10/11/2000	E. BRAY, SUBSTITUTING		
173	--	10/10/2000 10/11/2000	ASST. PUB. DEF. ANDUX, GONZALO		
174	--	10/10/2000 10/11/2000	PASSED FOR PRETRIAL - VOP 10/16/2000 8 09:00 00		
175	--	10/16/2000 10/17/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
176	--	10/16/2000 10/17/2000	ASST. PUB. DEF. ANDUX, GONZALO		
177	--	10/16/2000 10/17/2000	PASSED FOR PRETRIAL - VOP 11/06/2000 8 09:00 00		
178	--	11/6/2000 11/7/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
179	--	11/6/2000 11/7/2000	ASST. PUB. DEF. ANDUX, GONZALO		
180	--	11/6/2000 11/7/2000	DEFT. PERMITTED TO WITHDRAW		
181	--	11/6/2000 11/7/2000	DENIAL &		
182	--	11/6/2000 11/7/2000	DEF. ADMITS VIOLATION OF PROBATION		
183	--	11/6/2000 11/7/2000	(ADMISSION OF VOP)		
184	--	11/6/2000 11/7/2000	SENTENCE DEFERRED 11/20/2000 8 09:00 00		
185	--	11/20/2000 11/21/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
186	--	11/20/2000 11/21/2000	ASST. PUB. DEF. ANDUX, GONZALO		
187	--	11/20/2000 11/21/2000	PROBATION SET ASIDE & REVOKED 10/13/1994		
188	--	11/20/2000 11/21/2000	ORDER REVOKING PROBATION OF DATE 10/13/1994		
189	--	11/20/2000 11/21/2000	DEF. ADJUDGED GUILTY - FINGERPRINTS TAKEN		
190	--	11/20/2000 11/21/2000	JUDGEMENT AND SENTENCE TO STATE PRISON FOR 142 MONTHS		
191	--	11/20/2000 11/21/2000	WITH 318 DAYS JAIL CREDIT;		
192	--	11/20/2000 11/21/2000	PLUS PREVIOUS CREDIT FROM		
193	--	11/20/2000 11/21/2000	DEPT. OF CORRECTIONS.		

194	--	11/20/2000 11/21/2000	THIS CASE TO RUN CONCURRENT		
195	--	11/20/2000 11/21/2000	WITH CASE #00-7240 CF.		
196	--	11/20/2000 11/21/2000	ORDER FOR DNA TESTING		
197	--	11/20/2000 11/21/2000	SENTENCING GUIDELINES		
198	--	11/20/2000 11/21/2000	CLERK'S MEMO OF HEARING-FILED.		
199	--	11/20/2000 11/21/2000	CLERKS EXHIBIT MEMO		
200	--	11/20/2000 11/21/2000	UNIFORM COMMITMENT TO CUSTODY OF DEPT. OF CORRECTIONS		
201	--	11/20/2000 11/21/2000	ORDER DENYING RESTITUTION		
202	--	11/20/2000 11/21/2000	$150.00 RESTITUTION TO SATC		
203	--	11/20/2000 11/21/2000	PREVIOUSLY IMPOSED		
204	--	12/15/2000 12/18/2000	ORDER OF INSOL. & APPT. OF COUNSEL FOR PUR.OF APPEAL		
205	--	12/19/2000 12/19/2000	STATEMENT OF JUDICIAL ACTS TO BE REVIEWED		
206	--	12/19/2000 12/19/2000	DESIGNATION TO COURT REPORTER		
207	--	12/19/2000 1/5/2001	NOTICE OF APPEAL		
208	--	12/27/2000 12/27/2000	SENTENCED AS A HABITUAL FELONY OFFENDER		
209	--	12/27/2000 12/27/2000	(VIOLENT)		
210	--	12/28/2000 12/28/2000	COMMITMENT CHECKLIST SENT		
211	--	2/14/2001 2/15/2001	DESIG. OF PUB. DEF. OF 2ND JUD. CIRCUIT TO HANDLE APPEAL		
212	--	12/3/2001 12/7/2001	MANDATE FROM APPELLATE COURT A		
213 D213	--	1/14/2002 1/14/2002	APPEAL NO. 2001-238 RETURNED	113	Must Register View on request
214	--	1/14/2002 1/14/2002	FROM DCA (1 VOLUME) STORED IN		
215	--	1/14/2002 1/14/2002	BOX 617		

Case 16-2000-CF-007240-AXXX-MA

Agency	JSO	Department	Felony
Division	CR-D	Case Status	DISPOSED
SAO Number	00CF022417AD	Offense Date	5/28/2000
File Date	6/15/2000	Incident Number	2000-0000000
Officer		State Attorney	Villa, Suzanne Farhat
Public Defender	Andux, Gonzalo		

Parties

Name / DOB / DL / ID #	Party Type Race / Sex	Address
ANTHONY N. BREWTON DOB: 2/3/1972 Offender: 2000-019678 JSO ID: 448282	DEFENDANT B / M	5020 CLEVELAND JACKSONVILLE, FLO

Attorneys

Attorney	Address	For Parties
Andux, Gonzalo Public Defender (525286)	Public Defender's Office Jacksonville, FL	
Villa, Suzanne Farhat State Attorney (60976)	State Attorney's Office Jacksonville, FL	

Charges

Initial		Prosecutor		Court	
Count	Statute #	Statute Description w/Qualifier			
	Plea	Status	Level	Action	Minimum Fine
1	S810.02(2)(A)	BURGLARY TO STRUCTURE-CONVEYANCE-ASSAULT-BATTERY DURING BURGLARY			
		N/A	F1		---
2	S794.011(3)	SEXUAL BATTERY VICTIM 12 OR OLDER WITHA FIREARM			
	NOT GUILTY	SAME	FL	ADJUDICATED GUILTY	---
3	S782.04(1)(A)	ATTEMPTED MURDER - FIRST DEGREE			
	NOT GUILTY	SAME	FC	ADJUDICATED GUILTY	---

Fees

Date	Description	Assessed	Paid	Balance
06/03/2000	HISTORICAL CRIMINAL FEE	$40.00	$0.00	$40.00
11/20/2000	HISTORICAL CRIMINAL FEE	$453.00	$0.00	$453.00

Court Events

Date	Time	Type	Location	Courtroom	Cancelled
7/5/2000	9:00 AM	ARRAIGNMENT DATE	330 E BAY ST (CIRCUIT)	8	
8/3/2000	9:00 AM	PASSED FOR PRETRIAL	330 E BAY ST (CIRCUIT)	8	
8/31/2000	9:00 AM	PASSED FOR PRETRIAL	330 E BAY ST (CIRCUIT)	8	

9/15/2000	9:00 AM	PASSED FOR HEARING ON MOTION	330 E BAY ST (CIRCUIT)	8	
9/29/2000	9:00 AM	PASSED FOR HEARING ON MOTION	330 E BAY ST (CIRCUIT)	8	
10/10/2000	9:00 AM	FINAL PRE-TRIAL	330 E BAY ST (CIRCUIT)	8	
10/16/2000	9:00 AM	JURY SELECTION	330 E BAY ST (CIRCUIT)	8	
11/6/2000	9:00 AM	JURY SELECTION	330 E BAY ST (CIRCUIT)	8	
11/20/2000	9:00 AM	SENTENCE DEFERRED	330 E BAY ST (CIRCUIT)	8	

Dockets

Line / Document	Count	Effective Entered	Description	Pages	Image
1	--	6/3/2000 6/23/2000	ARREST & BOOKING REPORT 000196784		
2	--	6/3/2000 6/23/2000	APPLICATION FOR PUB. DEF. AND AFFIDAV. OF INSOLVENCY		
3	--	6/3/2000 6/23/2000	ORDER DETERM. ELIGIBILITY FOR COURT APPOINTED COUNSEL		
4	--	6/3/2000 6/23/2000	DEFENDANTS CLAIM OF RIGHTS		
5	--	6/3/2000 6/23/2000	PD APP FEE IMPOSED 40.00		
6	--	6/15/2000 6/23/2000	INFO FILED FOR BURGLARY/ASSAULT		
7	--	6/15/2000 6/23/2000	SEX BT V12> W/FA		
8	--	6/15/2000 6/23/2000	MURDER - 1		
9	--	6/15/2000 6/23/2000	BOND SET AT 0.00		
10	--	6/15/2000 6/23/2000	CORRECTED INFORMATION MEMO FROM STATE ATTY.		
11	--	6/15/2000 6/23/2000	AFFIDAVIT FOR ARREST WARRANT/ARREST WARRANT		
12	--	6/15/2000 6/23/2000	ARRAIGNMENT DATE 07/05/2000 8 09:00 00		
13	--	7/5/2000 7/6/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
14	--	7/5/2000 7/6/2000	L. SENTERFITT, SUBSTITUTING		
15	--	7/5/2000 7/6/2000	ASST. PUB. DEF. ANDUX, GONZALO		
16	--	7/5/2000 7/6/2000	DEF. W/READING OF INFO & PLEAD NG		
17	--	7/5/2000 7/6/2000	NOTICE OF INTENT TO CLASSIFY DEF. AS HAB. VIOL. FEL. OFF		
18	--	7/5/2000 7/6/2000	(FILED & SERVED)		
19	--	7/5/2000 7/6/2000	NOTICE OF INTENT TO CLASSIFY		
20	--	7/5/2000 7/6/2000	DEFT. AS PRISON RELEASE RE-		
21	--	7/5/2000 7/6/2000	OFFENDER- (FILED & SERVED)		
22	--	7/5/2000 7/6/2000	NOTICE OF OTHER CRIMES, WRONGS OR ACTS EVIDENCE		
23	--	7/5/2000	MOTION TO COMPEL BLOOD SAMPLES		

		7/6/2000			
24	--	7/5/2000 7/6/2000	-FILED.		
25	--	7/5/2000 7/6/2000	PASSED FOR PRETRIAL 08/03/2000 8 09:00 00		
26	--	7/5/2000 7/6/2000	TRIAL DATE - 10/16/2000		
27	--	7/5/2000 7/14/2000	STATE'S DISCOVERY EXHIBIT &		
28	--	7/5/2000 7/14/2000	DEMAND FOR RECIPROCAL DISCOVERY		
29	--	7/10/2000 7/11/2000	MOT. FOR STATEMENT OF PARTICULARS		
30	--	7/10/2000 7/11/2000	NOTICE OF DISCOVERY		
31	--	7/11/2000 7/13/2000	ORDER FOR DNA TESTING		
32	--	7/13/2000 7/14/2000	ORDER FOR HIV TEST		
33	--	7/17/2000 7/18/2000	TRIAL ORDER		
34	--	7/18/2000 7/19/2000	ORDER FOR DNA TESTING		
35	--	8/3/2000 8/7/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
36	--	8/3/2000 8/7/2000	ASST. PUB. DEF. ANDUX, GONZALO		
37	--	8/3/2000 8/7/2000	DEFT'S ORAL WAIVER OF		
38	--	8/3/2000 8/7/2000	APPEARANCE.		
39	--	8/3/2000 8/7/2000	PASSED FOR PRETRIAL 08/31/2000 8 09:00 00		
40	--	8/31/2000 9/1/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
41	--	8/31/2000 9/1/2000	ASST. PUB. DEF. ANDUX, GONZALO		
42	--	8/31/2000 9/1/2000	PASSED FOR HEARING ON MOTION 09/15/2000 8 09:00 00		
43	--	9/11/2000 9/11/2000	PRAE, FOR WITNESS SUBPOENA- S		
44	--	9/15/2000 9/18/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
45	--	9/15/2000 9/18/2000	ASST. PUB. DEF. ANDUX, GONZALO		
46	--	9/15/2000 9/18/2000	PASSED FOR HEARING ON MOTION 09/29/2000 8 09:00 00		
47	--	9/20/2000 9/21/2000	PRAE, FOR WITNESS SUBPOENA- S		
48	--	9/20/2000 9/21/2000	PRAE, FOR WITNESS SUBPOENA- S		
49	--	9/22/2000 9/25/2000	PRAE, FOR WITNESS SUBPOENA- S		
50	--	9/22/2000 9/25/2000	FIRST SUPPLEMENTAL STATE'S		
51	--	9/22/2000 9/25/2000	DISCOVERY EXHIBIT		
[illegible]		[illegible]	[illegible]		

52	--	9/29/2000 9/29/2000	NOTICE OF TAKING DEPOSITION		
53	--	9/29/2000 9/29/2000	NOTICE OF TAKING DEPOSITION		
54	--	9/29/2000 10/2/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
55	--	9/29/2000 10/2/2000	ASST. PUB. DEF. ANDUX, GONZALO		
56	--	9/29/2000 10/2/2000	STATE'S MOTION TO COMPEL		
57	--	9/29/2000 10/2/2000	FINGERPRINT SPECIMENS AND OR		
58	--	9/29/2000 10/2/2000	PALM PRINT IMPRESSIONS- FILED		
59	--	9/29/2000 10/2/2000	& GRANTED & ORDER ENTERED.		
60	--	9/29/2000 10/2/2000	FINAL PRE-TRIAL 10/10/2000 @ 09:00 00		
61	--	10/3/2000 10/4/2000	NOTICE OF TAKING DEPOSITION		
62	--	10/5/2000 10/9/2000	NOTICE OF TAKING DEPOSITION		
63	--	10/5/2000 10/9/2000	(5)		
64	--	10/10/2000 10/11/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
65	--	10/10/2000 10/11/2000	E. BRAY, SUBSTITUTING		
66	--	10/10/2000 10/11/2000	ASST. PUB. DEF. ANDUX, GONZALO		
67	--	10/10/2000 10/11/2000	JURY SELECTION 10/16/2000 @ 09:00 00		
68	--	10/16/2000 10/17/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
69	--	10/16/2000 10/17/2000	ASST. PUB. DEF. ANDUX, GONZALO		
70	--	10/16/2000 10/17/2000	DEFENSE ORAL MOTION FOR		
71	--	10/16/2000 10/17/2000	CONTINUANCE-GRANTED.		
72	--	10/16/2000 10/17/2000	JURY SELECTION 11/06/2000 @ 09:00 00		
73	--	10/18/2000 10/20/2000	NOTICE OF TAKING DEPOSITION		
74	--	10/26/2000 10/30/2000	SECOND SUPPLEMENTAL STATE'S		
75	--	10/26/2000 10/30/2000	DISCOVERY EXHIBIT		
76	--	10/26/2000 10/30/2000	NOTICE OF TAKING DEPOSITION		
77	--	10/30/2000 10/31/2000	WITNESS SUBPOENA(S) FOR DEPOSITION ISSUED D		
78	--	11/3/2000 11/6/2000	ORDER APPT. EXPERT TO EXAM. DEF. & REPORT TO DEF. ATTY.		
79	--	11/6/2000 11/7/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
80	--	11/6/2000 11/7/2000	ASST. PUB. DEF. ANDUX, GONZALO		

81	--	11/6/2000 11/7/2000	DEF. PERMITTED TO W/D PLEA OF NOT GUILTY AND PLEA GUILTY		
82	--	11/6/2000 11/7/2000	TO COUNTS 2 & 3		
83	--	11/6/2000 11/7/2000	ACKNOWLEDGE. OF RIGHTS & VOLUNTARINESS OF ENTRY OF PLEA		
84	--	11/6/2000 11/7/2000	PSI ORDERED.		
85	--	11/6/2000 11/7/2000	SENTENCE DEFERRED 11/20/2000 @ 09:00 00		
86	--	11/20/2000 11/21/2000	ASST. STATE ATTY. VILLA, SUZANNE FARHA		
87	--	11/20/2000 11/21/2000	ASST. PUB. DEF. ANDUX, GONZALO		
88	--	11/20/2000 11/21/2000	DEFT'S SENTENCING HEARING HELD		
89	--	11/20/2000 11/21/2000	IN FULL.		
90	--	11/20/2000 11/21/2000	DEFT'S HABITUAL VIOLENT FELONY		
91	--	11/20/2000 11/21/2000	OFFENDER HEARING HELD IN FULL.		
92	--	11/20/2000 11/21/2000	DEFT. FOUND HABITUAL VIOLENT		
93	--	11/20/2000 11/21/2000	FELONY OFFENDER PER 775.084(4)		
94	--	11/20/2000 11/21/2000	(b).		
95	--	11/20/2000 11/21/2000	STATE'S EXHIBIT #1-FILED.		
96	--	11/20/2000 11/21/2000	LETTER'S FILED.		
97	--	11/20/2000 11/21/2000	CLERK'S MEMO OF HEARING-FILED.		
98	--	11/20/2000 11/21/2000	ORIGINAL FILED IN CASE #94-		
99	--	11/20/2000 11/21/2000	5374 CF.		
100	--	11/20/2000 11/21/2000	DEF. ADJUDGED GUILTY - FINGERPRINTS TAKEN		
101	--	11/20/2000 11/21/2000	JUDGEMENT AND SENTENCE TO STATE PRISON FOR 30 YEARS		
102	--	11/20/2000 11/21/2000	WITH 174 DAYS JAIL CREDIT, AS		
103	--	11/20/2000 11/21/2000	TO COUNTS 2 & 3; TO RUN		
104	--	11/20/2000 11/21/2000	CONCURRENTLY; AS HABITUAL		
105	--	11/20/2000 11/21/2000	VIOLENT FELONY OFFENDER. WITH		
106	--	11/20/2000 11/21/2000	15 YEAR MINIMUM MANDATORY.		
107	--	11/20/2000 11/21/2000	L E E A IMPOSED 3.00		
108	--	11/20/2000 11/21/2000	F/M COSTS IMPOSED 50.00		
109	--	11/20/2000 11/21/2000	LGTF IMPOSED 200.00		

110	--	11/20/2000 11/21/2000	PUB DEF IMPOSED 200.00		
111	--	11/20/2000 11/21/2000	ORDER DEEMING DEFENDANT SEXUAL PREDATOR		
112	--	11/20/2000 11/21/2000	ORDER FOR DNA TESTING		
113	--	11/20/2000 11/21/2000	CLERKS EXHIBIT MEMO		
114	--	11/20/2000 11/21/2000	ORIGINAL FILED IN CASE #94-		
115	--	11/20/2000 11/21/2000	5374 CF.		
116	--	11/20/2000 11/21/2000	NOLLE PROSEQUI 30		
117	--	11/20/2000 11/21/2000	COUNT 1.		
118	--	11/20/2000 11/21/2000	SENTENCING GUIDELINES		
119	--	11/20/2000 11/21/2000	JUDGMENT AND RESTITUTION ORDER [F.S.775.089]		
120	--	11/20/2000 11/21/2000	(2)		
121	--	11/20/2000 11/21/2000	UNIFORM COMMITMENT TO CUSTODY OF DEPT. OF CORRECTIONS		
122	--	12/15/2000 12/15/2000	SENTENCED AS A HABITUAL FELONY OFFENDER		
123	--	12/15/2000 12/15/2000	(VIOLENT)		
124	--	12/15/2000 12/15/2000	PRE-SENT. INVESTIGATION REPORT SEALED ,		
125	--	12/15/2000 12/15/2000	COMMITMENT CHECKLIST SENT		
126	--	12/15/2000 12/18/2000	ORDER OF INSOL. & APPT. OF COUNSEL FOR PUR.OF APPEAL		
127	--	12/19/2000 12/19/2000	STATEMENT OF JUDICIAL ACTS TO BE REVIEWED		
128	--	12/19/2000 12/19/2000	DIRECTIONS TO CLERK		
129	--	12/19/2000 12/19/2000	DESIGNATION TO COURT REPORTER		
130	--	12/19/2000 1/5/2001	NOTICE OF APPEAL		
131	--	2/14/2001 2/15/2001	DESIG. OF PUB. DEF. OF 2ND JUD. CIRCUIT TO HANDLE APPEAL		
132	--	12/3/2001 12/7/2001	MANDATE FROM APPELLATE COURT A		
133 D133	--	1/14/2002 1/14/2002	APPEAL NO. 2001-236 RETURNED	110	Must Register View on request
134	--	1/14/2002 1/14/2002	FROM DCA (1 VOLUME & PSI)		
135	--	1/14/2002 1/14/2002	STORED IN BOX 617		
136 D136	--	6/6/2011 6/6/2011	REQUEST FOR DOCUMENTS	2	Must Register View on request

137 D137	--	6/6/2011 6/7/2011	LETTER TO DEFENDANT	1	Must Register View on request
138 D138	--	6/24/2011 7/1/2011	PUBLIC RECORDS REQUEST PURSUANT TO FLORIDA STATUE 119	1	Must Register View on request
139 D139	--	7/16/2015 7/21/2015	REQUEST FOR DOCUMENTS	3	Must Register View on request
140 D140	--	12/10/2015 12/14/2015	MOTION TO VACATE JUDG. & SENT. (RULE 3.850)	16	Must Register View on request
141 D141	--	2/27/2017 2/28/2017	NOTICE OF INQUIRY	2	Must Register View on request

UNITED
FOR THE PEOPLE

Constitutional Amendment

The Supreme Court's ruling in *Citizens United v. FEC* has focused America's attention on the dangerous influence of corporate power in our democracy and the urgency of taking all necessary measures to undo that influence, including amending the Constitution.

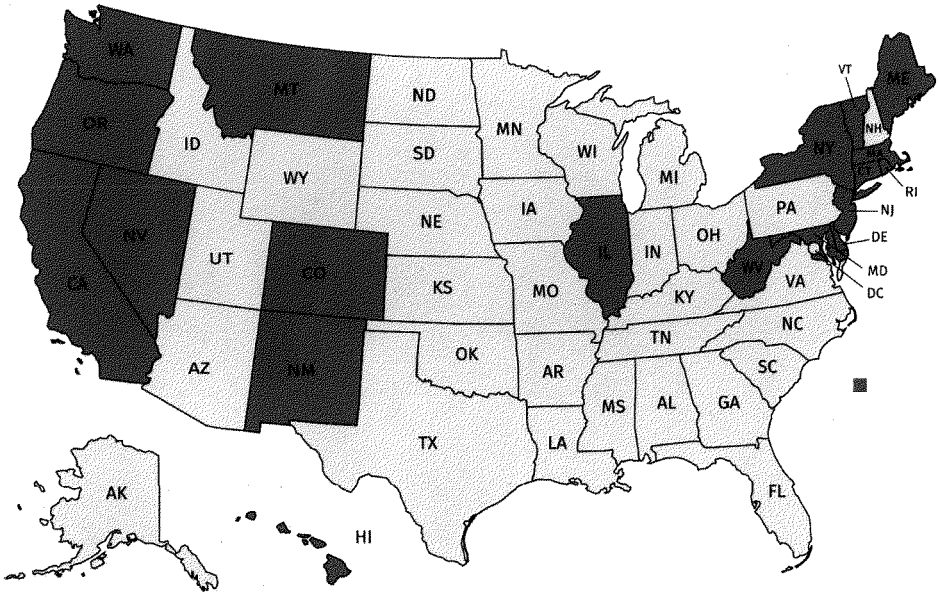
Generations of Americans have amended the Constitution over the years to ensure that "We the People" means all the people, not just the privileged few. *Citizens United*, which opened the floodgates to unlimited corporate spending to influence elections at all levels of government, has brought home the importance of amending the Constitution to ensure that "We the People" does not mean we the corporations.

United For The People believes that America works best when our government is of, by, and for the people. Though our supporters have differences in scope and tactics, we are organizations united in the understanding that the Court's decisions in *Citizens United* and related cases must be remedied by amending the Constitution in order to restore the democratic promise of America.

140 million Americans, 45% of the U.S. population, live in a state or locality that has supported amending the Constitution in order to restore the democratic promise of America.

State Support

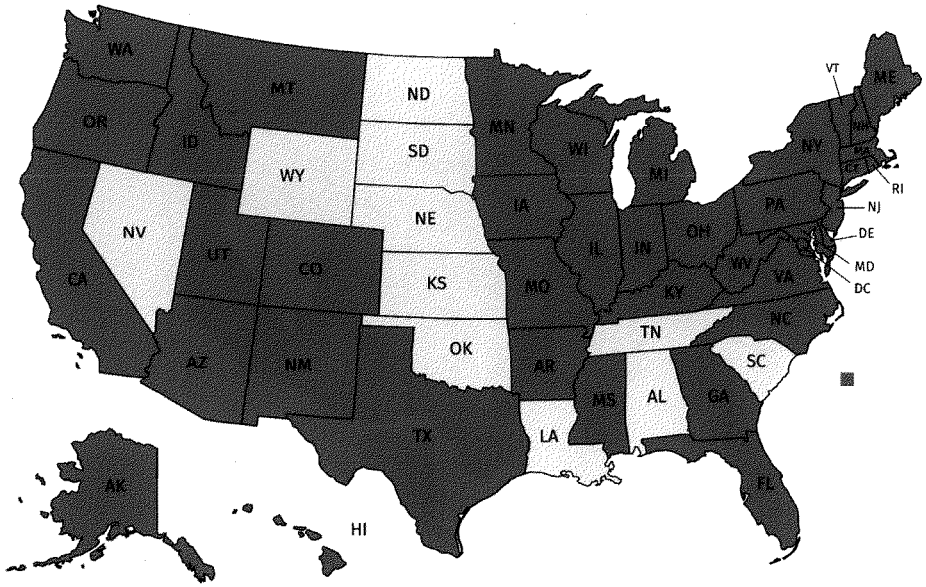
19 States



Created with mapchart.net ©

Local Support

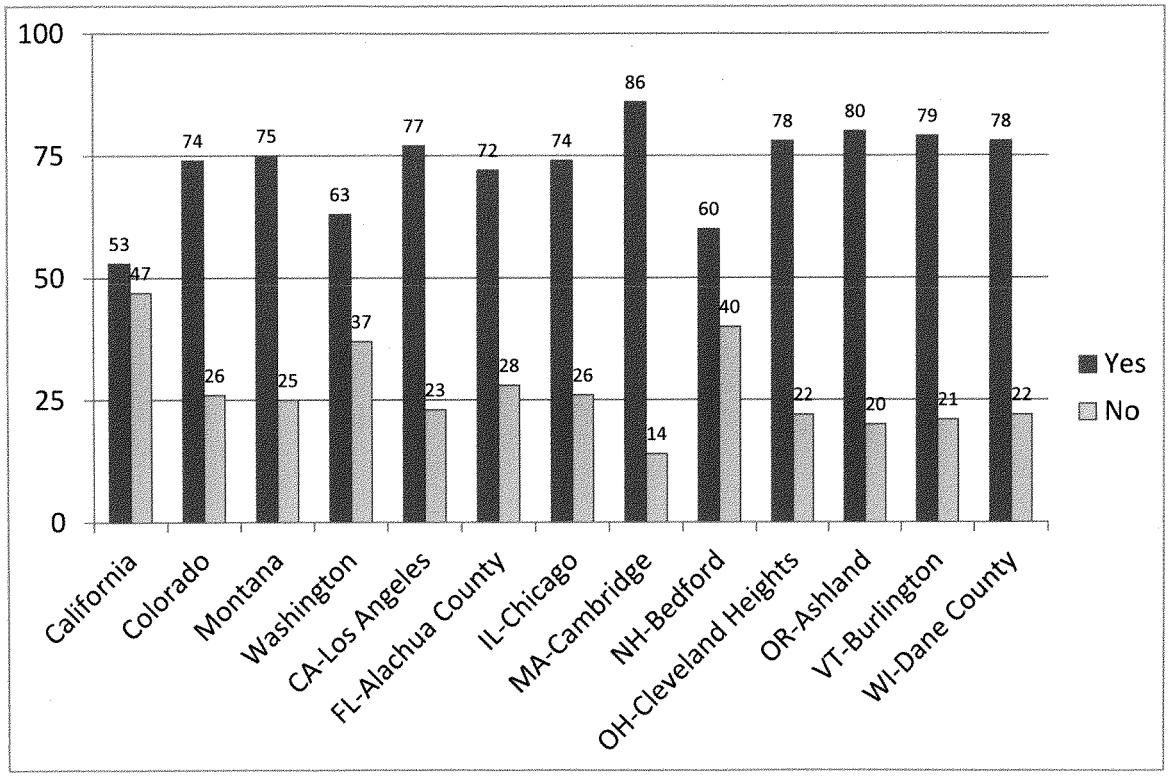
796 localities



Created with mapchart.net ©

Americans from across the country and political spectrum, by large margins, support a constitutional amendment to curb the outsized influence of big money in politics.

On the Ballot



Polling

May 2018 by Voice Of the People and the University of Maryland School of Public Policy's Program for Public Consultation

"The most significant change—favored by 75% (Republicans 66%, Democrats 85%)—was a [c]onstitutional amendment that would allow Congress and the states to write campaign finance laws that regulate and set reasonable limits on the raising and spending of money to influence elections and to distinguish between people and corporations. This would effectively supersede the 'Citizens United' decision and allow legislators to restrict or prohibit corporations and other organizations from spending money to influence elections."

July 2014 by Democracy Corps on behalf of Every Voice

"One option we tested is a [c]onstitutional [a]mendment to overturn the *Citizens United* ruling. Voters support such an amendment by an overwhelming 73 to 24 percent margin, including majorities in even the reddest states . . . This is broad and deep support on a controversial issue, the kind that we rarely see in our hyper-partisan climate."

April 2013 by the University of New Hampshire Survey Center on behalf of the New Hampshire Coalition for Open Democracy, Free Speech For People, People For the American Way, and Public Citizen

"More than two-thirds of New Hampshire adults . . . think there should be an amendment to the U.S. Constitution that would limit campaign contributions and spending."