

# The Case for H.R. 1

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**A**merican democracy urgently needs repair. For decades, public trust has declined as longstanding problems with our system of self-government have worsened. Lawmakers are beholden to wealthy donors more than constituents. Citizens' voices are silenced through voter suppression, gerrymandering, and other violations of their civil and political rights. The virulent coronavirus underscores the urgent need for a functioning democracy that serves all the people.

Even under less trying circumstances, recent national elections revealed serious problems in our electoral system. In 2014, turnout plunged to the lowest in 72 years. In 2018, states engaged in brazen and widespread voter suppression – enforcing discriminatory voter identification laws and conducted large-scale purges of the voter rolls, among other tactics. Elsewhere, outdated registration systems and technology produced long lines at polling places. Super PACs and dark money groups, funded mostly by a tiny class of megadonors, spent over \$1 billion. All the while, our election infrastructure was at risk of manipulation by foreign adversaries.

In the face of these challenges, in 2018 voters mobilized for reform. They surged to the polls in the highest numbers since 1914 and elected a record number of candidates pledged to democracy reform. Over 100 House candidates alone ran on change platforms. Of the 43 Democratic challengers who flipped seats, 25 ran on reforming the system. Voters approved ballot measures to unrig politics—tackling redistricting, voting, and campaign finance—often by large bipartisan majorities, in red, blue, and purple states.

Since then, momentum for reform has continued to build. In 2019, nearly 700 pro-voter bills were introduced

in 46 states. Maine enacted automatic voter registration, New Mexico same day registration, and New York small donor public financing. We saw voting rights restored or expanded for those with past criminal convictions in Kentucky, Colorado, Nevada, Illinois, Louisiana, and New Jersey. This momentum carried into 2020. Thus far, lawmakers in 29 states have introduced 188 bills to expand access (far more than bills to curb voting). In February, Virginia moved legislation on automatic voter registration, same day registration, and redistricting. Every Democratic presidential candidate ran with democracy reform as a top goal.

Most important, in 2019, the House of Representatives passed H.R. 1, the “For the People Act of 2019.” This historic legislation contains key reforms to revitalize American democracy—including automatic voter registration, small donor public financing, redistricting reform, and a commitment to restore the Voting Rights Act. It would make voting easier and more accessible, lower barriers to running for office, and empower voters to choose their representatives, rather than let representatives choose their voters. H.R. 1 would be the most sweeping reform in a half century, the most significant change to pass either chamber. It has secured cosponsorship from every Democratic senator. The major obstacle to passing this important legislation is Senate Majority Leader Mitch McConnell, who currently refuses to bring the bill to the Senate floor for a vote.

For far too long, lawmakers have neglected to address our democracy's worsening problems. Now we face a new challenge: a worldwide pandemic that will necessitate substantial changes to election procedures and other reforms to ensure that every American can register to

vote a cast a ballot safely. The public deserves action. H.R. 1 responds directly to Americans' hunger for real solutions to ensure that each of us can have a voice in the decisions that govern all of our lives. Congress must seize this opportunity and pass this historic set of reforms.

## Voting Rights

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**The right to vote is at the heart of effective self-government.** In the Federalist Papers, Alexander Hamilton and James Madison laid down a standard for our democracy: “Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States.”<sup>1</sup> For over two centuries, we have worked to live up to that ideal, but have consistently fallen short. Many have struggled, and continue to struggle, for the franchise. H.R. 1 would expand and protect this most fundamental right and bring voting into the 21st century. Many of its voting provisions would also make it easier for election officials to address the unique challenges posed by the Covid-19 pandemic and ensure safe and fair elections.

## Modernize Voter Registration

One in five eligible Americans is not registered to vote, due in many cases to out-of-date and ramshackle voter registration systems.<sup>2</sup> We must modernize these systems.

The United States is the only major democracy in the world that requires individual citizens to shoulder the onus of registering to vote (and re-registering when they move).<sup>3</sup> In much of the country, voter registration still relies on error-prone pen and paper. Paper forms make mistakes and omissions more likely, as well as inaccurate entry of information into databases by election officials. A 2012 report by the Pew Center on the States estimated that roughly one in eight registrations in America is invalid or significantly inaccurate.<sup>4</sup>

These problems drive down turnout. Each Election Day, millions of Americans go to the polls only to have trouble voting because of registration flaws. Some find their names wrongly deleted from the rolls. Others fall out of the system when they move.<sup>5</sup>

Outdated registration systems also undermine election integrity. Incomplete and error-laden voter lists create opportunities for malefactors to disenfranchise eligible citizens. Officials with partisan motives can remove voters from the rolls because of minor discrepancies, such as spelling mistakes, incomplete addresses, or other miss-

ing information. These systems are also far more expensive to maintain than more modern systems. In Arizona's Maricopa County, for example, processing a paper registration cost 83 cents, compared to 3 cents for applications processed electronically.<sup>6</sup>

The Covid-19 pandemic will likely put outdated registration systems under even greater stress. Quarantines, illnesses, and social distancing will reduce access to government offices. Voter registration drives will be curbed. And the post office may be disrupted. All this may come during the critical weeks leading up to an election.<sup>7</sup>

## Automatic Voter Registration

Automatic voter registration, a key component of H.R. 1, would transform and modernize our current registration systems. This bold, paradigm-shifting approach would add tens of millions to the rolls, cost less, and bolster security and accuracy. It is now the law in sixteen states and the District of Columbia.<sup>8</sup> It should be the law for the entire country.

Under automatic voter registration (“AVR”), every eligible citizen who interacts with designated government agencies, such as the DMV, a public university, or a social service agency, is automatically registered to vote, unless they decline registration. It shifts registration from an “opt-in” to an “opt-out” process, aligning with people's natural propensity to choose the default option presented to them. If fully adopted nationwide, AVR could add as many as 50 million new eligible voters to the rolls – the largest enfranchisement since the 19th Amendment.<sup>9</sup>

The policy also requires that voter registration information be electronically transferred to election officials as opposed to an antiquated infrastructure of paper forms and snail mail. This significantly increases the accuracy of the rolls and drives down the costs of maintaining them.<sup>10</sup>

Oregon and California became the first states to adopt AVR in 2015. Since then, fourteen more states and the District of Columbia followed—many with strong bipartisan support. In Illinois, for example, the state legislature passed AVR unanimously, and a Republican Governor signed it into law.<sup>11</sup>

The new system has proven extraordinarily successful, increasing registration rates in nearly every state where it has been implemented. In Vermont, for example, registrations went up by 60% after it adopted AVR. In Georgia, 94%. In 8 jurisdictions that implemented AVR for the 2018 election, 2.2 million people were registered to vote through AVR, and up to 6 million people had their registration information updated.<sup>12</sup>

There is strong reason to believe that the reform also boosts turnout. When voters are automatically registered, they are relieved of an obstacle to voting, thus increasing

the likelihood they will show up to the polls. Automatic registration also exposes more voters to direct outreach from election officials and others.<sup>13</sup> Indeed, Oregon saw the nation's largest turnout increase after it adopted AVR. It had no competitive statewide races, yet the state's turnout increased by 4 percent in 2016—2.5 percentage points higher than the national average.<sup>14</sup> The aforementioned study found that in the 8 jurisdictions analyzed, AVR resulted in hundreds of thousands of new voters at the polls. Other reforms that make it easier to register have also increased turnout, such as permitting registrants who move anywhere within a state to transfer their registration and vote on Election Day at their new polling place.<sup>15</sup> And they send a strong message that all eligible citizens are welcome and expected to participate in our democracy.

Many election officials support AVR because it improves administration and saves money. Virtually every state that has implemented electronic transfer of registration records from agencies such as the DMV to election officials has reported substantial savings from reduced staff hours processing paper, and lower printing and mailing expenses. Eliminating paper forms improves accuracy, reduces voter complaints about registration problems, and reduces the need for the use of provisional ballots.<sup>16</sup>

Voters strongly support AVR. According to recent polling, 65 percent of Americans favor it. Michigan and Nevada adopted AVR this past election by popular referendum, with overwhelming support from voters across the political spectrum. Alaska voters passed AVR in 2016 with nearly 64 percent of the vote.<sup>17</sup>

H.R. 1 sensibly makes AVR a national standard, building on past federal reforms to the voter registration system.<sup>18</sup> Critically, the Act requires states to put AVR in place at a wide variety of government agencies beyond the DMV, including those that administer Social Security or provide social services, as well as higher education institutions. It requires a one-time “look back” at agency records to register eligible individuals who have previously interacted with government agencies. It protects voters' sensitive information from public disclosure.

Critically, AVR also includes multiple safeguards to ensure that ineligible voters are not registered (and to prevent people from being punished for innocent mistakes). The government agencies designated for AVR regularly collect information about individuals' citizenship and age, and they are already required to obtain an affirmation of U.S. citizenship during the registration transaction. Before anyone is registered, agencies must inform individuals of eligibility, the penalties for illegal registration, and offer an opportunity to opt out of registrations. Election officials, too, are required to send individuals a follow-up notice by mail. Indeed, election officials report that AVR's elimination of paper forms *enhances* the accuracy of the rolls.<sup>19</sup>

## Same-Day and Online Registration

H.R. 1 would boost voter participation further by establishing same-day and online registration. No cumbersome paperwork. No waiting period. With a few clicks or a trip to the polls with proper documentation, eligible voters would be able to cast a ballot.

Same-day registration (“SDR”) is a strong complement to AVR, allowing eligible citizens to register and vote on the same day. It is particularly useful to people who have not interacted with government agencies or whose information has changed since they last did. And because it allows eligible Americans to vote even if their names are not on the voter rolls, SDR safeguards against improper purges, registration system errors, and cybersecurity attacks.

SDR has been used successfully in several states since the 1970s. Today, twenty-one states and the District of Columbia have passed some form of same day registration, either on election day, during early voting, or both.<sup>20</sup> SDR has been shown to boost voter turnout by 5 to 7 percent.<sup>21</sup> More than 60 percent of Americans support it.<sup>22</sup>

H.R. 1 also requires states to offer secure and accessible online registration. At a time when many Americans do everything from banking to reviewing medical records online, voters want this convenient method of registration. The online registration provisions in H.R. 1 would let all voters register, update registration information, and check registrations online. They would also ensure that these benefits are available to citizens who do not have driver's licenses. Online registration is especially critical as a response to the Covid-19 pandemic, which may keep some voters from registering by other means.<sup>23</sup>

In addition to convenience and safety, online registration saves money and improves voter roll accuracy. Processing electronic applications is a fraction of the cost of processing paper applications, and election officials report that letting voters enter their own information significantly reduces the likelihood of incomplete applications and mistakes. It is not surprising, therefore, that online registration is incredibly popular and has spread rapidly. In 2010, only six states offered online voter registration. Now, thirty-eight states and the District of Columbia do.<sup>24</sup>

Taken together, AVR, SDR, and online registration would ensure that no eligible voter is left out of our democratic process. It is time to bring these reforms to the whole country.

## Protect Against Flawed Purges

Modernizing our voter registration system means not only registering all eligible voters, but also making sure those eligible voters stay on the voter rolls. Voter purges—the large-scale deletion of voters' names from the rolls often using flawed data—are on the rise. In 2018, they were a key form of vote suppression used by election officials around the country.<sup>25</sup> We should address this growing threat by curbing improper efforts to remove eligible voters.

Purge activity has increased at a substantially greater rate in states that were subject to federal oversight under the Voting Rights Act prior to the Supreme Court’s decision in *Shelby County v. Holder*. The Brennan Center has calculated that more than 17 million voters were purged from the polls nationwide between 2016 and 2018. Over the same period, the median purge rate in jurisdictions previously covered by the VRA was 40 percent higher than the purge rate in jurisdictions that were not covered. Georgia, for example, purged twice as many voters—1.5 million—between the 2012 and 2016 elections as it did between 2008 and 2012. The state also saw most of its counties purge *more than 10 percent* of their voters within the past two years alone. Texas purged 363,000 more voters between 2012 and 2014 than it did between 2008 and 2010. We ultimately found that *2 million fewer voters* would have been purged between 2012 and 2016, and 1.1 million fewer between 2016 and 2018, if jurisdictions previously subject to pre-clearance had purged at the same rate as other jurisdictions.<sup>26</sup>

Incorrect purges disenfranchise legitimate voters and cause confusion and delay at the polls. And purge practices can be applied in a discriminatory manner that disproportionately affects minority voters. In particular, matching voter lists with other government databases to ferret out ineligible voters can generate racially discriminatory results if the matching is done without adequate safeguards. Black, Asian American, and Latino voters are much more likely than white voters to have one of the most common 100 last names in the United States, resulting in a higher rate of false positives.<sup>27</sup>

H.R. 1 creates strong protections against improper purges. It puts new guardrails on the use of inter-state databases (such as the now-defunct and much-maligned Crosscheck system)<sup>28</sup> that purport to identify voters that have re-registered in a new state, but that have been proven to produce deeply flawed data. It prohibits election officials from relying on a citizen’s failure to vote in an election as reason to remove them from the rolls. And it requires election officials to provide timely notice to removed voters, as well as an opportunity to remedy their registration before an election.

## Restore the Voting Rights Act

H.R. 1 contains an express commitment to restore the full protections of the Voting Rights Act of 1965 (“VRA”), which the U.S. Supreme Court crippled with its ruling in *Shelby County v. Holder* in 2013.<sup>29</sup> VRA restoration is accomplished through separate legislation, the Voting Rights Advancement Act of 2019, or H.R. 4, which passed the House of Representatives on December 6, 2019.<sup>30</sup>

As recent experience makes clear, restoration of the

VRA—the engine of voting equality in our country—is critical. The VRA is widely regarded as the single most effective piece of civil rights legislation in our nation’s history.<sup>31</sup> As recently as 2006 it won reauthorization with overwhelming bipartisan support.<sup>32</sup> But in the absence of a full-force VRA, the 2018 midterm elections were marred by the most brazen voter suppression seen in decades.<sup>33</sup> Election officials executed large-scale voter purges and closed polling places and early voting sites, especially in minority neighborhoods.<sup>34</sup> Burdensome voter ID requirements targeted minority citizens.<sup>35</sup> Unnecessarily strict registration rules, like Georgia’s “exact match” policy, put 53,000 voter registrations on hold, the overwhelming majority of whom were Black people, Latino, and Asian Americans.<sup>36</sup> And many absentee ballots were suspiciously rejected.<sup>37</sup> A fully functional VRA would have prevented many of these abuses. We must commit to restoring the Act to ensure that all Americans have a voice in our democracy.

For nearly five decades, the linchpin of the VRA’s success was the Section 5 pre-clearance provision. It required certain states with a history of discriminatory voting practices to obtain approval from the federal government before implementing any voting rules changes. Section 5 deterred and prevented discriminatory changes to voting rules right up until the time the Supreme Court halted its operation. Between 1998 and 2013 alone, Section 5 blocked 86 discriminatory changes (13 in the final 18 months before the *Shelby County* ruling), caused hundreds more to be withdrawn after Justice Department inquiry, and prevented still more from being put forward because policymakers knew they would not pass muster.<sup>38</sup>

*Shelby County* eviscerated Section 5 by striking down the “coverage formula” that determined which states were subject to pre-clearance. That resulted in a predictable flood of discriminatory voting rules, contributing to a now decade-long trend of states adopting new restrictions, which the Brennan Center has documented extensively. 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. Shortly afterward, Alabama, Arizona, Florida, Mississippi, North Carolina, and Virginia also moved ahead with restrictive voting laws or practices that previously would have been subject to pre-clearance.<sup>39</sup> 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.<sup>40</sup>

Section 2 of the VRA—which prohibits discriminatory voting practices nationwide and permits private parties and the Justice Department to challenge those practices in court—remains an important bulwark against discrimination. But Section 2 lawsuits are not a substitute for

pre-clearance. They are far more lengthy and expensive, and often do not yield remedies for impacted voters until after an election (or several) is over.<sup>41</sup>

H.R. 4 updates the VRA's coverage formula to restore the Act's full force. It is backed by a thorough legislative record documenting the recent history of voter suppression in U.S. elections. While H.R. 4 passed in the House of Representatives, it has yet to be taken up by the Senate. This crucial legislation must become law in order to fortify the right to vote and the integrity of our elections. H.R. 1 commits us to this goal.

## Restore Voting Rights to People with Prior Convictions

Nationally, state laws deny 4.5 million citizens the right to vote because of a criminal conviction—3.2 million of whom are no longer incarcerated. The laws that disenfranchise them originate primarily from the Jim Crow era, shutting people who work, pay taxes, and raise families out of our political system.<sup>42</sup> We should restore voting rights to Americans living in the community. This would strengthen our communities, offer a second chance to those who have served their time, and remove the stain of a policy born out of Jim Crow.

Disenfranchisement laws vary dramatically from state to state. In Iowa, for example, everyone convicted of a felony is permanently stripped of their right to vote. In states like Vermont and Maine, people currently in prison are allowed to vote. In between, there are states that distinguish between different types of felonies, states that treat repeat offenders differently, and varying rules on what parts of a sentence must be completed before rights are restored, such as paying off debt or other legal financing obligation.<sup>43</sup> Navigating this patchwork of state laws causes confusion for everyone—including election officials and prospective voters—about who is eligible to vote. The real-world result is large-scale disenfranchisement not only of ineligible persons but also of potential voters who are eligible but do not know it.<sup>44</sup>

Regardless of their particular terms, criminal disenfranchisement laws are rooted in discriminatory practices and disproportionately impact Black people. In 2016, one in thirteen voting-age Black citizens could not vote, a disenfranchisement rate more than four times that of all other Americans.<sup>45</sup> This unequal impact is no accident—many states' criminal disenfranchisement laws are rooted in nineteenth-century attempts to evade the Fifteenth Amendment's mandate that Black men be given the right to vote.<sup>46</sup>

This disproportionate impact on people of color means that, all too often, communities are shut out of our democracy. Disenfranchisement laws have a negative

ripple effect beyond those people within their direct reach. Research suggests that these laws may affect turnout in neighborhoods with high incarceration rates, even among citizens who are eligible to vote.<sup>47</sup> This is not surprising. Children learn civic engagement habits from their parents. Neighbors encourage each other's political participation. And when a significant portion of a community is disenfranchised, it sends a damaging message to others about the legitimacy of democracy and the respect given to their voices.

H.R. 1 adopts a simple and fair rule: If you are out of prison and living in the community, you get to vote in federal elections. It also requires states to provide written notice to individuals with criminal convictions when their voting rights are restored.

These changes would have a profoundly positive impact on affected citizens and society. We all benefit from the successful reentry of formerly incarcerated citizens into our communities. Restoring their voting rights makes clear that they are entitled to the respect, dignity, and responsibility of full citizenship.

Voting rights restoration also benefits the electoral process by reducing confusion and easing the burdens on election officials to determine who is eligible to vote. If every citizen living in the community can vote, officials have a bright line rule to apply. This clear rule also eliminates one of the principal bases for erroneous purges of eligible citizens from the voting rolls.<sup>48</sup> In past elections, states have botched attempts to remove Americans with past criminal convictions from the rolls, improperly removing many eligible citizens. For example, in 2016 thousands of Arkansans were purged because of supposed felony convictions— but the lists used were highly inaccurate, and included many who had never committed a felony, or who had had their voting rights restored.<sup>49</sup>

For these reasons, rights restoration is immensely popular regardless of political views. In November 2018, 65 percent of Florida voters passed a ballot initiative restoring voting rights to 1.4 million of their fellow residents, with a massive groundswell of bipartisan support. Louisiana, through bipartisan legislation, restored voting rights to nearly 36,000 people convicted of felonies. In December of 2019, newly-elected Governor Andy Beshear signed an executive order restoring the vote to some 140,000 Kentuckians. Shortly after, the New Jersey legislature restored voting rights to 80,000 people on parole or probation. Governor Kim Reynolds, Republican of Iowa, recently endorsed a similar constitutional amendment in her state. And over the past two decades, seventeen states have restored voting rights to segments of the population.<sup>50</sup>

Congress has the authority to act. Many state criminal disenfranchisement laws were enacted with a racially discriminatory intent and have a racially discriminatory

impact, violating the Fourteenth and Fifteenth Amendments, which vest Congress with broad power to enforce their protections. Congress can also act under its Article I power to set the rules for federal elections. The Supreme Court has previously upheld use of this power in analogous circumstances, such as when Congress lowered the voting age to 18 in federal elections.<sup>51</sup> It is time to finally put one of the most troubling legacies of the Jim Crow era behind us.

## Institute Nationwide Early Voting

Every year, Americans across the country struggle to get to the polls on Election Day. Full-time jobs, childcare needs, disabilities, and other factors prevent them from traveling to their polling place to cast a ballot. Sometimes, even after making the time and the journey, long lines cause them to turn away. We should alleviate this problem by guaranteeing a minimum two-week period for early voting in federal elections.

Holding elections on a single workday in mid-November is a relic of the nineteenth century. It was done for the convenience of farmers who had to ride a horse and buggy to the county seat in order to cast a ballot.<sup>52</sup> This no longer works for millions across the country. Early voting helps to modernize the electoral process to make it easier for hard-working Americans to get to the polls. It also helps to minimize crowding at polling places, which is especially critical in the face of the Covid-19 pandemic.<sup>53</sup>

Thirty-nine states already offer some opportunity to vote in person before Election Day. More than a dozen of those states offer early voting for a period comparable to or greater than the two-week period leading to Election Day required by H.R. 1.<sup>54</sup> But the absence of a national standard means that some states have few or inconsistent early voting hours. Others have been able to engage in politicized cutbacks to early voting. Over the past decade, multiple states have reduced early voting days or sites used disproportionately by Black voters, such as the elimination of early voting on the Sunday before Election Day. Federal courts have struck down these kinds of early voting cutbacks in North Carolina and Wisconsin because they were intentionally discriminatory.<sup>55</sup>

H.R. 1 will make voting more manageable by requiring that states provide two weeks of early voting and equitable geographic distribution of early voting sites. A guaranteed early voting period will reduce long lines at the polls and ease the pressure on election officials and poll workers on Election Day. It will also make it easier for election officials to spot and solve problems like registration errors or voting machine glitches before they impact most voters. For these reasons, election officials report

high satisfaction with early voting. Early voting is popular with voters too, with study after study showing a significant positive effect on voter satisfaction.<sup>56</sup>

Early voting is a critical element of a convenient and modern voting system. A national standard is long overdue.

## Protect Against Deceptive Practices

Attempts to suppress voting through deception and intimidation remain all too widespread. Every election cycle, they are documented by journalists and non-partisan Election Protection volunteers.<sup>57</sup> This is not a new problem, but social media platforms make the mass dissemination of misleading information easy and allow for perpetrators to target particular audiences with disturbing precision. In 2016, they were especially prevalent, and not just on the part of domestic actors. Russian operatives also engaged in a concerted disinformation and propaganda campaign over the Internet that aimed, in part, to suppress voter turnout, especially among Black people.<sup>58</sup> We should increase protections against such efforts.

While federal law already prohibits voter intimidation, fraud, and intentional efforts to deprive others of their right to vote, existing laws have not been strong enough to deter misconduct. Moreover, no law specifically targets deceptive practices, nor is there any authority charged with investigating such practices and providing voters with corrected information.

H.R. 1 protects voters from deception and intimidation in three ways. First, it increases criminal penalties for false and misleading statements, as well as intimidation, aimed at impeding or preventing a person from voting or registering to vote. Second, it empowers citizens to go to court to stop voter deception. Third, it blunts the effect of deceptive information by requiring designated government officials to disseminate accurate, corrective information to voters. These provisions will give federal law enforcement agencies and private citizens the opportunity to stop bad actors from undermining our elections.

## Campaign Finance

**We also need to dramatically overhaul the role of money in politics.** Thanks in part to *Citizens United* and other harmful court decisions, a small class of wealthy donors has achieved unprecedented clout in American elections.<sup>59</sup> That distorts our democracy and undermines the will of American voters. We should pass reforms to counteract the worst effects of *Citizens United* and amplify the voices of everyday Americans in our campaigns.

# Small Donor Public Financing

To truly counteract the worst effects of *Citizens United*, we need to create a small-donor public financing system for congressional races and revamp the presidential public financing system. These reforms have the potential to fundamentally transform our political campaigns.

America's system of privately financed campaigns gives a small minority of wealthy donors and special interests unparalleled clout. Super PACs, political committees that can raise and spend unlimited funds thanks to *Citizens United*, have raised more than \$5 billion to spend influencing elections.<sup>60</sup> Roughly a fifth of that total has come from just eleven people.<sup>61</sup> Dark money groups that keep their donors secret, but which we know are funded by many of the same donors who back super PACs, have spent over \$1 billion more.<sup>62</sup> Overall, in the decade since *Citizens United*, donors of more than \$100,000 have come to dominate federal campaign fundraising. Even during the supposed small donor boom of the 2018 midterms, the roughly 3,500 donors who gave at least \$100,000 easily outspent all individual small donors (of \$200 or less), who numbered at least seven million.<sup>63</sup> In fact, while the number of small individual donors has increased in recent years in absolute terms, their total share of federal campaign spending has remained flat, accounting for about 20 percent of total donations.<sup>64</sup> In the two most recent midterm elections, the top 100 super PAC donors gave almost as much as all the millions of small donors combined.<sup>65</sup>

The outsized role of large campaign donors forces candidates to spend inordinate time focused on their concerns. One party fundraising presentation from several years ago suggested that new representatives spend four hours a day soliciting large contributions.<sup>66</sup> As Senator Chris Murphy of Connecticut noted of the hours he spent calling donors, "I talked a lot more about carried interest inside of that call room than I did at the supermarket. [Wealthy donors] have fundamentally different problems than other people . . . And so you're hearing a lot about problems that bankers have and not a lot of problems that people who work in the mill in Thomaston, Conn., have."<sup>67</sup>

Unsurprisingly given this dynamic, researchers find that government policy is much more responsive to the preferences of the wealthy and business interest groups than those of average citizens.

The last Congress, for example, was dominated by the push for Obamacare repeal and a \$1.5 trillion tax overhaul, both avowedly donor-driven initiatives that enjoyed tepid public support at best.<sup>68</sup> The tax bill in particular made it over the finish line in part because of explicit warnings that "financial contributions will stop" if it failed to

pass.<sup>69</sup> There are many other examples of government policy aligning more with the preferences of the donor class than with those of most other Americans, especially with respect to issues related to wealth inequality, like wages, housing, and financial regulation.<sup>70</sup>

The clout donors wield in our political system has contributed to a sense of powerlessness on the part of millions of everyday Americans. Overwhelming majorities tell pollsters that corruption is widespread in the federal government, that they believe people who give a lot of money to elected officials have more influence than others, that money has too much influence in political campaigns, and that they blame money in politics and wealthy donors for dysfunction in the U.S. political system.<sup>71</sup>

The central role of wealthy private donors poses special challenges for communities of color. At the highest contribution levels, the donor class has long been overwhelmingly white (and disproportionately male).<sup>72</sup> One consequence is that policies that would disproportionately benefit people of color, such as raising the minimum wage, tend to be much more popular with ordinary people than with influential political donors.<sup>73</sup> The cost of campaigns is also a barrier to people of color running for office, especially women.<sup>74</sup> In 2018 black women running for Congress raised only a third of what other female candidates received from large donors.<sup>75</sup> Facing these structural barriers, potential candidates often decline to run at all – as one operative notes, "[e]specially for black women, raising money is oftentimes a major deterrent to why they don't get into politics or run for election."<sup>76</sup>

H.R. 1 addresses these problems head-on by amplifying the voices of the everyday voters, primarily through small donor matching. Small donor matching is a transformative solution to the problem of big money politics. While its potential may be profound, the basics of this system are simple. Candidates opt into the system by raising enough small start-up donations to qualify and accepting certain conditions such as lower contribution limits. Donors who give to participating candidates in small amounts will then see their contributions matched by public money. H.R. 1 would match donations of \$1-\$200 to participating congressional candidates at a six-to-one ratio, the same ratio used until recently in New York City's highly successful program.<sup>77</sup>

Small donor matching has a long and successful history in American elections. It was first proposed more than a century ago by President Theodore Roosevelt. Congress incorporated a one-to-one small donor match for primaries into the presidential public financing system enacted in 1971. The vast majority of major party presidential candidates from 1976 to 2008 used matching funds in their primary campaigns. Thanks to the presidential public financing system, Ronald Reagan was reelected by a landslide in 1984 without holding a single fundraiser.

Two years later, the bipartisan Commission on National Elections concluded that: “Public financing of presidential elections has clearly proved its worth in opening up the process, reducing the influence of individuals and groups, and virtually ending corruption in presidential election finance.”<sup>78</sup>

Small donor matching has also found success at the state level, where it has been adopted in a wide variety of jurisdictions.<sup>79</sup> The system that has been studied the most is New York City’s, which has existed since the 1980s and currently matches donations of up to \$175.<sup>80</sup> The vast majority of city candidates participate.<sup>81</sup> Studies of the 2009 and 2013 city elections found that participating candidates took in more than 60 percent of their funds from small donors and the public match.<sup>82</sup> These donors are far more representative of the real makeup of New York than big donors in terms of race, income, education level, and where they live.<sup>83</sup> Candidates who participate in the small donor matching program also raise significantly more money from donors in their own districts than other candidates running in the same areas.<sup>84</sup>

Along with expanding the donor pool, the city’s small donor matching system has also helped more diverse candidates run. These include the city’s first Black mayor and New York State’s first female and first Black elected attorney general, who began her career on the city council.<sup>85</sup>

H.R. 1’s small donor matching provisions would transform campaign fundraising in federal elections. They would allow every candidate to power their campaign with small donations; almost all congressional candidates would be able to raise as much as or more than they do under the current system.<sup>86</sup>

H.R. 1 accomplishes this transformation at no cost to taxpayers; the public match is instead funded primarily by a small surcharge on criminal and civil penalties assessed against corporate wrongdoers. And even if this were not the case, the price tag is exceedingly modest—roughly .01 percent of the overall federal budget over ten years.<sup>87</sup> The reality is that campaigns cost money, which must come from somewhere. When wealthy donors and special interests fund our campaigns, they expect something in return. Taxpayers are too often the ones left to pay the real bill.<sup>88</sup> We need a system that will create greater incentives to enact policies that benefit all Americans. H.R. 1’s matching program represents the best hope for bringing such a change about.

In addition to small donor matching, H.R. 1 also creates a pilot program to provide eligible donors with \$25 in “my voice vouchers” to give to congressional candidates of their choice in increments of \$5. While less common, vouchers are another promising type of small donor public financing, one that is especially beneficial for Americans who cannot afford to make even small donations. Voters in the city of Seattle overwhelmingly passed a voucher program in 2015, which has brought thousands

of new donors into the political process, most of whom are women, people of color, and/or younger and less affluent than the city’s overall donor pool.<sup>89</sup>

Finally, H.R. 1 revamps the presidential public financing system, which provides matching funds to primary candidates and block grants to general election nominees. Despite its initial success, that system ultimately failed because it did not afford candidates sufficient funds to compete in light of the dramatic growth in campaign costs.<sup>90</sup> H.R. 1 addresses this problem by increasing the primary match to a six-to-one ratio, providing matching funds to party nominees in the general election, and repealing burdensome limits on how much participating candidates can spend.

## Shoring Up Other Critical Campaign Finance Rules

We must also shore up other critical campaign finance rules to curb dark money, counter foreign interference in U.S. elections, and make it harder to sidestep campaign contribution limits. These are some of the biggest challenges for our campaign finance system. As recently as 2006, almost all federal campaign spending was raised in accordance with federal contribution limits and fully transparent. But *Citizens United* made it possible for new types of entities to spend limitless funds on electoral advocacy—including super PACs and dark money groups that are not required to make their sources of funding public.<sup>91</sup> As noted, such groups have spent billions on federal elections, much of it coming from a handful of billionaire megadonors. All of this spending tends to be concentrated in the closest races. One Brennan Center study of the 2014 midterms showed that more than 90 percent of dark money spent on Senate races that year was concentrated in the eleven most competitive contests.<sup>92</sup>

Dark money is an especially troubling phenomenon. The lack of donor disclosure deprives voters of critical information about who is trying to influence them and what those spenders want from the government. It is donor disclosure, as the *Citizens United* court itself pointed out, that allows voters to determine whether elected leaders “are in the pocket of so-called ‘moneyed interests.’”<sup>93</sup>

More recently, it has come to light that lack of transparency is also providing multiple avenues for foreign governments and nationals to meddle in the American political system. Dark money is one such avenue. For instance, there is an ongoing investigation into ties between the Russian government and the National Rifle Association, a 501(c)(4) organization that spent tens of millions of dollars in dark money on the 2016 presidential race.<sup>94</sup>

Russian operatives in the 2016 election also took advantage of weak disclosure rules for paid Internet ads.



Overall, political advertisers spent \$1.4 billion online in the 2016 election, almost eight times what they spent in 2012.<sup>95</sup> Online ads are cheap to produce and disseminate instantly to vast potential audiences across great distances without regard for political boundaries. The Russian government's efforts—documented, among other places, in the Mueller Report—focused on stoking and amplifying social discord in the U.S. electorate, lowering turnout (especially among Black voters), and, once Donald Trump became the Republican nominee, helping him defeat Hillary Clinton.<sup>96</sup> Moscow's efforts in 2016 may serve as a blueprint for other malefactors. As former Homeland Security Secretary Jeh Johnson put it, “the Russians will be back, and possibly other state actors, and possibly other bad cyber actors.”<sup>97</sup> The Covid-19 pandemic has made combatting online political disinformation and propaganda even more urgent; indeed, the Kremlin already appears to be using the pandemic to sow panic in western countries.<sup>98</sup>

Beyond questions of transparency, there is also the problem of candidates working closely with outside spenders, including both super PACs and dark money groups, to circumvent contribution limits. The *Citizens United* Court assumed this would not happen. It was the very “absence of prearrangement and coordination” that the Court thought would make outside spending not particularly valuable to candidates, and thus not a significant corruption risk. That is why, unlike direct contributions to candidates, outside spending cannot be limited. But even if one accepts the Court's flawed reasoning, the reality is that a great deal of outside spending is anything but independent. In 2016, for example, most presidential candidates had personal super PACs run by top aides or other close associates, whose only purpose was to get the candidate elected and for which the candidate often personally raised funds or even appeared in ads. These entities are also becoming increasingly common in Senate and House races.<sup>99</sup> All of which has rendered campaign contribution limits virtually meaningless.

H.R. 1 takes several key steps to deal with these problems. First, it closes legal loopholes that have allowed dark money to proliferate by requiring all groups that spend significant sums on campaigns to disclose the donors who pay for that spending. Second, it expands transparency requirements to apply to online campaign ads on the same terms as ads run on more traditional media. It also strengthens the “paid for” disclaimers that are required to be included in such ads. And it requires the largest online platforms, with over 50 million unique visitors per month, to establish a public file of requests to purchase political ads akin to the file broadcasters have long been required to maintain.<sup>100</sup> Finally, it tightens restrictions on coordination between candidates and all outside groups that can raise unlimited funds. These are valuable reforms that,

like small donor public financing, will help blunt the worst effects of *Citizens United* and bring greater accountability to our campaigns.

## Overhaul the FEC

A third important priority is to overhaul the dysfunctional Federal Election Commission (“FEC”), which has failed to meaningfully enforce existing rules and would almost certainly struggle to implement other ambitious reforms.

The FEC's structure dates back to the 1970s, and was designed to prevent the agency from taking any decisive action without bipartisan agreement among its commissioners. No more than three of its six members can be affiliated with any one party, and at least four votes are required to enact regulations, issue guidance, or even investigate alleged violations of the law. By longstanding tradition, each of the two major parties takes half the FEC's seats.<sup>101</sup> For the last seven months, the Commission has not even had a quorum of commissioners, because only three of its six seats are occupied.<sup>102</sup>

The FEC's design dates back to a time when disagreements over the government's role in regulating money in politics did not necessarily track partisan affiliation. Ordinary Americans of all political stripes still overwhelmingly support strong campaign finance laws, but party elites are now sharply divided, which has left the Commission mired in gridlock.<sup>103</sup> Even before it lost its quorum, the Commission routinely deadlocked along party lines over whether to pursue significant campaign finance violations—often after sitting on allegations for years without even investigating them. Its process for issuing new regulations had also virtually ground to a halt. Commissioners were increasingly unable to agree even on how to answer requests for interim guidance received through the Commission's advisory opinion process, leaving candidates, parties, and others to decipher the law for themselves without assistance.<sup>104</sup>

FEC dysfunction has played a critical role in the creation of many of our political system's worst problems, including dark money, rampant collaboration between candidates and supposedly independent outside groups, and many of the gaps in the law that increase our vulnerability to foreign interference in our campaigns.<sup>105</sup> As a bipartisan group of lawmakers wrote President Trump in 2018, a dysfunctional FEC “hurts honest candidates who are trying to follow the letter of the law and robs the American people of an electoral process with integrity.”<sup>106</sup> If not addressed, the Commission's problems could stymie implementation of the other ambitious reforms in H.R. 1. Moreover, the agency's inability to enforce campaign finance laws contributes to a broader culture of impunity at a time of eroding respect for the rule of law and democratic values more generally.<sup>107</sup>

H.R. 1 addresses the main flaws of the FEC through

several targeted changes. It curtails gridlock by reducing the number of commissioners from six to five, with no more than two affiliated with any party, effectively requiring one commissioner to be a tie-breaking independent. It also provides the Commission with a real, presidentially-appointed chairperson<sup>108</sup> to serve as its chief administrative officer. And it ends the practice of allowing commissioners to remain in office indefinitely past the expiration of their terms, which has given Congress and the president an excuse to avoid appointing new members, likely contributing to the agency's recent loss of its quorum.<sup>109</sup> Finally, H.R. 1 streamlines the Commission's enforcement process by giving its nonpartisan staff authority to investigate alleged campaign finance violations and dismiss frivolous complaints.<sup>110</sup>

All of these changes are designed to bring the FEC's structure more in line with that of other important federal regulators. Critically, however, H.R. 1 also contains strong safeguards to protect a revitalized FEC from becoming a tool for partisan overreach.

For instance, H.R. 1 seeks to ensure partisan balance on the new FEC by providing that nominees to seats on the Commission will be deemed to be affiliated with a party if they have had any connection to the party—including as a registered voter, employee, consultant, or attorney within the previous five years. That will minimize the risk of the Senate confirming a “wolf in sheep's clothing”—i.e. someone trying to disguise their true partisan leanings.<sup>111</sup> It also creates a new, bipartisan vetting process for nominees. And it provides for more robust judicial oversight of the enforcement process. Ending the ability of commissioners to hold over indefinitely past the expiration of their terms will also be a safeguard against excessive partisanship, since holdover commissioners are more subject to pressure from the president and Congress, who have the power to replace them at any time.<sup>112</sup>

These measures provide significantly more formal protection than exists under current law. They are part of an overall package of sensible reforms that would help ensure that the campaign finance laws we have on the books will be fairly and effectively enforced.

## Redistricting Reform

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**Extreme partisan gerrymandering is another threat to our democracy's long-term health.** We should require independent citizen commissions for congressional redistricting, outlaw partisan gerrymandering and establish other clear criteria for drawing lines, and make the redistricting process more transparent and participatory.

The need for redistricting reform is urgent. Extreme gerrymandering has reached levels unseen in the last 50 years.<sup>113</sup> As a result, shifts in political currents have had virtually no electoral impact in the most heavily gerry-

mandered states. In 2018, for example, a political tsunami year for Democrats, no districts changed parties in Ohio and North Carolina, two states with extremely biased maps. Despite the fact that Democrats earned nearly half the vote in both states, they won only a quarter of the seats. The overwhelming majority of the seats that did change parties in 2018—72 percent—were drawn by commissions and courts.<sup>114</sup> A Democratic gerrymander in Maryland was proven to be just as unbreakable in the Republican wave of 2014.<sup>115</sup> Redistricting abuse is a bipartisan problem—both parties will draw districts that serve their partisan ends if given the opportunity.

Too often, communities of color bear the brunt of these efforts. When Republican-drawn maps in Virginia, North Carolina, and Texas were successfully challenged on the grounds that they discriminated against minority voters, Republicans defended the maps by arguing that politics, rather than race, had been the driving force behind their maps. Democrats in Maryland, likewise, rejected a congressional map that would have given Black people additional electoral opportunities because that would have created an additional Republican seat.<sup>116</sup> Without a rule that makes disadvantaging minority voters for partisan gain illegal, this type of discrimination will continue and grow.

H.R. 1 offers bold and comprehensive solution for the problem of gerrymandering. It requires states to use independent redistricting commissions to draw congressional maps and imposes a uniform set of rules for how districts should be drawn, expressly outlawing partisan gerrymandering and prioritizing criteria like keeping geographically-concentrated communities with shared interests (often referred to as “communities of interest”<sup>117</sup>) together. Depending on when H.R. 1 is passed these reforms could be phased in, with the ban on partisan gerrymandering and requirement for uniform mapdrawing rules becoming effective immediately while the independent commission requirement takes effect later if there is not enough time to set commissions up for the next round of redistricting in 2021.

The experience of states like California and Arizona shows that reforms work. California went from having a congressional map that was one of the least responsive to shifts in public opinion to one of the most. California's maps did not just improve political fairness. They also kept communities of interest together, increased representation for communities of color, and enhanced the opportunity for competition.<sup>118</sup>

It is little wonder that reforms are popular among voters. In 2018, a record five states passed redistricting reform for congressional and/or legislative districts. The Ohio proposal carried every single congressional district in the state by a supermajority. Reforms in Colorado and Michigan also passed overwhelmingly, with more than 60 percent of the vote statewide.<sup>119</sup>

H.R. 1 builds on what has been proven to work.

Commissions would contain equal numbers of Republican, Democratic, and unaffiliated and third party commissioners, with voting rules that ensure that no one group would be able to dominate the redistricting process. Additionally, all potential commissioners would be screened for conflicts of interest to ensure that they do not have a personal stake in the outcome.

The Act's establishment of a clear set of mapdrawing rules, listed in the order in which they are to be applied,<sup>120</sup> is another important and ground-breaking change. Federal law currently has next to no rules governing how districts are to be drawn.<sup>121</sup> Likewise, most states, with a handful of exceptions, have few rules governing congressional redistricting. This has allowed abuses to run rampant. The Act's ban on partisan gerrymandering and enhanced protections for communities of color and communities of interest directly address the most egregious of these abuses in this decade, like the intentional dilution of political power of communities of color mentioned earlier.

Finally, H.R. 1 transforms what has historically been an opaque process into one that is transparent and participatory. Commission business would be done in open public meetings and subject to oversight. Data and other information would be made available and all official communications would be subject to disclosure. Community groups and members would get a say through testimony and other feedback mechanisms. Each commission would be required to show its work and assure fairness by issuing a detailed report before taking a final vote on a plan. In short, redistricting would no longer be done in backroom deals.

Congress has the authority to fix congressional redistricting.<sup>122</sup> As the Supreme Court recognized this past term, "the Framers provided a remedy" in the Constitution for redistricting abuses through the "power bestowed on Congress to regulate elections, and . . . to restrain the practice of political gerrymandering."<sup>123</sup> Over the years, Congress has repeatedly exercised its power under article I, section 4 to do just that.<sup>124</sup>

The changes in H.R. 1 will dramatically improve congressional representation for all Americans, combining best practices for assuring fair, effective, and accountable representation. Congress plainly has the power to enact them and should do so without delay.

## Election Security

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**We must also take critical steps to improve security and reliability of our election infrastructure.**

Since the 2016 election, we have learned disturbing details about attacks against American election infrastructure. Foreign adversaries and cyber criminals successfully breached state voter registration systems

and election night results reporting websites.<sup>125</sup> Attacks against election systems across the globe give us reason to fear this could be the tip of the iceberg, and that we must guard against even more ambitious efforts in the future.<sup>126</sup> Our intelligence community continues to warn that "numerous actors are regularly targeting election infrastructure."<sup>127</sup> This is an alarming issue for most Americans. According to recent polls, 70 percent of Americans say it matters "a lot" to them if a foreign country interferes in our elections, and 53 percent of Americans are not confident that we can defend ourselves from these attacks.<sup>128</sup> It is passed time to take these concerns seriously. Although we may have escaped a serious cyber breach in the 2018 midterms, as Christopher Krebs of the Department of Homeland Security put it, "the big game we think for the adversaries is probably 2020."<sup>129</sup>

Despite these clear threats, eight states continue to use voting machines that have no paper backup (which security experts have consistently argued is a minimum defense necessary to detect and recover from cyberattacks),<sup>130</sup> of the states that do use paper ballots, too few conduct sufficient reviews of their paper backups to audit their election results;<sup>131</sup> private voting system vendors are not required to report security breaches which often leaves our election administrators and the public in the dark;<sup>132</sup> and election officials across the country say they lack the resources to implement critical election security measures.<sup>133</sup> Unfortunately, our election security is only as strong as our weakest link.

H.R. 1 bolsters significantly the security and resilience of our nation's election administration infrastructure. Among the most critical reforms, it requires states to replace insecure paperless voting systems, promotes robust audits of electronic election results, and imposes new requirements for private election system vendors.

## Paperless Voting Systems

First and foremost, H.R. 1 mandates the replacement of all paperless electronic voting machines with machines that require an individual paper record of each vote. Top security experts—from the National Academies of Sciences, Engineering and Medicine, the national intelligence community, academia and industry—agree that replacing paperless voting systems is a top priority. This step is critical to improving election security because, as the National Academies put it, "[p]aper ballots form a body of evidence that is not subject to manipulation by faulty software or hardware and . . . can be used to audit and verify the results of an election."<sup>134</sup> Without that record and check, software manipulation or a bug could change an election result without detection. Further, as Virginia showed in 2017 when it was forced to replace paperless systems just months before a high-profile gubernatorial election after learning of serious security vulnerabilities

in its systems, this transition can easily be accomplished in the timeframe provided in this Act.<sup>135</sup>

## Mandate Robust Audits of Election Results

H.R. 1 also provides funds for states to implement robust audits of election results using statistical models to ensure that a sufficient number of paper ballots are checked to corroborate the electronic vote tallies (known as “risk-limiting audits”).<sup>136</sup> While paper records will not prevent programming errors, software bugs, or the insertion of corrupt software into voting systems, risk-limiting audits use these paper records and are designed to detect and correct any election outcomes impacted by such abnormalities. They are quickly growing in popularity. Two states already mandate them for use in the 2020 election, and election officials in over a dozen jurisdictions across the country have either piloted them in the last year or will do so in 2019.<sup>137</sup>

## Regulating Election System Vendors

Third, H.R. 1 provides for greater federal oversight of the private vendors who design and maintain the election systems that store our personal information, tabulate our votes, and communicate important election information to the public. The Brennan Center has documented numerous instances of voting system failures that could have been prevented had vendors notified their clients of previous failures in other jurisdictions using the same voting equipment.<sup>138</sup> Among other things, the Act would require that any vendors who receive grants under the Act (1) certify that the infrastructure they sell to local election jurisdictions is developed and maintained in accordance with cybersecurity best practices, (2) certify that their own information technology is maintained in accordance with cybersecurity best practices, and (3) promptly report any suspected cybersecurity incident directed against the goods and services they provide under these grants.

## Ethics

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**Finally, we must establish stronger ethics rules for all three branches of government.** These provisions would be an essential first step towards shoring up eroding constraints on self-dealing at the highest levels of government.<sup>139</sup> H.R. 1 addresses this challenge. Among the most important changes, it:

- Requires the president and vice president to adhere to the same broad ethical standards as the millions of government employees who work under them, consistent with voluntary practices to which every president going back to the 1960s adhered until President Trump took office.
- Requires the president, vice president, and candidates for those offices to disclose their tax returns, also consistent with longstanding voluntary norms.
- Strengthens the Office of Government Ethics, which oversees ethical compliance in the Executive Branch.
- Strengthens congressional safeguards against congressional conflicts of interest.
- Strengthens constraints on the “revolving door” between government and industry that prevent former officials from unduly profiting off their time in public service; and
- Requires a code of ethics for the United States Supreme Court.

H.R. 1 is a comprehensive and appropriately aggressive set of reforms that would revitalize and improve our democracy. The American people expect a system that works for everyone. Congress must answer that call by passing this groundbreaking legislation.

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**40** Danielle Lang and 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 Black voters with “surgical precision.” *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

**41** The Brennan Center’s case against Texas’s 2011 voter ID law illustrates this point. Despite consistent rulings that the law was discriminatory, it remained in effect over the course of 3 federal and 4 statewide elections. The Brennan Center represented the Texas State Conference of the NAACP and the Mexican American Legislative Caucus of the Texas House of Representatives, along with the Lawyers’ Committee for Civil Rights Under Law and other co-counsel. The case was consolidated with several others. For more information, see <https://www.brennancenter.org/legal-work/naacp-v-steen>. See also Lopez, *Shelby County*.

**42** Scholars previously estimated that about 6.1 million citizens were disenfranchised nationwide. See Christopher Uggen et al., *6 Million Lost Voters: State-level Estimates of Felony Disenfranchisement*, The Sentencing Project, 2016, 4, <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>. Florida accounted for approximately 1.5 million of these because its constitution permanently disenfranchised everyone convicted of a felony. Since then, in November 2018, Florida voters approved the Voting Restoration Amendment, which restores voting rights to anyone who has completed all terms of their sentence. See *Fl. Const. Art. VI, § 4* (2019). In December 2019, New Jersey restored voting rights to 80,000 some people who are on parole or probation, and Kentucky restored voting rights to at least 140,000 people with convictions in their past. Unless otherwise noted, all of the numbers cited in this testimony adjust for these changes. See Lori Rozsa, “A Joyous Day’ Ahead as 1.4 Million Florida Ex-Felons Have Voting Rights Restored,” *Washington Post*, Jan. 5, 2019, <https://www.washingtonpost.com/national/a-joyous-day-ahead-as-14-million-florida-ex-felons-have-voting-rights-re->

[stored/2019/01/05/58650ee2-106f-11e9-8938-5898adc28fa2\\_story.html?noredirect=on&utm\\_term=.b1dbaa9c4a0](https://www.brennancenter.org/issues/restoring-voting-rights); Brennan Center for Justice, "Restoring Voting Rights," <https://www.brennancenter.org/issues/restoring-voting-rights>.

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**46** Erin Kelley, *Racism and Felony Disenfranchisement*, Brennan Center for Justice, 2017, 2, <https://www.brennancenter.org/publication/racism-felony-disenfranchisement-intertwined-history>.

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**48** Angela Caputo, "In the South, an Aggressive Effort to Purge Former Felons From Voting Rolls," *Pacific Standard*, Nov. 6, 2018, <https://psmag.com/social-justice/former-confederate-states-have-purged-a-growing-number-of-felons-from-voting-lists>.

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[www.cfinst.org/Press/PReleases/14-02-13/Testimony\\_before\\_the\\_New\\_York\\_City\\_Campaign\\_Finance\\_Board\\_Says\\_Small\\_Donor\\_Matching\\_Funds\\_a\\_Success\\_but\\_the\\_City\\_Should\\_Look\\_at\\_Changes\\_Moving\\_Forward.aspx](http://www.cfinst.org/Press/PReleases/14-02-13/Testimony_before_the_New_York_City_Campaign_Finance_Board_Says_Small_Donor_Matching_Funds_a_Success_but_the_City_Should_Look_at_Changes_Moving_Forward.aspx). Candidates who did not participate in the public financing system raised most of their money from donors of \$1,000 or more. Michael J. Malbin, Peter W. Brusoe and Brendan Glavin, *What Is and What Could Be: The Potential Impact of Small-Donor Matching Funds in New York State Elections*, Campaign Finance Institute, 2013, 3, [http://www.cfinst.org/pdf/state/NY/CFI\\_Impact-Matching-on-NYS.pdf](http://www.cfinst.org/pdf/state/NY/CFI_Impact-Matching-on-NYS.pdf).

**83** As New York State Senator (and former City Council Member) Jose Serrano explained: "Imagine if you could spend a little less time [making fundraising calls], and a little more time in someone's living room, listening to conversations that they have, hearing the ideas that they may have. You can become a much more engaged and responsive candidate and hopefully elected official." DeNora Getachew and Ava Mehta, eds., *Breaking Down Barriers: The Faces of Small Donor Public Financing*, Brennan Center for Justice, 2016, 29, [https://www.brennancenter.org/sites/default/files/publications/Faces\\_of\\_Public\\_Financing.pdf](https://www.brennancenter.org/sites/default/files/publications/Faces_of_Public_Financing.pdf). Councilmember Eric Ulrich, a Queens Republican, makes a similar point: "[t]he matching funds program has allowed for the voice of small donors and regular people to have a greater say in outcomes. . . . That has helped us transform how we serve our constituents. I have no choice but to listen to and engage the [constituents] in an overall discussion about what direction the city should go." See Getachew and Mehta, *Breaking Down Barriers*, 34. The comparison to state races that do not have small donor matching is notable. One study the Brennan Center conducted found that participating city candidates raised money from 90 percent of the city's census blocs, as compared to roughly 30 percent for state assembly candidates (who do not receive public matching dollars) running in the same areas. See Elisabeth Genn, Michael J. Malbin, Sundeeep Iyer, and Brendan Glavin, *Donor Diversity Through Public Matching Funds*, Brennan Center for Justice and Campaign Finance Institute, 2012, 4, [www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport\\_WEB.PDF](http://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF).

**84** Nirali Vyas, Chisun Lee, and Joanna Zdany, "The Constituent-Engagement Effect of Small Donor Public Financing: A Statistical Comparison of City Council (2017) and State Assembly (2018) fundraising in New York City," Brennan Center for Justice, Sept. 9, 2019, <https://www.brennancenter.org/our-work/research-reports/constituent-engagement-effect-small-donor-public-financing-statistical>.

**85** As New York State Attorney General Letitia James put it after being elected New York City Public Advocate:

"The public financing system in New York City gave me the opportunity to compete and succeed, allowing me to represent individuals whose voices are historically ignored." Getachew and Mehta, *Breaking Down Barriers*, 7. See also "The Case for Public Financing in New York."

**86** Ian Vandewalker and Kevin Morris, "The Reform Law Needed to Counter Citizens United: H.R. 1," Brennan Center for Justice, Jan. 21, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/reform-law-needed-counter-citizens-united-hr-1>.

**87** Fowler and Weiner, "Understanding H.R. 1," 6.

**88** As one political scientist recently put it: "There are no free lunches. If the public doesn't foot the cost of political campaigns, wealthy donors and lobbyists will. And they will get something in return. And it will be far more than what they paid in. That's how the system works. If we enact public financing through a small-donor matching system, the public will also get something in return. And it will be far more than what they paid in. That's how the system works." See Lee Drutman, "Democrats' small-donor campaign finance proposal is a great deal for taxpayers," *Vox*, Jan. 14, 2019, <https://www.vox.com/polyarchy/2019/1/14/18182579/democrats-hr-1-donor-campaign-finance-proposal-taxpayers>.

**89** *First Look: Seattle's Democracy Voucher Program*, Win Win

Network and Every Voice Center, 2017, 2, 3–5, <https://everyvoice.org/wp-content/uploads/2018/08/2017-11-15-Seattle-Post-Election-Report-FINAL.pdf>.

**90** Skaggs and Wertheimer, *Empowering Small Donors*, 11.

**91** Daniel I. Weiner, *Citizens United Five Years Later*, Brennan Center for Justice, 2015, 7, [https://www.brennancenter.org/sites/default/files/analysis/Citizens\\_United\\_%20Five\\_Years\\_Later.pdf](https://www.brennancenter.org/sites/default/files/analysis/Citizens_United_%20Five_Years_Later.pdf).

**92** Ian Vandewalker, *Election Spending 2014: Outside Spending in Senate Races Since Citizens United*, Brennan Center for Justice, 2015, 4, <https://www.brennancenter.org/sites/default/files/analysis/Outside%20Spending%20Since%20Citizens%20United.pdf>.

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**94** Joseph Biden and Michael Carpenter, "Foreign Dark Money Is Threatening American Democracy: Here's how to put a stop to it," *Politico*, Nov. 27, 2018, <https://www.politico.com/magazine/story/2018/11/27/foreign-dark-money-joe-biden-222690>; Tim Mak, "NRA Was 'Foreign Asset' To Russia Ahead of 2016, New Senate Report Reveals," *NPR*, Sept. 27, 2019, <https://www.npr.org/2019/09/27/764879242/nra-was-foreign-asset-to-russia-ahead-of-2016-new-senate-report-reveals>.

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**96** "The Mueller Report Exposed Weaknesses in U.S. Democratic Institutions that H.R. 1 Would Address," Brennan Center for Justice, 2019, <https://www.brennancenter.org/our-work/research-reports/mueller-report-exposed-weaknesses-us-democratic-institutions-hr-1-would>; see also Nathaniel Persily, "Can Democracy Survive the Internet?" *Journal of Democracy* 28 (2017): 72.

**97** *Id.*; Andrew Rafferty, "Former DHS Chief Warns Russians Will Continue to Target U.S. Elections," *NBC News*, June 21, 2017, <https://www.nbcnews.com/politics/politics-news/former-dhs-chief-warns-russians-will-continue-target-u-s-n775116>.

**98** James Frater, Mary Ilyushina, and Hadas Gold, "EU says pro-Kremlin media trying to sow 'panic and fear' with coronavirus disinformation," *CNN*, Mar. 18, 2020, <https://www.cnn.com/2020/03/18/europe/eu-kremlin-disinformation-coronavirus-intl/index.html>.

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**102** Shane Goldmacher, "The Federal Election Commission Needs 4 of 6 Members to Enforce the Law. It Now Has 3," *New York Times*, Aug. 26, 2019, <https://www.nytimes.com/2019/08/26/us/politics/federal-election-commission.html>.

**103** Weiner, *Fixing the FEC*, 4.

**104** See 52 U.S.C. §§ 30107(a)(7), 30108. Deadlocks on advisory opinion requests have increased exponentially. Weiner, *Fixing the FEC*, 3–5.

**105** *Id.*, at 1.

**106** Kilmer, *Buck Lead Bipartisan Call to President Trump: Fill Vacant Seats on Federal Election Commission Immediately*, 2018, <https://kilmer.house.gov/news/press-releases/kilmer-buck-lead-bipartisan-call-to-president-trump-fill-vacant-seats-on-federal-election-commission-immediately>.

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Reform, National Task Force on Rule of Law and Democracy, 2018, 16, [https://www.brennancenter.org/sites/default/files/publications/TaskForceReport\\_2018\\_09\\_.pdf](https://www.brennancenter.org/sites/default/files/publications/TaskForceReport_2018_09_.pdf).

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**109** The commissioner who departed had served for more than five years past the expiration of his term. Dave Levinthal, “FEC commissioners’ terms expired long ago, but Trump, Congress won’t replace them,” *NBC News*, Apr. 30, 2018, <https://www.nbcnews.com/politics/elections/fec-commissioners-terms-expired-long-ago-trump-congress-won-t-n870071>.

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**111** See Daniel Weiner, “FEC’s status quo is hazardous – proposed legislation would help fix it,” *The Hill*, Feb. 10, 2019, <https://thehill.com/opinion/campaign/429294-fecs-status-quo-is-hazardous-proposed-legislature-would-help-fix-it>.

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**113** Laura Royden and Michael Li, *Extreme Maps*, Brennan Center for Justice, 2017, 6–13, <https://www.brennancenter.org/sites/default/files/publications/Extreme%20Maps%205.16.pdf>.

**114** Annie Lo, “How Did Democrats Flip the House? Fairer Maps,” Brennan Center for Justice, Dec. 7, 2018, <https://www.brennancenter.org/blog/how-did-democrats-flip-house-fairer-maps>.

**115** *Benisek v. Lamone*, \_\_\_ F. Supp. 3d \_\_ (2018).

**116** Guy-Uriel E. Charles and Luis Fuentes-Rohwer, “Race and Representation Revisited: The New Racial Gerrymandering Cases and Section 2 of the VRA,” *William and Mary Law Review* 59, no. 5 (2018): 1559–1600; Aaron C. Davis, “Redistricting in Md. has element of racial friction,” *Washington Post*, July 24, 2011, [https://www.washingtonpost.com/local/dc-politics/redistricting-in-md-has-element-of-racial-friction/2011/07/23/gIQAU86MXI\\_story.html?utm\\_term=.b84f2191878d](https://www.washingtonpost.com/local/dc-politics/redistricting-in-md-has-element-of-racial-friction/2011/07/23/gIQAU86MXI_story.html?utm_term=.b84f2191878d).

**117** Shared interests that can merit collective representation can be social, cultural, ethnic, economic, religious, or political. Communities of interest are complex, but they are a crucial part of our social fabric, and H.R. 1 recognizes their importance by prioritizing their cohesion. See Justin Levitt and Erika Wood, *A Citizen’s Guide to Redistricting*, Brennan Center for Justice, 2010, <https://www.brennancenter.org/sites/default/files/analysis/a-citizens-guide-to-redistricting.pdf>.

**118** Royden and Li, *Extreme Maps*, 23, 26, 29; Laura Royden, Michael Li, and Yuriy Rudensky, *Extreme Gerrymandering & the 2018 Midterm*, Brennan Center for Justice, 2018, 17–19, <https://www.brennancenter.org/sites/default/files/publications/Extreme%20Gerrymandering%204.24.18.pdf>.

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**120** The criteria are based on best practices as developed by a number of civil rights and good government groups that study redistricting. See “Redistricting Principles for a More Perfect Union,” Common Cause, accessed Mar. 25, 2020, <https://www.common-cause.org/redistricting-principles-for-a-more-perfect-union/#>.

**121** There are no federal redistricting-specific regulations beyond the requirement that districts be single member and equally populated. For racial and language minorities, there are also protections available under the Equal Protection Clause and the Voting Rights Act.

**122** *Arizona v. Intertribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

**123** *Vieth v. Jubelirer*, 541 U.S. 267 (2004).

**124** 55 STAT. 761 (1941), 2 U.S.C. §2A (SUPP. 1950); 54 STAT. 162 (1940); 46 STAT. 21 (1929); 37 STAT. 13 (1911); 31 STAT. 733 (1901); 26 STAT. 735 (1891); 22 STAT. 5 (1882); 17 STAT. 28 (1872); 12 STAT. 353 (1862); 10 STAT. 25 (1852); 9 STAT. 432(1850); 5 STAT. 491 (1842); 4 STAT. 516 (1832); 3 STAT. 651 (1822); 2 STAT. 669 (1811); 2 STAT. 128 (1802); 1 STAT. 253 (1792).

In 1967, for example, Congress required all states to use single member congressional districts to end the drawing of racially discriminatory multimember districts, a practice adopted to defy the call of the Voting Rights Act. See 2 U.S.C. § 2c

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**126** Lawrence Norden and Ian Vandewalker, *Securing Elections from Foreign Interference*, Brennan Center for Justice, 2017, 7, <https://www.brennancenter.org/publication/securing-elections-for-foreign-interference>.

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