

# RIGHT TO VOTE

The Case for Expanding  
the Right to Vote in the U.S. Constitution

VOTE

NO LIVES MATTER UNTIL  
BLACK LIVES MATTER

**INCLUSIVE  
DEMOCRACY  
AGENDA**

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## Acknowledgements

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## Foreword

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As the 2020 election looms on the horizon, I find myself frequently thinking of my grandmother. My grandmother was not particularly outspoken or political. She wasn't a leader in the church, though she attended service every Sunday. She didn't go to rallies or protest marches, but she voted in every election. She was a woman of deep faith and strong political convictions. Maybe that's why she never told me to grow up to be a doctor or a lawyer. Instead, she told me that I would grow up to be a preacher or a politician—roles she imagined could change the world for Black and brown people.

So imagine how stunned I was when I told her I was going to be a political organizer and she started to cry. I thought I was living into her prophecy and dream for my life. But there was something about being an electoral organizer that felt fundamentally different to her. She talked about the canvassers that knocked on her door every 4 years with promises of a better life after each election; canvassers who never showed up again once the votes were cast.

What if my grandmother and others in our communities were not turned into metrics of doors knocked, registration cards, and phone calls? What if we, as organizers and as a movement, were not pushed to have transactional, transitory relationships to satisfy goals that have no meaning to the very people we are trying to be with and for? What if instead, our energy and effort were focused on the year-round work of building deeper understanding and relationships? What if our work enabled our communities to know that, through voting, they can hold one lever of power to make their hopes, dreams, and priorities a reality? What would it look like if we didn't have to concentrate on registering people to vote because the right to vote was already a given?

At Demos, we want to push the U.S. toward a much more inclusive democracy—toward a bold vision that incites and excites folks to fully participate in a thriving and liberated future for all, not a select few. The right to vote is key to actualizing these visions. The right to vote is more than the ability to show up at the polling place and check off a box. It is a value that says we belong, and we have an obligation to a broader community that we call this nation. It is a pronouncement that we have the right to participate and determine our own destiny in this country so that a deeper and more meaningful engagement in our democracy is possible.

We are in a moment when the possibility of a more inclusive democracy is attainable. People are in the streets demanding an end to the structural racism and violence that are the reality of Black and brown people's lives. Achieving that end will require fundamental changes that are codified in the very documents that are supposed to guide our collective life together as a nation.

We need to rise to this moment by refusing to tinker with an already broken system. By demanding the right to vote, Black and brown people are collectively saying we will not, year after year, knock at the door begging to be let in. We are declaring that everyone belongs and everyone has the right to participate.

In working to build this collective power, we challenge elected officials and candidates to be accountable to that vision and to the “demos”—the people whose lives and experiences are dependent upon these policies. People who, in spite of the tears and disillusionment, still hold the hope that we can change the world if we participate. Through one vehicle of equal participation—a Right-to-Vote Amendment to the Constitution outlined in this report—we take an important step toward a truly inclusive democracy and affirm the lives that have been left out of the conversation. The lives of people like my grandmother. People like us.



Rodney McKenzie  
Executive Vice President, Movement Strategies



## Executive Summary

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The struggle and sacrifice of generations of Black and brown Americans for full inclusion in our democracy have brought our society closer to its democratic ideals. The U.S. Constitution currently contains more protections for the right to vote than when it was enacted. However, this foundational document—in which we enshrine our most fundamental values and most durable structural protections—even today does not offer an affirmative, comprehensive guarantee of the right to vote. As a result, lawmakers across the country have found ways to lock millions of people, disproportionately Black and brown people, out of their voting rights and, in turn, out of full participation in our democracy. Voting rights organizers and advocates continue to engage in creative and courageous efforts to resist voter suppression and other tactics that threaten our democratic ideals, and to make the right to vote real for all eligible Americans. These efforts are complicated, and sometimes thwarted, by the limitations of protections for the right to vote in our laws and, most critically, in our Constitution.

In 2020, Black-led organizing has sparked communities across the country to rise up and demand change. A growing multiracial movement is coming to understand what has been known in Black and brown communities for a long time: our democracy isn't "broken." Instead, it's working exactly as it was designed, denying Black and brown people's ability to participate in the political process, seeding deep distrust of the very processes and institutions that are meant to ensure our government is "of, by, and for the people," and, in turn, stripping away the rights and agency of a broad majority of people of all races and ethnicities. This time has also brought a greater appetite for changes long envisioned by grassroots organizations and others closest to the problems of democratic exclusion, changes that would help us fully realize the promise of democracy for the first time.

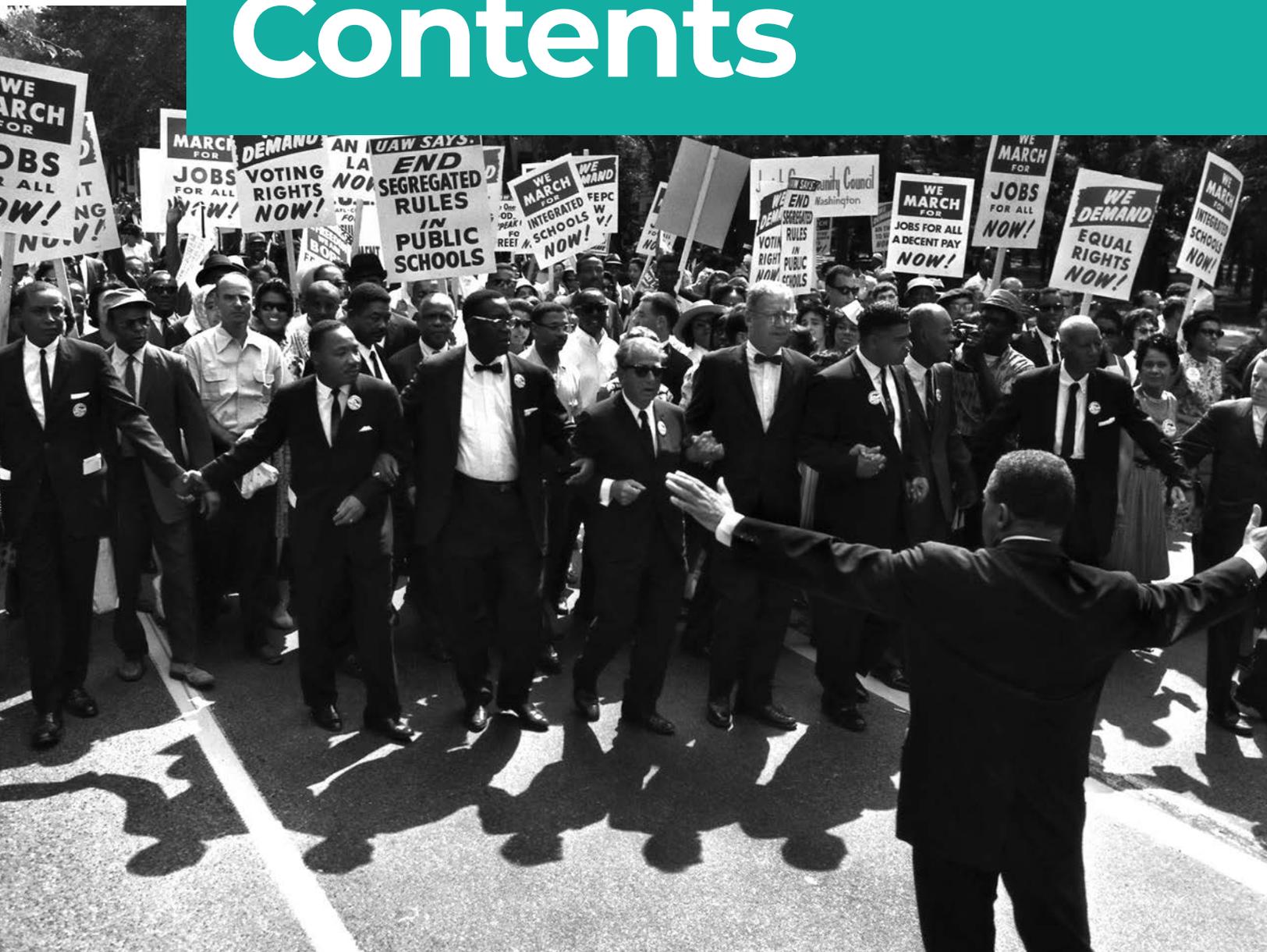
If we truly want to build inclusive democracy, we must articulate an affirmative vision of an expansive right to vote in the Constitution itself. This paper lays out the kind of robust constitutional protection for the right to vote that we at Demos envision in the form of a new amendment—a Right-to-Vote Amendment for a 21st Century Democracy—that names how the right to vote has been obstructed over the years and offers concrete remedies to these distortions of our democracy.

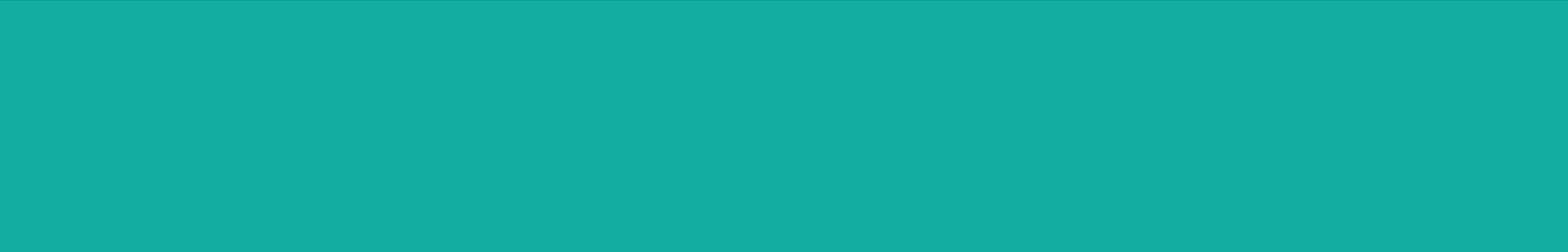
Such an amendment should:

1. State the right to vote in the affirmative;
2. Promote universal voter registration by constitutionalizing automatic voter registration and same day registration;
3. Protect against practices that have the effect of denying or diluting the voting rights of historically disenfranchised communities;
4. Abolish the Electoral College and ensure the president and vice president are elected directly by the people;
5. Establish statehood for the District of Columbia;
6. Guarantee sovereignty and self-determination of political status to the people of the U.S. territories;
7. End the practice of penal disenfranchisement;
8. Prevent unfair partisan gerrymandering;
9. Curb the distorting role of big money in politics; and
10. Give Congress broad enforcement powers, including the ability to establish election administration standards for all elections and require federal preclearance of state voting law changes, so that the right to vote can be made real for all eligible people.

Long-overdue changes to the Constitution alone will not solve all democratic exclusion. However, enshrining in the Constitution a vision for full political participation would go a long way toward remedying a document that was so profoundly flawed at its ratification. It would earn trust in our political process and realize the unfulfilled promises of our democracy. It would ensure that every eligible person, especially the Black and brown people who have long been excluded, has full, inalienable access to the franchise. When our democracy finally works for Black and brown people, it will work for all people.

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# Introduction

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Actualizing American democracy requires the full right of all people to vote. As a society founded on the principle that governments “deriv[e] their just powers from the consent of the governed,”<sup>1</sup> our vote voices our consent or dissent and is one of our most powerful tools to push our government and our society toward the “more perfect union”<sup>2</sup> we seek. Since the founding of the United States, when only property-holding white men could vote, generation upon generation has taken up the struggle for the right to vote. Black Americans have always been at the center of these struggles,<sup>3</sup> from Reconstruction and the writing of the Fourteenth and Fifteenth Amendments,<sup>4</sup> to the suffragist movement,<sup>5</sup> to sustained resistance to Jim Crow that grew into the Civil Rights Movement,<sup>6</sup> to the voting rights and disenfranchisement battles we are fighting today.<sup>7</sup> These struggles for full participation in our democracy—made possible by Black and brown women in particular, whose leadership is often made invisible and forgotten<sup>8</sup>—have pushed back against the notion that only wealthy, white men should have a say, offering instead a vision for an inclusive democracy.

Yet so many of us know from our lived experience that the right to vote is far from something we all can count on. This troubling reality traces back to our nation’s founding documents and the systems of chattel slavery and settler colonialism that

shaped them.<sup>9</sup> The U.S. Constitution was deeply flawed at the time of its ratification, most egregiously for having protected the international slave trade, propped up slavery through the Fugitive Slave Clause, and counted enslaved Black Americans as three-fifths of a person in order to inflate white Southern political power.<sup>10</sup> Voting rights leader and former Georgia gubernatorial candidate Stacey Abrams lays bare the white supremacist roots of the U.S Constitution:



***“At the country’s inception, the Founding Fathers decided who would be deemed worthy of citizenship; and they used, as a measuring stick, the ability to maintain the class and power structure that had laid the foundation for their wealth and political dominance. Not surprisingly, only white men were granted such esteemed status. ... From the mundane decision of taxation to the sale of human chattel, the Constitution envisioned the narrowest class of power brokers, and constraints on citizenship are the most effective means to filter out the interlopers.”***<sup>11</sup>



In fact, the Constitution did not even mention the people's right to vote until Congress and the states ratified the Reconstruction Amendments after the Civil War, a full 8 decades after the Constitution was adopted. Until that time, the word "vote" in the Constitution showed up only in relation to how Congress and the president carried out their duties.<sup>12</sup> According to one scholar on the creation of the Constitution, it was "almost as if in the course of constructing a house, the contractor ordered the windows, curtains, and shingles, but completely forgot about the foundation."<sup>13</sup> Instead, the Constitution left voter qualification and ballot access up to the states, which effectively limited the franchise to white male property owners.

Since its adoption, our Constitution has been amended several times to correct these founding sins, including expanding the franchise, and today our Constitution does a better job of providing protections for the right to vote. Six amendments ratified since the 1860s explicitly protect the right to vote, 4 of which assert that the right to vote "shall not be denied or abridged" on specific grounds.<sup>14</sup> Additionally, the courts have consistently called the right to vote "fundamental."<sup>15</sup> However, to this day the language of the Constitution does not provide an affirmative, unassailable guarantee that all U.S. citizens of legal voting age will be able to vote. Instead, federal constitutional protections for voting are framed in the negative—e.g., protection against denial of the right to vote based on certain characteristics, such as race, gender, and age.<sup>16</sup> To the extent Americans have an affirmative right to vote, that right is granted by the states, usually through guarantees in state constitutions.<sup>17</sup> So, in American democracy in 2020, peoples' ability to register and cast a ballot that counts varies significantly, depending on which state they call home.<sup>18</sup>

And, instead of applying strict constitutional scrutiny to incursions on the right to vote,<sup>19</sup> the Supreme Court has often applied a "balancing test," with the outcome of a challenge depending upon the weight a court chooses to give to the interests the state asserts as a basis for the restriction.<sup>20</sup> As a result, the federal courts sometimes uphold state and local enactments that make voting more difficult, such as photo ID requirements, restrictions on early voting, prohibitions on voter registration activities, and other voter suppression laws that fuel structural exclusion from our democracy.<sup>21</sup>

Thus, nearly 250 years after our nation was founded on the premise that "all men are created equal," many Black and brown people, young people, low-income people, and people with disabilities, among others, still find their right to vote compromised election after election. In spite of the promises of the Declaration of Independence and the protections of the Fourteenth, Fifteenth, Nineteenth, Twenty-Third, Twenty-Fourth, and Twenty-Sixth Amendments,<sup>22</sup> and even with the

remaining federal protections for voting rights in the Voting Rights Act (VRA) of 1965<sup>23</sup> and other federal laws,<sup>24</sup> the right to vote remains elusive for millions of Americans: over 5 million people are formally disenfranchised based on incarceration or conviction status; nearly 5 million more people lack voting rights because they live in Washington, D.C. or the territories; millions more individuals face barriers on their way to the polls; 66 million eligible voters are not even registered.<sup>25</sup> In each instance, these millions of disenfranchised Americans are predominantly people of color—the same Americans who, generation after generation, have faced multiple intersecting barriers to actualizing their right to vote. The deep distrust of government institutions and processes, including voting, among Black and brown communities, fostered over centuries of violation and multiple layers of exclusion, is one more barrier to an inclusive democracy.

The absence of a direct textual guarantee of the right to vote in the Constitution, and the brazenness with which state lawmakers capitalize on that omission to curtail the right to vote, aimed directly at Black and brown communities and working-class voters,<sup>26</sup> challenge us to think about what a truly pro-democracy Constitution would look like. In an era when we are so often fighting defensive battles against erosion of the right to vote, it is especially important to articulate an affirmative vision of how we could more fully enshrine the right to vote in the Constitution itself and, in turn, bring our democracy closer to its founding ideals.

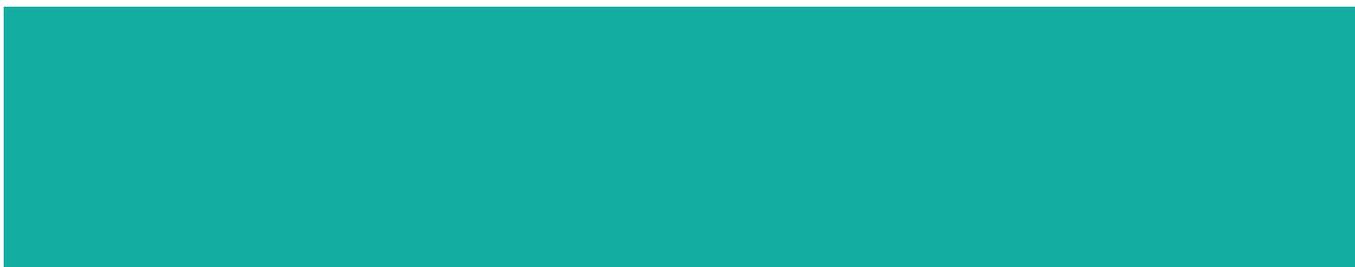
This paper lays out the kind of robust constitutional protection for the right to vote that Demos envisions, in the form of a new constitutional amendment—one that names how the right to vote has been obstructed over the years and offers concrete remedies to these distortions of our democracy. To explain the vision animating this project, we briefly describe the ways the right to vote is currently denied or under attack; explain how a constitutional amendment could remedy these ills; review past right-to-vote amendment proposals; and offer specific constitutional language, which has been informed by conversations with numerous advocates, academics, and organizations who share the goal of guaranteeing the right to vote and are actively working toward a more inclusive democracy.

This is part of a series called the Inclusive Democracy Agenda, which offers ideas about how to build a more racially just, inclusive democracy in this country. Demos' Inclusive Democracy Agenda was born in February 2019, at the annual convening of the Inclusive Democracy Project (IDP), a majority-person of color cohort of powerful state and local leaders, convened by Demos, who organize working-class communities and communities of color to advance bold democracy campaigns across the U.S. During the 2019 convening, Demos and IDP leaders discussed the

ongoing exclusion of Black and brown people from our democracy, the need for transformative change, and solutions big enough to meet the scale of the problem. The ideas presented herein benefit tremendously from perspectives and experiences of members of the IDP, who represent communities that have been the most excluded from our democracy.



***...our vote voices our consent or dissent and is one of our most powerful tools to push our government and our society toward the “more perfect union” we seek.***





# The Limitations of Current Protections for the Right to Vote

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Black and brown people's voting rights have been denied in multiple convergent ways for centuries, robbing our society of critical voices and perspectives and breeding an enduring distrust of political institutions and processes. Securing the right to vote and making our founding democratic ideals real for all people has always been a work in progress, and as a result, democracy is not yet fully realized in our country. Today, the fundamental right to vote, through which so many other rights and protections flow,<sup>27</sup> is compromised in many ways.

## Formal Disenfranchisement

One of the most widespread and egregious ways the right to vote is denied is through racist penal disenfranchisement laws on the books in nearly every state.<sup>28</sup> As a result of these laws, reinforced by over-policing and mass incarceration of communities of color,<sup>29</sup> more than 5 million people are formally blocked from voting because they are incarcerated on a felony conviction, or because they live in a state that continues to disenfranchise them even after they have completed their sentences and returned to their communities.<sup>30</sup> These disenfranchised voters are disproportionately Black. In 2016, the disenfranchisement rate for African Americans was 7.4 percent, compared to a non-African American disenfranchisement rate of 1.8 percent.<sup>31</sup> Hundreds of thousands of other people are effectively disenfranchised by in-

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surmountable financial obligations for fines, fees, and court costs attached to their sentences, without regard to the person's ability to pay. Even though the poll tax has been unconstitutional since 1964,<sup>32</sup> these financial obligations act as a modern-day poll tax in at least 30 states.<sup>33</sup> Still other people are blocked from voting, even though they technically maintain their right under federal and state law, because they are behind bars, without access to a ballot, at the time of an election.<sup>34</sup>

An additional nearly 5 million people who live under the American flag<sup>35</sup>—who are subject to the laws and policies of the U.S. government and fund that government by paying Social Security, payroll, estate, business, gift, and other federal taxes—do not have the right to vote for elected officials who can fully represent them and advocate for their interests in that government.<sup>36</sup> The residents of Washington, D.C. and the people of Puerto Rico, Guam, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa<sup>37</sup>—more than 90 percent of whom are people of color<sup>38</sup>—lack voting representation in the U.S. House of Representatives and Senate.<sup>39</sup> All of those except D.C. residents also cannot vote for U.S. President in the general election.<sup>40</sup> More importantly, these nearly 5 million people continue to be denied their right to full sovereignty and home rule.<sup>41</sup> As many people in the territories and the residents of Washington, D.C. point out,<sup>42</sup> these millions of Americans are effectively living under colonial rule.

## De Facto Disenfranchisement

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Outside formal disenfranchisement due to involvement in the criminal legal system or residence in D.C. or one of the U.S. territories, millions of other Americans, disproportionately Black and brown Americans, are kept from voting because they face challenges getting and staying registered, or confront barriers on their way to the ballot box. Many of these modern roadblocks to democracy have existed in some form for decades, but especially in the 7 years since the Supreme Court gutted the Voting Rights Act in *Shelby v. Holder*, laws aimed at restricting the vote have proliferated.<sup>43</sup> Historically and today, these efforts, led by cynical lawmakers and corporate interests desperate to consolidate political power and to maintain white supremacy, have denied Black and brown communities and other marginalized populations their fundamental right to vote, despite their hard-fought gains, and kept our democracy from its full potential.<sup>44</sup> From restrictive photo ID laws and discriminatory polling place closures,<sup>45</sup> to practices that purge eligible voters from the rolls or disqualify their registrations, these modern voter suppression tactics have

made it harder for millions of Americans to get and stay registered and to cast a ballot that counts. Those harmed are disproportionately people of color, young people, low-income people, people with limited English proficiency, LGBTQ people, and people with disabilities.<sup>46</sup>

While it is difficult to quantify exactly how many people have been disenfranchised by these laws, a recent MIT analysis of “lost votes” found that, among people who thought they were registered and intended to vote in the 2016 election, 1.2 million were not actually able to cast a ballot due to barriers such as voter ID, trouble accessing their polling place, long lines, registration problems, and late or missing absentee ballots.<sup>47</sup> Such an estimate, however, severely undercounts the true number of missing voters in our system, as it reflects only registered voters who intended to vote but who reported not being able to cast a ballot. According to the U.S. Census Bureau, in 2016 there were about 66 million voting-eligible Americans who reported not being registered, a third of whom cited transportation problems, inconvenient polling place, or illness or disability, among other barriers, as the reason they were not registered.<sup>48</sup> And, due to long-standing structural barriers to getting registered to vote—from poll taxes and literacy tests, to limitations on 3rd party registration, to discriminatory “exact match” laws—Black and brown Americans are registered at lower rates than white Americans year after year.<sup>49</sup>

Others have registered, but when they show up to vote find they were purged from



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the rolls because they had not voted recently or because of flawed data that incorrectly indicated they were ineligible. Millions of people are purged from state voter rolls each year, and those who are wrongfully removed often do not learn they were purged until they attempt to vote and are denied.<sup>50</sup> In Wisconsin and in many places around the country, these voter purges appear to target Black and brown voters.<sup>51</sup> Despite its disenfranchising effect, and contrary to the plain language of the National Voter Registration Act (NVRA), an Ohio law that purges voters based on inactivity was upheld by the Supreme Court in 2018.<sup>52</sup>

The impact of voting barriers on Native Americans deserves special mention because of the unique history of Indigenous peoples in what is now the United States, and the barriers they have faced to full citizenship and voting rights. As the Native American Rights Fund puts it, “Native Americans have been subject to 500 years of racism and genocide,” an ongoing assault that has been characterized by attempted annihilation, forced assimilation, and denial of Indian voting.<sup>53</sup> When the Fourteenth Amendment was enacted in 1868, guaranteeing the right of citizenship to all persons born in the United States, it expressly excluded Native Americans living on reservations from that citizenship—even though Indigenous communities are the only people who are truly native to these lands. Not until enactment of the Indian Citizenship Act of 1924 did Native Americans gain formal citizenship, and even after that, many states continued to deny the right to vote to those who were enrolled in tribes and/or residing on reservations, or for other discriminatory reasons.<sup>54</sup> To this day, barriers to the vote remain pervasive. Native Americans experience direct discrimination in exercising the right to vote, compounded by geographic isolation, poor physical and technological infrastructure, depressed socio-economic conditions, and homelessness and housing insecurity.<sup>55</sup> Each of these barriers exist because of centuries of systematic erasure and neglect by the same U.S. government that has stolen Indigenous lives and land for more than half a millennium.

The Native American Voting Rights Coalition conducted field hearings across Indian Country from 2017-2018, documenting extensive, continuing problems. As a summary of one such hearing explains:

*[D]istance to polls, poverty, and an inability to access transportation prevent Native Americans from voting. A history of deplorable voting conditions have fostered a sense of distrust of the voting process. Rude treatment during registration and at polls by poll workers serves to intimidate already insecure Native voters. Witnesses also reported a widespread distrust of state, county, and*

*local officials. Testimony outlined a belief these officials are not acting in tribal members' best interests and instead are conspiring to suppress Native vote.*<sup>56</sup>

In sum, modern-day restrictions on the right to register and vote prevent millions of Americans, disproportionately Black and brown Americans, from full civic participation. This weakens our democracy and denies us a government truly “of the people, by the people, and for the people.”<sup>57</sup>

## Denial of Fair Representation

On top of the myriad ways people are kept from registering and voting described above, tens of millions of Americans are denied full, fair representation through vote dilution, gerrymandering, and the Electoral College.

Vote dilution schemes reduce the value of the vote and have disproportionately harmed communities of color. As the Supreme Court explained in its seminal decision recognizing the principle of “one person, one vote,” *Reynolds v. Sims*, “The right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”<sup>58</sup> If a county with 5,000 people gets the same number of representatives as a county with 500,000 people, the power of each individual vote in the larger county is diluted as compared to the power of each individual vote in the smaller county. The basic requirement that equal numbers of persons should have equal numbers of representatives is thus fundamental to ensuring fairness of the electoral system. Yet this right was not confirmed in Supreme Court jurisprudence until 1964.

Vote dilution can take place even when the basic requirement of one person, one vote is satisfied. For example, in Jones County, North Carolina, even though Black residents made up 30 percent of the county population, not a single Black person was elected to the County Commission between 1994 and 2017. All 5 members of the Board of Commissioners were being elected at-large from the county as a whole, and the majority of white voters were unwilling to vote for Black candidates. In the wake of a 2017 lawsuit challenging this vote dilution, the county changed to a district-based system, through which voters elect a commissioner to represent their specific district rather than the entire county “at large.” With this change, Black voters were in the majority in 2 of the districts, and thus were able to elect 2 Black candidates to the Board of Commissioners.<sup>59</sup>

Partisan and race-based gerrymandering—through which elected officials draw district lines and effectively select their constituents, rather than the other way

around—also skew representation and prevent people across the United States from having an equal say in our democracy.<sup>60</sup> Some consideration of race data may be appropriate for ensuring communities of color can elect candidates of their choice, and it is through thoughtful districting that takes racial equity into account that some candidates of color have been elected to office, as in the Jones County example above. However, through gerrymandering, communities of color and members of a disfavored political party are denied fair representation because they are “packed” into fewer districts or “cracked” across many districts, practices that dilute their voting strength and deny these communities the chance to elect their preferred candidates. And when advocates finally began winning court battles to draw districts allowing people of color to elect candidates of choice to office—in some cases, electing their first Black representatives to Congress since Reconstruction—the Supreme Court intervened to strike down those districts, deeming it a violation of the Equal Protection Clause.<sup>61</sup> Gerrymandering also stacks the deck in favor of the status quo by making elections less competitive. In 2016, more than 90 percent of U.S. House of Representatives races were won by a vote margin of more than 10 percent, which is to say that an overwhelming majority of Congressional seats were non-competitive.<sup>62</sup>

Gerrymandering actively devalues the democratic participation of parts of the electorate, enabling candidates and elected officials to ignore the needs of many of the people they ostensibly represent and serve. In the Federalist Papers No. 37, Madison wrote that “Republican liberty” demands “not only that all power should be derived from the people, but that those [e]ntrusted with it should be kept in dependence on the people, by a short duration of their appointments.”<sup>63</sup> In her dissent in *Rucho v. Common Cause*, the case that closed off the federal courts to claims of unconstitutional partisan gerrymandering, Justice Elena Kagan noted that election day is the manifestation of the people’s power and sovereignty over government. Kagan calls election day “the foundation of democratic governance,” before going on to note that “partisan gerrymandering can make it meaningless.”<sup>64</sup> Through partisan gerrymandering, self-dealing politicians can, as Kagan explains, actually “beat democracy.”<sup>65</sup> Malcom X put it more plainly when he described gerrymandering: “even though you can vote they fix it so you’re voting for nobody.”<sup>66</sup>

Democracy and fair representation are further distorted by the practice of “prison-based gerrymandering,” through which incarcerated persons are counted in the jurisdiction where they are incarcerated rather than in their home communities. Even though most states’ laws are clear that incarceration does not change one’s residence, and in spite of the fact that almost all incarcerated persons cannot vote or

otherwise influence politics or policy where they are incarcerated, the Census Bureau continues to count some 2 million people in the wrong place for the purposes of redistricting.<sup>67</sup> This practice undermines the equal-population standard by giving outsize influence to the residents of places that house prisons and other correctional facilities, which tend to be white and rural, and robbing the communities from which incarcerated persons come, disproportionately urban communities of color, of fair representation.<sup>68</sup> And, since our racist system of mass incarceration disproportionately locks up Black and brown people, the practice also has disturbing echoes of the infamous three-fifths compromise, when Black Americans were denied voting rights but were counted as a fraction of a person to inflate voting power and representation for white people.<sup>69</sup>

Our presidential elections also depart from democratic ideals in crucial ways. Our president is chosen not by the people themselves but instead by members of the Electoral College, who are selected by the political parties. The Electoral College is an antiquated system that gives disproportionate influence to white voters at the expense of people of color as well as young people, single women, and working class people of all races.<sup>70</sup> The Electoral College is made up of 538 “electors” who vote for and elect the president and vice president. Each state gets a number of electors equal to its number of representatives and senators, incorporating the advantage enjoyed by sparsely populated states in the Senate into the system of electing the president and vice president, as well.

For example, Wyoming, with a population of fewer than 600,000, gets one elector for every 192,579 residents, while California, with a population of nearly 40 million, gets only one elector per 719,219 residents.<sup>71</sup> Not only is California’s population much bigger than that of Wyoming, it is also far more diverse.<sup>72</sup> Thus, small states dominated by white voters have power in the Electoral College disproportionate to their population numbers, and, in turn, their electors’ votes for president have more weight. Further evidence of the undemocratic nature of the Electoral College is found in the “faithless electors” problem, whereby electors can actually cast their votes for president against the will of the state’s majority.<sup>73</sup> In 2016, 7 electors did just that.<sup>74</sup> While a July 2020 Supreme Court decision allowed states to put important curbs on this blatantly undemocratic problem, the decision does not necessarily mean that electors will never again attempt to defy the will of the people.<sup>75</sup>

This representational inequality inherent in the Electoral College is even greater in the U.S. Senate. Senators representing small, homogenous (mostly white) states like Vermont and Maine have equal say in critical matters, such as passing or blocking legislation and confirming judges and justices, as do senators representing massive,

diverse states like Texas and Florida. Given extreme population differences among states, this “equal say” actually means overrepresentation in the Senate of voters in small states and underrepresentation of those in larger states.<sup>76</sup>

Like other elements of American electoral practices, the Electoral College is a remnant of America’s racist roots. A compromise to benefit Southern slave states, the Electoral College ensured the South would be able to out-vote the North because it allowed Southern states to count enslaved people (as three-fifths of a person) in allocating Electoral College electors, even as they denied those individuals the vote.<sup>77</sup> The system was also attractive to some Founders who believed the American people could not make informed decisions when electing a president.<sup>78</sup> Thanks to the Electoral College, 2 of the last 3 presidents won elections despite receiving fewer votes than their competitor.<sup>79</sup>

## Distorted Influence

A series of Supreme Court decisions over the last several decades allowing unlimited spending in political campaigns<sup>80</sup> has given an overwhelmingly white, male donor class disproportionate power in our democracy, and diluted the voices and political power that Black and brown Americans have been building for decades.<sup>81</sup> Thanks to their enormous spending power in our current campaign finance system, corporations, millionaires, and billionaires have an outsize say in our policymaking. Elected officials listen—and are accountable—to the monied interests that fuel their campaigns, while the rest of us can have a hard time even getting a meeting with our elected representatives, much less their genuine commitment to govern in our interests.

In addition to their disproportionate influence on our policymaking, these same wealthy and corporate donors wield inappropriate power in determining who can become policymakers in the first place. Election after election, qualified candidates, especially candidates of color and women of all races with less access to these high-dollar donation networks, find it nearly impossible to run for and win elected office.<sup>82</sup> In turn, the supermajority of women, people of color, and working-class people rarely have the chance to vote for candidates they actually prefer. As veteran civil rights advocate Gwen Patton said, “We have fought and died for the right to vote, but what good is the right if we do not have candidates to vote for? Getting money out of politics is the unfinished business of the voting rights movement.”<sup>83</sup>

Data on who runs for and wins elected office lay bare the severity of this problem.

In 2016, even though women made up 51 percent of the population, they were only 28 percent of candidates; people of color were 39 percent of the population but were a mere 12 percent of candidates.<sup>84</sup> From the county level up to Congress, 89 percent of our elected officials are white (62 percent are white men), while nearly 40 percent of the country are people of color. Women of color are the most underrepresented group in the halls of power: though they make up 20 percent of our national population, women of color account for just 4 percent of all elected officials.<sup>85</sup> In short, the undue influence of big money in our political system undermines our democracy and exacerbates racial inequity.

The promise of one person, one vote means that every U.S. citizen of legal voting age must be able to cast a vote, every vote must count equally, and the government must be representative of and responsive to the needs of all of its people. For all the reasons described here, this promise continues to elude us.



***Like other elements of American electoral practices, the Electoral College is a remnant of our racist roots. A compromise to benefit Southern slave states, the Electoral College ensured the South would be able to out-vote the North because it allowed Southern states to count enslaved people (as three-fifths of a person) in allocating Electoral College electors, even as they denied those individuals the vote.***





# What Does a Right-to-Vote Constitutional Amendment Accomplish?

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To ensure our democracy is really of, by, and for the people, we need a Constitution that guarantees the right to vote for every single one of us and that outlaws the undemocratic structures and underhanded machinations that have compromised that right over the centuries. While not the only way to protect the right to vote, a comprehensive right-to-vote constitutional amendment would go a long way toward banishing the voter intimidation and suppression that have kept our democracy from its full potential for well over 200 years.

Of course, protecting and advancing the right to vote is also possible via statute and impact litigation. Indeed, landmark legislation such as the Voting Rights Acts of 1965, as well as the 1993 National Voter Registration Act and the 2002 Help America Vote Act,<sup>86</sup> have each made significant strides toward achieving a more inclusive, representative democracy. If enacted, the “For the People Act” (H.R.1) pending in Congress<sup>87</sup>—which includes a sweeping array of reforms to the policies and practices governing voting rights and representation at the federal, state, and local levels, among other reforms—would bring us significantly closer to a democracy that works for all of us. Pro-voter reforms at the state level, which have been advanced by both state legislatures and directly by the people via ballot initiatives, have also strengthened democracy.<sup>88</sup> And at important times, the Supreme Court has protected the right to vote through constitutional and statutory interpretation. In *Harper v. Virginia State Board of Elections*, for example, the Court held that the right to vote is fundamental, and struck down poll taxes as a violation of that right.<sup>89</sup> Additionally, Supreme Court decisions have established the principle of one person, one vote<sup>90</sup> and protected the ability of communities of color to elect candidates of their choice under the Voting Rights Act.<sup>91</sup>

However, as we have seen again and again, both statutes and case law are susceptible to undoing by forces hostile to the idea of an inclusive democracy and intent on hoarding power for an unrepresentative few. After resounding victories for policies expanding and protecting the right to vote in ballot initiatives across the country in 2018, conservative lawmakers in places like Michigan and Florida moved swiftly to place restrictions on progress or to flat-out roll back the will of the people.<sup>92</sup>

Supreme Court decisions in recent years have also undermined protections of the right to vote. In *Crawford v. Marion County Election Board*, the Supreme Court upheld Indiana’s voter ID law against a facial attack on its constitutionality,<sup>93</sup> and 35 states now have some form of photo ID requirement,<sup>94</sup> a voting qualification that disproportionately burdens Black and brown people, low-income people, youth and the elderly.<sup>95</sup> The disastrous *Shelby v. Holder* decision opened the floodgates to voter suppression tactics in states across the country.<sup>96</sup> In *Husted v. A. Philip Randolph*

*Institute*, in contradiction to the plain terms of the NVRA prohibiting the removal of voters for “failure to vote,” the Supreme Court ruled that states can target eligible voters for purges simply because they haven’t voted frequently enough in the eyes of state officials.<sup>97</sup> In *Buckley v. Valeo*, and subsequent cases such as *Citizens United v. FEC* and *McCutcheon v. FEC*, the Supreme Court undermined campaign finance laws designed to protect our elections and effectively sanctioned unlimited spending in political campaigns.<sup>98</sup> And in *Rucho v. Common Cause*, the Supreme Court withdrew the federal courts from any role in preventing incumbents from locking in their power and diluting their constituents’ votes through unlawful partisan gerrymandering.<sup>99</sup>

History demonstrates that some politicians will not hesitate to entrench their power, especially when they sense that the popular will threatens their position. Further, as the federal judiciary becomes increasingly hostile to voting rights, avenues for protecting, much less advancing, the right to vote through the courts are becoming fewer and riskier. In the *Shelby* and *Husted* cases described above, the Court actively undermined statutory protections for the right to vote. As if passing bills protecting the right to vote wasn’t hard enough, preserving those laws—and avoiding losing ground—in the Courts today is even harder. The Constitution is where we enshrine our most fundamental values and how we achieve durable structural change. Affirmatively and comprehensively codifying the right to vote in the Constitution will help realize the unfulfilled promise of democracy and ensure every

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*...as we have seen again and again, both statutes and case law are susceptible to undoing by forces hostile to the idea of an inclusive democracy and intent on hoarding power for an unrepresentative few.*

American has full access to the franchise.

Such an amendment should go beyond simply stating that all people have the right to vote. An affirmative statement, like that proposed by Representative Mark Pocan and former Representative Keith Ellison,<sup>100</sup> is a valuable opening for any right-to-vote amendment, as it fills a glaring gap in the Constitution. However, such a statement alone is not likely to alter current jurisprudence on the issue,<sup>101</sup> especially as we face an increasingly conservative judiciary. If the current protections against vote denial in the Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth amendments have not led the Court to treat voting rights as guaranteed, we cannot assume a simple restatement of that right in the affirmative will change that. To guarantee the right to vote and truly stop vote suppressors in their tracks, a right-to-vote amendment should go further. Given the fundamental role the right to vote plays in our society—and in light of ongoing and evolving efforts to deny that right to Black and brown people, among other communities—we must envision and strive for a democracy that works for all of us.

A constitutional amendment is a monumental undertaking in light of present-day political realities. Nevertheless, it is well worth articulating what a pro-voter Constitution should look like. Notably, amending the Constitution is a task we have accomplished 27 times before,<sup>102</sup> often to correct wrongs less egregious than voter suppression and to protect rights less precious than the right to vote. Each such amendment has inspired us to re-examine the principles undergirding our democracy, and to make room for a national conversation about the aspirations that the proposed amendment embodies. We believe this is an important moment to engage our best thinking about the aspirations we should pursue for the needs of a 21st century democracy.

### **THE U.S. SENATE**

The Senate itself is a highly undemocratic body. Part of the “Great Compromise” crafted to build support for the new Constitution, the Senate was designed to assuage small states’ fear of domination by counterbalancing the representational equality in the House of Representatives, “the People’s House.” Today, population disparities between small and large states are significantly larger than they were

*continued next page*

at time the Senate was designed and the Constitution ratified, and the representational consequences for our political system are grave. As a result, the structure of the Senate itself is a major impediment to realization of the principle of one person, one vote. And since these small states tend to be whiter, compared to the far more diverse large states, the Senate works against the goal of political equality and a multiracial, inclusive democracy, as well. While we believe more study is required before recommending a particular proposal for Senate reform, we considered a number of proposals that merit serious attention.

Several proposals attempt to better approximate representational equality by giving states more or fewer senators based on their population size. Geographer Benjamin Forester, for example, proposes giving 3 senators to the 7 most populous states, 1 senator to the 7 least populous states, and 2 for all other states.<sup>103</sup> Wharton Professor Eric Orts would tie Senate representation to the decennial apportionment process, a solution that in 2010 would have given 26 states 1 senator, 12 states 2 senators, 8 states 1 or 2 senators, and the 4 biggest states either 6 (Florida and New York), 9 (Texas), or 12 (California) senators.<sup>104</sup> Others have suggested keeping the 2 senators per state model prescribed in Article 1 Section 3 of the Constitution but giving senators differential numbers of votes, based on their state's population; under such a scheme, the 2 senators from small states like Wyoming and Vermont would still get 1 vote, but the 2 senators from large states like Texas and California would each get more votes on any given bill, nomination, or other matter in front of the chamber.<sup>105</sup> Still others, like the late John Dingell, the long-time Michigan representative, have called for us to abolish the Senate altogether.<sup>106</sup> While determining the fairest and most equitable approach to reforming the Senate will take deep thinking and consultation with a variety of stakeholders, the unrepresentative and anti-democratic nature of the body is undeniable, and only likely to get more so in the coming years. Reforming the Senate should be taken as seriously as other needed reforms to our democracy.



# Previous Right-to-Vote Amendment Proposals



There have been other “right-to-vote amendments” proposed to the U.S. Constitution over the years. Each has proposed adding an affirmative statement of the right to vote in the Constitution, and most have offered additional provisions to shore up that right and to prevent disenfranchisement in some of its historical and current forms. The following is a review of some of the most prominent proposals and organizing efforts of past years.<sup>107</sup>

## *2003 – Then-Representative Jesse Jackson Jr.*

In 2003, then-Representative Jesse Jackson Jr. introduced H.J. Res 28, a constitutional amendment proposal that, in addition to creating an affirmative right to vote, would have forced strict scrutiny of voting law changes among judges and justices, allowed Congress to create election administration standards that states must meet, required states to adopt same-day registration, and required presidential electors to vote for the winner of the presidential election in their state. It also would have given Congress the “power to enforce and implement this article by appropriate legislation.”<sup>108</sup>

Representative Jackson re-introduced this proposed amendment each subsequent session of Congress during which he served, through 2011. His 2005 resolution received the most co-sponsors—55—but none ever made it out of committee.<sup>109</sup> In addition to his legislative efforts on behalf of a right-to-vote amendment, Jackson worked to mainstream the idea of an affirmative guarantee of the right to vote in the U.S. Constitution.<sup>110</sup>

## *2003 – Now-Congressman Jamin (Jamie) Raskin*

In 2003, then-constitutional law professor (now Congressperson) Jamie Raskin advanced an alternative vision for a right-to-vote amendment that would address some of the structural deficiencies of American democracy.<sup>111</sup> Raskin’s proposed right-to-

vote amendment would have ensured that all U.S. citizens 18 years and older would have the right to cast an effective vote for candidates in elections at the federal, state, and local level; given D.C. voting representation in Congress; ensured that the right of citizens to vote, participate, and run for office could not be abridged or denied because of party affiliation, wealth, or prior condition of incarceration; clarified that the states may go beyond the content of the amendment to further expand voting rights to disenfranchised people; and given Congress the power to enforce the amendment through appropriate legislation.

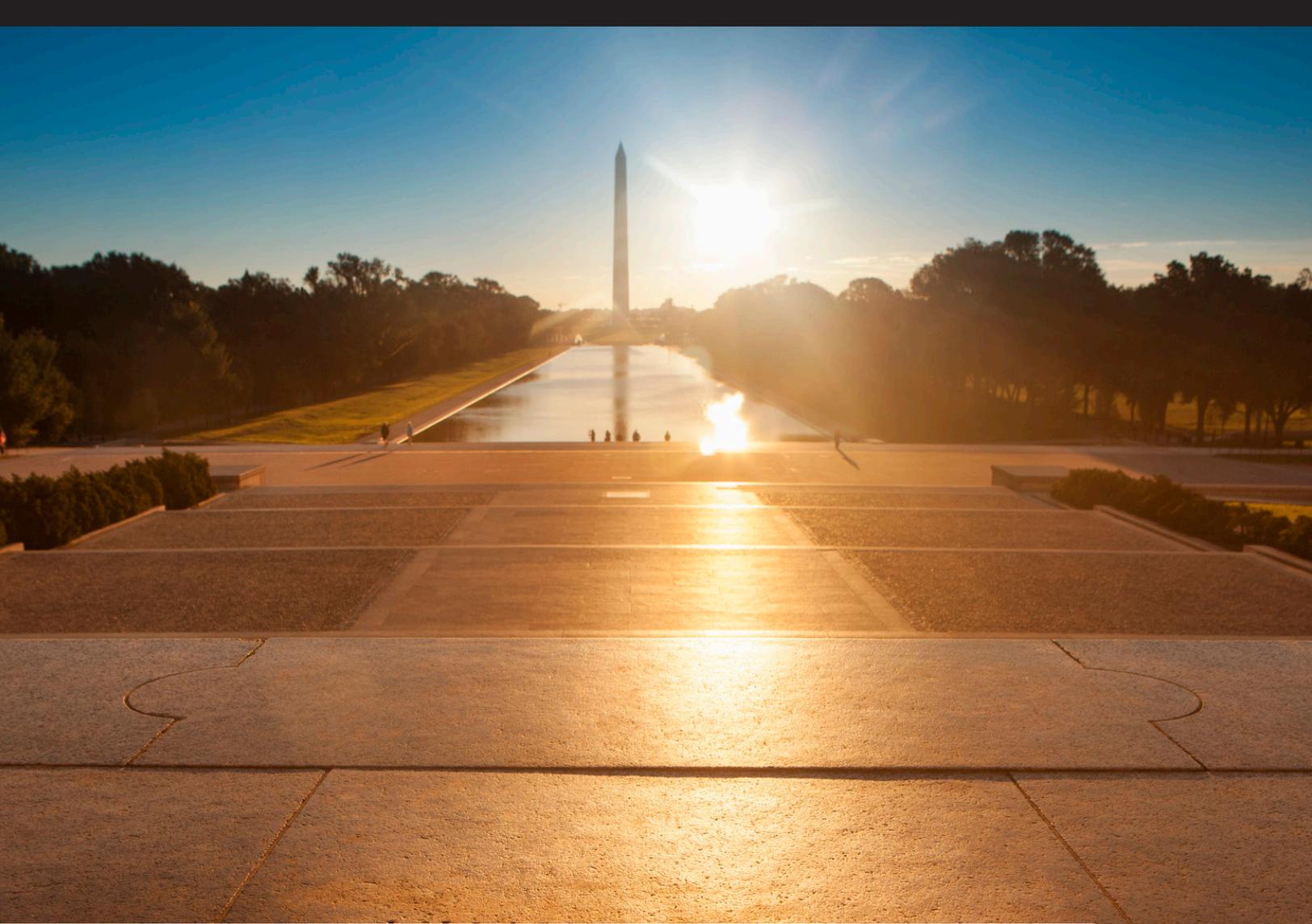
Although Raskin's 2003 proposal was never introduced in Congress, it has contributed significantly to the discussion about the appropriate contours of a right-to-vote amendment.

#### 2005-present – Advancement Project

Over several years, beginning in 2005, the Advancement Project has engaged in deep analysis and strategic planning around a potential constitutional amendment that would establish an affirmative right to vote—work that provides the foundation for the first section of the amendment proposed here. As part of its exploration, the Advancement Project facilitated brainstorming and strategy sessions with voting rights and constitutional law experts, and with national, state, and grassroots voting rights leaders across the country. In a 2008 report, the Advancement Project laid out the importance of an affirmative right to vote at the federal level; reviewed the benefits and complications of potential content for such an amendment; and made the case that pursuing a constitutional right-to-vote strategy would energize and unify those who care about democracy, channeling disparate efforts and organizing into a broad-based and powerful movement.<sup>112</sup> The Advancement Project's leadership has been critical in first injecting this idea into the national conversation.

#### 2013 – Representative Mark Pocan and then-Representative Keith Ellison

In 2013, Representative Mark Pocan and then-Representative Keith Ellison introduced a new version of the right-to-vote amendment in Congress. Their proposal, H.J. Res 44, shed many of the specific provisions related to protecting access to the ballot and expanding the electorate of earlier amendments, instead simply stating the right to vote in the affirmative and giving Congress the power to enforce the amendment through appropriate legislation. Pocan and Ellison's 46-word proposal stated, "Every citizen of the United States, who is of legal voting age, shall have the fundamental right to vote in any public election held in the jurisdiction in which the citizen resides," and that "Congress shall have the power to enforce and implement this article by appropriate legislation."<sup>113</sup> The proposed amendment garnered 40 co-sponsors when it was re-introduced in 2015 and 37 co-sponsors in 2017, but it never moved out of committee. Their proposal was informed by FairVote, another leading organization advocating for a right-to-vote amendment, among other advocates.<sup>114</sup>



# **A Right-to-Vote Amendment for a 21st Century Democracy**



At Demos, we believe the time has come to advance a vision of comprehensive constitutional reform, one that dismantles the many undemocratic structures of our political system, helps to build trust in government and the political process, and finally banishes the persistent scourge of voter suppression. In addition to stating the constitutional right to vote in the affirmative, this proposal for a Right-to-Vote Amendment tackles the most important ways access to the ballot and to fair representation have been thwarted over the centuries. Each section tackles a different way democracy has been denied to various communities—most often Black and brown communities—and provides a constitutional fix for these problems, some of which are as old as our country. This section includes Demos’ Right-to-Vote Amendment text, followed by a detailed description of each section, including proposed text, the barrier to voting rights and representation it addresses, and a rationale for how it does so.

# Full Amendment Text



**Section 1.** Every citizen of the United States who is of legal voting age shall have the fundamental, universal, and inalienable right to vote in elections for President and Vice President of the United States, the Senate of the United States, the House of Representatives, state and local elected offices, and any other public election in the jurisdiction in which the citizen resides. The United States, the States, or any political subdivision thereof, may choose to extend suffrage rights to residents who are not citizens.

**Section 2.** Any State that requires eligible persons to register to vote shall implement a process to register eligible persons automatically and shall allow voter registration up to and on the day of the election, including at the polling place.

**Section 3.** The right to register and vote shall be free from discrimination, whether intentional or in effect, by the United States or any State or political subdivision thereof, on account of race, color, or membership in a language minority group; American Indian, Native Alaskan, or other Indigenous status; disability; socioeconomic status; gender identity; or sexual orientation. The right to register and vote shall be free from dilution, whether intentional or in effect, by the United States or any State or political subdivision thereof on account of race, color, or membership in a language minority group, or American Indian, Native Alaskan, or other Indigenous status.

**Section 4.** The President and Vice President shall be elected directly by the people of the United States. The pair of candidates, who shall have consented to the joining of their names, that achieves the greatest number of votes for President and Vice President shall be elected. All citizens of legal voting age, natural born and naturalized, are eligible to the Office of President and other Federal, state, and local offices.

**Section 5.** Washington, D.C. shall be a State, with full rights and privileges inherent in that status, and is declared admitted into the Union on an equal footing with the other States in all respects. With the creation of this new State, the Seat of the Government of the United States shall include the principal Federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the Federal executive, legislative, and judicial office buildings located adjacent to the Mall, the White House, and the Capitol Building.

**Section 6.** The permanently inhabited Territories of the United States are sovereign and have the right to decolonization and self-determination of political status. Congress shall respect the outcome of that self-determination.

**Section 7.** Notwithstanding any other provision of this Constitution, the right to register and vote shall not be denied or abridged on account of conviction, incarceration, detention, or other involvement in a criminal matter, past or present, nor shall incarceration change an individual's residence for purposes of the enumeration established in Art. I, § 2, cl. 3.

**Section 8.** To the extent consistent with full representation for historically disenfranchised groups, no apportionment or redistricting plan for Federal, state, or local office shall deliberately or unduly dilute the votes of individuals who favor or disfavor a particular political party. Redistricting plans for Federal, state, and local offices shall be drawn to achieve substantially equal district population per representative based on a jurisdiction's full population of all persons.

**Section 9.** To advance democratic self-government and political equality, and to protect the integrity of government and the electoral process, Congress and the States may regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections. Congress and the States may distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections. Nothing in this article shall be construed to grant Congress or the States the power to abridge the freedom of the press.

**Section 10.** Congress shall have the power to enforce and implement this article by appropriate legislation. This power shall include, but is not limited to, establishing minimum election administration standards for Federal, state, and local elections consistent with the protections of the right to vote enumerated in this Constitution, and requiring Federal preclearance of changes in state or local election procedures for any jurisdiction Congress deems has a history of enacting, promulgating, or enforcing practices in conflict with the rights established herein of persons historically disenfranchised based on their membership in any of the aforesaid groups. Congress shall also have the power to identify additional protected classes among historically disenfranchised populations. The rights established in this Amendment shall be effective, and enforceable by the Federal government, as well as any affected person, regardless of any action taken by Congress. Nothing in this Article shall be construed to deny the power of Congress, the States, or any political subdivision thereof to expand voting rights beyond those guaranteed by this Amendment or any other part of the Constitution.

**Section 11.** This amendment shall take effect two years after ratification.

# Annotated Amendment



## Section 1: Fundamental Right to Vote



Every citizen of the United States who is of legal voting age shall have the fundamental, universal, and inalienable right to vote in elections for President and Vice President of the United States, the Senate of the United States, the House of Representatives, state and local elected offices, and any other public election in the jurisdiction in which the citizen resides. The United States, the States, or any political subdivision thereof, may choose to extend suffrage rights to residents who are not citizens.

**Reframes the constitutional right to vote in the affirmative.**

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The current protections for the right to vote in the U.S. Constitution are primarily framed in the negative—e.g., the right to vote “shall not be denied” on account of race or sex. The proposed clause creates an affirmative guarantee of the right to vote in the Constitution, an important change that will more securely protect against laws limiting or threatening the right to vote and require stricter judicial scrutiny of such restrictions.<sup>115</sup>

**Affirms the ability of Congress, states, and municipalities to extend suffrage to non-citizens.**

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An additional community of Americans is kept from voting almost everywhere in the United States: people without U.S. citizenship. This clause affirms the right of jurisdictions to allow non-citizens to vote in some elections, as many states did historically and as a handful of municipalities do today.<sup>116</sup>

## Section 2: Universal Voter Registration

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Any state that requires eligible persons to register to vote shall implement a process to register eligible persons automatically and shall allow voter registration up to and on the day of the election, including at the polling place.

**Shifts the burden of voter registration from the individual onto the state.**

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While the tactics have changed, voter registration has been used to police access to the polls for centuries.<sup>117</sup> This clause mandates that any state requiring registration as a qualification for voting must implement a system of automatic voter registration (AVR), through which the state is responsible for ensuring all eligible voters who want to be registered are on the rolls.

**Ensures registration is never a barrier to voting.**

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Even in places with AVR, there are sometimes errors that result in an eligible voter not being registered. In some states, that could prevent an eligible person from voting on Election Day. This clause requires that any state requiring registration as a qualification for voting offer same-day registration (SDR) at the polls, so that every eligible voter who shows up is able to cast a ballot that counts.

## Section 3: Protections Against Vote Discrimination and Dilution

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The right to register and vote shall be free from discrimination, whether intentional or in effect, by the United States or any State or political subdivision thereof, on account of race, color, or membership in a language minority group; American Indian, Native Alaskan, or other Indigenous status; disability; socio-economic status; gender identity; or sexual orientation. The right to register and vote shall be free from dilution, whether intentional or in effect, by the United States or any State or political subdivision thereof on account of race, color, or membership in a language minority group, or American Indian, Native Alaskan, or other Indigenous status.

**Protects against denial of voting rights, whether intentional or in effect, for communities of color, those who require language assistance, people with disabilities, low-income people, women, and LGBTQ people.**

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Historically disenfranchised populations continue to face barriers to the right to vote. The enduring problem of discrimination against these communities justifies specific protections in the Constitution. This provision would explicitly protect against voter discrimination—and guarantee voting rights—to the communities hardest hit by voter suppression.

**Protects against dilution of voting rights and fair representation, whether intentional or in effect, for communities of color, who have faced vote dilution historically and today.**

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Vote dilution schemes continue to deny communities of color an equal opportunity to elect candidates of their choice.<sup>118</sup> This provision would explicitly protect the communities of color that have been the targets of vote dilution and guarantee voting rights and fair representation.

Note that protections against vote denial and vote dilution are separate, as vote dilution is a voter suppression tactic faced uniquely by communities of color, historically and today. Providing for protections against vote dilution for a broader set of groups, as we do for protections against vote denial, would be largely impractical given that other groups generally are not geographically concentrated, which is a fundamental feature of vote dilution. Further, extending protections against vote dilution to a broader set of groups could have the unintended effect of weakening protections against vote dilution for communities of color, by greatly complicating the analysis of vote dilution.

**Allows for effects-based claims to be brought in cases involving the denial or dilution of voting rights and fair representation.**

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Current jurisprudence requires an affected person to show discriminatory intent, in addition to impact, in claims brought under the Equal Protection Clause, which can be exceedingly difficult to prove. This provision overturns the intent standard laid out in *Washington v. Davis*,<sup>119</sup> and allows people to challenge voting practices and procedures that impede or dilute the right to vote, whether or not they can prove discriminatory intent.

## Section 4: Electoral College

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The President and Vice President shall be elected directly by the people of the United States. The pair of candidates, who shall have consented to the joining of their names, that achieves the greatest number of votes for President and Vice President shall be elected. All citizens of legal voting age, natural born and naturalized, are eligible to the Office of President and other Federal, state, and local offices.

**Abolishes the Electoral College and provides for direct election of president and vice president by the people of the United States.**

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Every 4 years, presidents are chosen not by the people themselves but instead by members of the Electoral College, an antiquated system that gives disproportionate influence to voters in small states whose populations are overwhelmingly white, while dampening the voting power of people of color in large, populous states.<sup>120</sup> This provision would ensure the candidates for president and vice president who receive the most votes by individual voters are elected, ending the current anti-democratic system and promoting the principle of one person, one vote. This provision abrogates Article II, Section 1, as well as the Twelfth Amendment, of the U.S. Constitution, where the Electoral College is codified.

## Section 5: Statehood for DC

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Washington, D.C. shall be a State, with full rights and privileges inherent in that status, and is declared admitted into the Union on an equal footing with the other States in all respects. With the creation of this new State, the Seat of the Government of the United States shall include the principal Federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the Federal executive, legislative, and judicial office buildings located adjacent to the Mall, the White House, and the Capitol Building.

### **Establishes statehood for Washington, D.C.**

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The residents of Washington, D.C. have lacked voting representation in Congress since the city was created to be the seat of the U.S. government in 1790. Today, more than 700,000 Americans, a majority of whom are people of color, call our nation's capital home. Despite paying the highest taxes per capita of any state in the nation, Washingtonians continue to be denied statehood and, thus, continue under the status that helped spark the American Revolution: taxation without representation.<sup>121</sup> Residents of Washington, D.C. have no voting Member of Congress, a body that nonetheless maintains the power to veto any legislation the city passes and that must approve the city's budget. This section borrows language from H.R. 51 to grant statehood to Washington, D.C.<sup>122</sup>

A constitutional amendment is not necessary for Washington, D.C. to achieve statehood; this can be fully accomplished by congressional enactment. However, as long as such legislation has not yet been enacted, and Washingtonians are denied statehood, any right-to-vote constitutional amendment would be incomplete without such a provision.<sup>123</sup>

### **Creates a new seat of the federal government which includes the White House, Congress, and other federal buildings and monuments.**

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Because the federal government is well-established in the District of Columbia and its location is still worth specifying, the amendment provides for a seat of government incorporating key federal locations, also borrowed from H.R. 51.<sup>124</sup>

## **Section 6: Self-Determination for the Territories**

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**The permanently inhabited Territories of the United States are sovereign and have the right to decolonization and self-determination of political status. Congress shall respect the outcome of that self-determination.**

**Affirms the permanently inhabited territories are sovereign, guarantees them a process of self-determination of their own political status, and compels Congress to respect the results.**

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For well over 100 years, the residents of the territories—an overwhelming majority

of whom are people of color and almost all of whom are U.S. citizens<sup>125</sup>—have been denied sovereignty and forced to endure a perpetual state of colonization by the United States (generally on top of a long period of brutal colonization by other Western nations). This clause affirms the right of the people of the territories to decolonize and choose their own political status, as established under international law,<sup>126</sup> and compels Congress to implement those decisions, whether for independence, statehood, free association, or a new bilateral relationship.

The issue of sovereignty and representation for the U.S. territories is complex. The territories are not a monolith, and the people of each permanently inhabited territory—Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands—face distinct realities and have unique perspectives on the questions of political status and of voting rights and representation. Indeed, within each territory, there exist a plethora of perspectives on and priorities for the future of each island. Given the differences among the territories, in everything from population size<sup>127</sup> to the Indigenous communities who call each island home, it seems as implausible as it is inappropriate to prescribe one solution for them all. Most critically, intrinsic to the ideas of sovereignty and self-determination, as laid out by the United Nations’ “Declaration on the Granting of Independence to Colonial Countries and Peoples,” is the ability of a people to chart their own future.<sup>128</sup> As such, it is not for Demos, or any organization or group of people based outside the territories, to say what form of government is best for the people of the territories.

Yet, ending the ongoing colonialization of the U.S. territories and allowing each territory to determine for itself how it wants to exist moving forward—whether as an independent nation, as a U.S. state, as a freely-associated state, or under a new bilateral relationship—is absolutely key to a fully inclusive, representative democracy in the United States. A full, pro-democracy U.S. Constitution would

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be incomplete if it did not include a provision underscoring the sovereignty of the territories and compelling Congress to respect whatever process for self-determination they set out for themselves, on whatever timeline and under whichever conditions they choose.

We considered including a provision to provide interim voting rights and full representation in the federal government, for those territories who want them, until such time as an alternative status is chosen. We shared these ideas with experts and advocates in each of the territories, as well as with advocates on the mainland with ties to the territories, for feedback. Some liked the proposal and offered tweaks that improved it. Others, however, were uncomfortable with the inclusion of voting rights in a provision that is first and foremost about decolonization and self-determination, for some of the reasons laid out here. Based on this feedback, we have not included the interim voting rights provision in the section on the territories. However, to stimulate discussion, we are providing here a sketch of what such a provision could look like:

*While remaining a Territory, each permanently inhabited Territory may determine by plebiscite whether the people thereof shall have the right to vote for President and Vice President of the United States; for one of two senators, one who would represent Puerto Rico and the U.S. Virgin Islands together and one who would represent Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands together; and for the number of representatives each permanently inhabited territory would be apportioned were they a State. The senators and representatives so selected shall have the same rights, duties, and qualifications as senators and representatives elected by the citizens of a State.*

In addition to the denial of their right to determine their own political status, the ability to vote for the federal leaders who govern them has also been denied to the people of the territories. Providing

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the permanently inhabited territories the option to elect voting representatives in both houses of Congress and to vote for the president in the general election during the period before they make a final determination of their preferred political status would help ensure that as long as the people of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands live under the U.S. flag, whatever their status, they have the right to vote for the federal elected officials who govern them. Such a proposal technically would not dictate any choice by the territories regarding whether they take up the option of full voting rights or with respect to their political status.

However, we appreciate that, in practice, the option of voting rights can be perceived as preferencing statehood over other status options. More critically, some argue that interim voting rights may complicate the opportunity for true self-determination by further entrenching a statehood-adjacent relationship, and voting rights do not, in and of themselves, deal with the fundamental incongruence between colonialism and democracy. Some in the territories, like Dr. Daniel Aga, Director of the American Samoa Office of Political Status, Constitutional Review, and Federal Relations, point to the lack of voting rights and full constitutional protections as “serious democratic deficiencies.”<sup>129</sup> Others, like John Gonzales, President of the Northern Marianas Descent Corporation, call out “the hypocrisy of U.S. democracy.”<sup>130</sup> An interim solution like the voting rights proposal above may provide some relief for these deficiencies and hypocrisy to a territory that chooses it. As nearly every person we spoke to in the territories pointed out, however, interim voting rights will not solve the underlying problem of ongoing colonialism; only full sovereignty and the right already guaranteed under international law to pursue a process of decolonization and determination of their own futures can do that.<sup>131</sup> Based on feedback from stakeholders, we have not included the above proposal in the amendment itself.

We have had a number of conversations with people across the 5

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permanently inhabited territories, as well as with people working in the mainland U.S. on issues affecting people in the territories, and the proposal contained herein benefited greatly from their counsel and feedback. More than serving as a definitive solution, we hope the inclusion of a section on the territories will help us all remember that, as long as they remain part of the United States, the rights of the people of the territories are as integral to the health of American democracy as any others. As we think about what it will take to fix our democracy, we cannot continue to ignore the question of the territories. Instead, we must look to the leadership of Puerto Ricans, Guamanians, U.S. Virgin Islanders, American Samoans, and Commonwealth of the Northern Mariana Islanders themselves to determine the best path forward.

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*Some in the territories ... point to the lack of voting rights and full constitutional protections as “serious democratic deficiencies” ... [and] “the hypocrisy of U.S. democracy...”*

## **Section 7: Abolition of Penal Disenfranchisement**

Notwithstanding any other provision of this Constitution, the right to register and vote shall not be denied or abridged on account of conviction, incarceration, detention, or other involvement in a criminal matter, past or present, nor shall incarceration change an individual’s residence for purposes of the enumeration established in Art. I, § 2, cl. 3.

**Restores the right to vote to people involved in the criminal legal system by abolishing the practice of penal disenfranchisement in every form.**

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The disenfranchisement of people for felony convictions is rooted in deeply racist Jim Crow laws, and to this day disproportionately locks Black and brown people out of the voting booth and the opportunity to build greater political power (among many other devastating impacts).<sup>132</sup> Moreover, the right to vote should be inalienable—something you simply cannot lose once you reach the age of eligibility. This provision would correct long-standing injustices and strengthen our democracy by ensuring no American citizen of legal voting age is kept from voting due to involvement in the criminal legal system, and it would ensure people who are incarcerated—whether on conviction or pretrial—have access to the ballot. The effect of this clause would be to strike the words “or other crime” from the Fourteenth Amendment of the U.S. Constitution and to undo the Supreme Court’s decision in *Richardson v. Ramirez*, 418 U.S. 24 (1974), which relied on those words to interpret the Fourteenth Amendment as authorizing disenfranchisement for criminal conviction.

**Ends prison-based gerrymandering by ensuring that the Census counts incarcerated persons as residents of their home communities rather than as residents of the prison where they are temporarily and involuntarily confined.**

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Currently, the Census Bureau treats incarcerated persons as residents of the community in which the prison is located, even though for almost all other legal purposes their home community remains the legal residence of a person who is in prison or jail. This practice, known as “prison-based gerrymandering,” results in serious distortions in how our nation’s population is tabulated for redistricting purposes, and it fails to reflect accurately the demographics of numerous communities throughout our country. This provision will ensure that some 2 million incarcerated people are counted in the correct place, furthering the goal of fair and equal representation which the Census is intended to fulfill.

## **Section 8: Balanced Redistricting and Fair Representation**

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**To the extent consistent with full representation for historically disenfranchised groups, no apportionment or redistricting plan for Federal, state, or local**

**office shall deliberately or unduly dilute the votes of individuals who favor or disfavor a particular political party. Redistricting plans for Federal, state, and local offices shall be drawn to achieve substantially equal district population per representative based on a jurisdiction's full population of all persons.**

### **Bans partisan gerrymandering.**

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Through gerrymandering, self-interested politicians draw district lines, stacking the deck in favor of the status quo by making elections less competitive and denying representation to entire communities based on race and party. This provision would prevent unfair partisan gerrymandering, allowing voters to choose their representatives instead of the other way around. It would also help prevent racial vote suppression, as district lines drawn to help one political party often involve “cracking” and “packing” voters of color. This provision would undo the Supreme Court’s assertion in *Rucho v. Common Cause* that partisan gerrymandering is non-justiciable in federal court, re-opening the federal courts to claims of partisan gerrymandering by providing new constitutional grounding for these cases.

### **Constitutionalizes “one person, one vote.”**

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The principle of one person, one vote has long been understood as core to our democratic identity. It protects the fairness of representation in government, assuring that all votes count equally. Yet even this bedrock principle is under attack by forces who would prefer that everyone not have an equal say, and instead that some voices (generally white and wealthy) count more than others (generally Black and brown).<sup>133</sup> This clause ensures equal representation for all people residing in the United States, so that all of our voices count.

### **Strengthens prohibitions on racial gerrymandering and emphasizes the primacy of historically marginalized communities’ ability to achieve full representation by electing candidates of their choice.**

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For centuries, politicians have used racial gerrymandering to prevent communities of color from building political power by electing candidates of their choice. The Voting Rights Act prohibited and has provided strong protections against this practice between 1965 and 2013, when the Supreme Court in its *Shelby* decision gutted the provision that required maps in covered jurisdictions to be pre-cleared.<sup>134</sup> 2020 is the first decennial redistricting cycle without the protections against back-

sliding on the electoral power of people of color. This clause would constitutionalize the protections for full representation among communities of color.

## **Section 9: Money in Politics Reform**

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**To advance democratic self-government and political equality, and to protect the integrity of government and the electoral process, Congress and the States may regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections. Congress and the States may distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections. Nothing in this article shall be construed to grant Congress or the States the power to abridge the freedom of the press.**

**Allows Congress and the states to set limits on money raised and spent by candidates and others in elections.**

At every level, our elections are fueled by a donor class that is overwhelmingly wealthy, white, and male. Big money distorts our policy and perverts our politics. It also keeps many qualified candidates out of office, particularly candidates of color and women of all races, who generally do not have the same wealthy networks to lean on. This provision, borrowed from the “Democracy For All Amendment,” would allow Congress and the states to limit big money in elections, advancing democratic self-government and political equality.<sup>135</sup>

**Allows Congress and the states to distinguish between people and corporations regarding First Amendment rights.**

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In its infamous Citizens United decision,<sup>136</sup> the Supreme Court ruled essentially that corporations are entitled to the same rights as individual citizens to spend money on elections. This provision gives Congress explicit power to correct this gross distortion of democracy and make clear, once and for all, that the First Amendment does not grant corporations the same rights as people when it comes to engaging in electoral politics, restoring our ability to protect our democracy from powerful for-profit corporations. Together, these provisions would overturn decades of wrong-headed approaches to money in politics from the Supreme Court, including *Buckley v. Valeo*,

424 U.S. 1 (1976), *Citizens United v. FEC*, 588 U.S. 310 (2010), and *McCutcheon v. FEC*, 572 U.S. 185 (2014).

**Reinforces the freedom of the press guaranteed by the First Amendment.**

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The independence of the media—and their right to report on the facts, without influence or pressure from government or other powerful actors—is critical to a functioning democracy. This provision ensures that the campaign finance reform section of this amendment cannot be interpreted to threaten or limit the freedom of the press.

**Section 10: Election Administration Standards and Enforcement**

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Congress shall have the power to enforce and implement this article by appropriate legislation. This power shall include, but is not limited to, establishing minimum election administration standards for Federal, state, and local elections consistent with the protections of the right to vote enumerated in this Constitution, and requiring Federal preclearance of changes in state or local election procedures for any jurisdiction Congress deems has a history of enacting, promulgating, or enforcing practices in conflict with the rights established herein of persons historically disenfranchised based on their membership in any of the aforesaid groups. Congress shall also have the power to identify additional protected classes among historically disenfranchised populations. The rights established in this Amendment shall be effective, and enforceable by the Federal government, as well as any affected person, regardless of any action taken by Congress. Nothing in this Article shall be construed to deny the power of Congress, the States, or any political subdivision thereof to expand voting rights beyond those guaranteed by this Amendment or any other part of the Constitution.

**Gives Congress the power to enforce and implement this amendment through legislation.**

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As all voting rights amendments before it, this provision gives Congress the authority to make laws that implement and enforce the new protections of the right to vote codified in this amendment.

**Strengthens Congress’ authority to enact election administration standards for state and local elections, alongside its current power to regulate federal elections.**

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The U.S. Constitution gives significant power to the states to determine who, when, and how people must register and how they vote, and the courts have long upheld this state power to set election procedures, even though the Constitution also gives Congress power to make laws regarding elections. This explains the patchwork quilt of election laws across the country and the dramatically different experience of voting based on where we live. This provision would make clear Congress has the authority to set uniform standards for federal, state, and local elections that make our democracy accessible to all eligible voters.

**Gives constitutional authorization to federal preclearance of voting law changes in states and jurisdictions with a history of discrimination in voting.**

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The Supreme Court’s decision in *Shelby County v. Holder*, gutting the Voting Rights Act’s requirement that states and jurisdictions with a history of discrimination in voting practices receive federal preclearance before making changes to voting laws, has opened the floodgates to state voting laws and practices that make it harder for people of color and other historically disenfranchised groups to vote. This clause permits Congress to require preclearance, as previously provided in the VRA, “for any jurisdiction” it deems necessary to protect historically disenfranchised groups. The intent is to negate the Supreme Court’s “equal state sovereignty” doctrine in the *Shelby County* decision and thus provide constitutional grounding beyond the Fifteenth Amendment for a preclearance regime that allows Congress to treat states differently to protect individual rights.

**Institutes an individual right of action to pursue protection of the right to vote, even if Congress and/or the Executive Branch fails to act to enforce and implement this amendment.**

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Unfortunately, not all Congresses and presidential administrations will be friendly to voting rights, and it cannot be taken for granted that the Congress and presidential administration in power would adequately carry out their enforcement powers under this amendment. Thus, this clause makes clear that people may pursue their rights in court, even if Congress and/or the executive branch fails to act.

**Clarifies that Congress, states, and municipalities may go further to expand voting rights than what is required in the amendment.**

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This clause makes explicit that the rights and protections laid out in this amendment are not the limit of what a jurisdiction can do to expand and strengthen the right to vote, but rather the minimum. It encourages Congress, states, and municipalities to do even more to facilitate access to the ballot and full participation in our democracy.

## **Section 11: Enactment**

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**This amendment shall take effect two years after ratification.**

**Provides that the amendment becomes effective 2 years after ratification.**

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As in many ratified amendments, this section provides for a date upon which all provisions of the amendment will go into effect, which gives election officials and communities time to prepare for this new legal regime.

*Note that, unlike some previous amendments, there is no time limit for ratification.*

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*... the right to vote should be inalienable—  
something you simply cannot lose once you  
reach the age of eligibility.*





# Conclusion

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The right to vote is among the most precious in a democracy. As the late John Lewis often reminded us, “the vote is the most powerful nonviolent change agent you have in a democratic society. You must use it because it is not guaranteed.”<sup>137</sup> After more than 2 centuries of struggle, the right to vote is still not real for all Americans. Indeed, it is under renewed attack, and it is harder for Black and brown people to vote today than it was 7 years ago, before the *Shelby County* decision. In this moment of heightened attention to the problems with our democracy, we must not only fight for individual reforms to increase access to the ballot box, we must also take time to imagine a new democracy, one that works for every single member of our diverse society. We must envision and fight for a truly inclusive democracy.

One way of ensuring the right to vote is through a comprehensive constitutional amendment. While the politics of today may seem to preclude such an amendment, there is value in considering the content of a pro-democracy Constitution that would more fully embody the principles to which Americans have aspired—and, as award-winning journalist Nikole Hannah-Jones reminds us, toward which Black Americans in particular have pushed us<sup>138</sup>—since our nation’s founding. In addition to giving the right to vote the centrality and sanctity it deserves in our Constitution and in our democracy, articulating what such an amendment should encompass provides an opportunity for conversation and debate focused on our aspirations rather than our fears. Such conversations are necessary to the larger project of building durable power for the Black and brown communities who bear the brunt of voter suppression, and for the democracy movement overall.

# Endnotes

1. U.S. Declaration of Independence.
2. Preamble to the U.S. Constitution.
3. Nikole Hannah-Jones, “Our democracy’s founding ideals were false when they were written. Black Americans have fought to make them true,” *The New York Times Magazine*, August 14, 2019, <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html>.
4. W.E.B. Du Bois, *Black Reconstruction in America* (New York: The Free Press, 1935).
5. Susan Ware, *Why They Marched: Untold Stories of Women Who Fought for the Right to Vote* (Cambridge: The Belknap Press of Harvard University, 2019). See also Aminatou Sow and Ann Friedman, Call Your Girlfriend podcast, “Votes for Women,” September 27, 2019, <https://www.callyourgirlfriend.com/episodes/2019/09/27/votes-for-women>.
6. John Lewis and Michael D’Orso, *Walking With the Wind* (New York: Simon & Schuster, 1998). See also Gary May, *Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy* (Durham: Duke University Press, 2015).
7. Reverend Dr. William J. Barber II, *The Third Reconstruction: Moral Mondays, Fusion Politics, and the Rise of a New Justice Movement* (Boston: Beacon Press, 2016). On the fight to end disenfranchisement for involvement in the criminal legal system, see the Florida Rights Restoration Coalition, <https://floridarrc.com/>; Voices of the Experienced in Louisiana, <https://www.vote-nola.org/>; Millions for Prisoners in New Mexico, [https://www.facebook.com/MillionsforPrisonersNM/?eid=ARAn2NdLLbyhllD\\_Vua-IZ2WFaz5eXGDxEi1Fk8NdJ6ImPkhG0FaqNZMbHIpErOG4BTWk67A\\_mNQjK7K](https://www.facebook.com/MillionsforPrisonersNM/?eid=ARAn2NdLLbyhllD_Vua-IZ2WFaz5eXGDxEi1Fk8NdJ6ImPkhG0FaqNZMbHIpErOG4BTWk67A_mNQjK7K); Initiate Justice in California, <https://www.initiatejustice.org/>; All Of Us Or None, <https://www.prisonerswithchildren.org/our-projects/allofus-or-none/>; the National Council on Incarcerated and Formerly Incarcerated Women and Girls, <https://www.nationalcouncil.us/>; and the Formerly Incarcerated, Convicted People and Families Movement, <https://forwardjustice.org/ficpfm-movement>; among others.
8. Interview with Ella Baker, September 4, 1974, University of North Carolina “Documenting the American South” Southern Oral History Program Collection (#4007), Interview G-0007, [https://docsouth.unc.edu/sohp/playback.html?base\\_file=G-0007&duration=03:34:21](https://docsouth.unc.edu/sohp/playback.html?base_file=G-0007&duration=03:34:21). See

- also Cathleen D. Cahill, “Suffrage in Spanish: Hispanic Women and the Fight for the 19th Amendment in New Mexico,” Women’s Vote Centennial, <https://www.womensvote100.org/the-suff-buffs-blog/2020/6/24/suffrage-in-spanish-hispanic-women-and-the-fight-for-the-19th-amendment-in-new-mexico>; and Cathleen D. Cahill and Sarah Deer, “In 1920, Native Women Sought the Vote. Here’s What’s Next,” *The New York Times*, July 31, 2020, <https://www.nytimes.com/2020/07/31/style/19th-amendment-native-womens-suffrage.html>.
9. Richard Briffault, “Three Questions for the ‘Right to Vote’ Amendment,” 23 *William & Mary Bill of Rights Journal* 27, 29 (2014), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1705&context=wmborj>; Jonathan Soros, “The Missing Right: A Constitutional Right to Vote,” *Democracy, A Journal of Ideas*, Spring 2013, No. 28, <https://democracyjournal.org/magazine/28/the-missing-right-a-constitutional-right-to-vote/>; Jennifer Victor, “Which parts of the US Constitution have aged least well?” *Vox*, April 1, 2019, <https://www.vox.com/mischiefs-of-faction/2019/4/1/18290934/constitution-aged-least-well>.
  10. At the time of ratification, Article I, Section 2 of the Constitution instructed that Congressional representation be based on a count of “the whole Number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.” This “three-fifths compromise” was in effect until it was undone by Section 2 of the 14th Amendment. Article I, Section 9 prohibited Congress from regulating the international slave trade until 1808 and explicitly prohibited amending the Constitution to address the slave import limitation until that time. Article IV, Section 2 guaranteed the right of slave owners to pursue and reclaim slaves anywhere in the country. This “Fugitive Slave Clause” was in effect until the 13th Amendment abolished slavery in 1865. See Juan Perea, “The Proslavery Constitution,” American Constitution Society Blog Symposium, February 1, 2016, <https://www.acslaw.org/expertforum/the-proslavery-constitution/>.
  11. Stacey Abrams, excerpt from *Our Time Is Now: Power, Purpose, and the Fight For a Fair America*, accessed from *The New York Times*, June 9, 2020, <https://www.nytimes.com/2020/06/09/books/review/our-time-is-now-by-stacey-abrams-an-excerpt.html>.
  12. Victoria Bassetti, “In Search of the Right to Vote,” *Harper’s Magazine*, October 2012, <https://harpers.org/archive/2012/10/in-search-of-the-right-to-vote/>.
  13. *Id.*
  14. The 14th Amendment (ratified 1868) protects the right to vote against discrimination, the 15th Amendment (ratified 1870) prohibits vote denial or abridgement based on race, the 19th Amendment (ratified 1920) prohibits vote denial or abridgement based on sex, the 23rd Amendment (ratified 1961) afforded the residents of Washington, D.C. the ability to vote for president, the 24th Amendment (ratified 1964) bans poll taxes, and the 26th Amendment (ratified 1971) prohibits vote denial or abridgement based on age for those 18 years or older.
  15. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) notes that the right to vote “is regarded as a fundamental political right, because preservative of all rights.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) asserts “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.”
  16. See *supra* note 14.
  17. See *Minor v. Happersett*, 88 U.S. 162, 178 (1874) (“the Constitution of the United States does

not confer the right of suffrage upon any one”); *Bush v. Gore*, 531 U.S. 98, 104 (2000) (“The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the Electoral College”).

18. See *supra* note 9, Briffault, 30. See also Jesse Jackson, Sr., “Put the Right to Vote in the Constitution,” Roland Martin Reports, March 11, 2014, <http://rolandmartinreports.com/blog/2014/03/jesse-jackson-sr-put-the-right-to-vote-into-the-constitution/>; Jamin Raskin, “A Right-to-Vote Amendment for the U.S. Constitution: Confronting America’s Structural Democracy Deficit,” *Election Law Journal*, Vol. 3 No. 3 (2004) 559-573, <https://www.liebertpub.com/doi/abs/10.1089/153312904323216159?journalCode=elj>.
19. When the Supreme Court reviews constitutional challenges to a governmental enactment, it applies “strict scrutiny” to rights that the Court deems deserving of the highest protection. When strict scrutiny is applied, the government bears the burden of showing that its restriction on the constitutional right is necessary to achieve a compelling governmental interest and is narrowly tailored to achieve that interest. See, e.g., *Arkansas Writers’ Project, Inc. v. Ragland*, 481 U.S. 221, 231 (1987). This is a high bar that most often results in the invalidation of the challenged enactment.
20. See, e.g., *Crawford v. Marion County Elections Board*, 553 U.S. 181 (2008) (rejecting facial challenge to Indiana law requiring photo ID for voting). The “balancing test” applied in cases such as *Crawford* is often referred to as the “*Anderson-Burdick*” test, after 2 decisions that developed and elaborated on this approach: *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992).
21. *Crawford v. Marion County Elections Board*, 553 U.S. at 189-190 (applying *Anderson-Burdick* analysis to uphold photo ID requirement); *Ohio Democratic Party v. Husted*, 834 F.3d 620, 626-627 (2016) (applying *Anderson-Burdick* analysis to uphold restrictions on early voting); *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 393-396 (5th Cir. 2013) (applying the *Anderson-Burdick* analysis to uphold restrictions on voter registration activities).
22. See *supra* note 14.
23. The Voting Rights Act (VRA) of 1965 provided protections against a century of Jim Crow disenfranchisement laws that effectively prevented African Americans and other people of color from voting after the passage of the 15th Amendment. In the years immediately following the VRA’s passage, hundreds of thousands of African Americans were newly registered to vote, especially in the South, and African-American representation in state legislatures and in Congress increased dramatically. Subsequent reauthorizations of the law over the following decades extended protections for the right to vote to additional historically disenfranchised communities, including Latinxs, Asian Americans, and Native Americans. The principal enforcement mechanism of the VRA was gutted by the 2013 Supreme Court decision *Shelby v. Holder*, and as a result, the VRA as a tool for protecting the right to vote is significantly compromised. See generally Ari Berman, *Give Us the Ballot: The Modern Struggle for Voting Rights in America* (New York: Farrar, Straus and Giroux, 2015).
24. The National Voter Registration Act (NVRA) of 1993 reduced barriers to voter registration—often one of the greatest barriers to voting, especially among low-income communities and other marginalized peoples—by requiring states to provide voter registration at DMVs,

agencies providing public assistance, and agencies providing services to persons with disabilities; requiring states to accept mail-in voter registration applications; and providing protections from improper voter purges. Thanks to the NVRA, registering to vote, and in turn, voting itself, is more accessible for millions of Americans every election cycle. For more on the impact of the NVRA, see Laura Williamson, Pamela Cataldo, and Brenda Wright, *Toward a More Representative Electorate*, Demos, December 21, 2018. <https://www.demos.org/research/toward-more-representative-electorate>. The Help America Vote Act (HAVA) of 2002 provided additional recourse for voters who encounter registration problems on Election Day, including the opportunity to re-register and cast a provisional ballot. It also set minimum standards for making ballots and polling places accessible and required that people with disabilities have the same opportunity to cast a ballot as other voters, among other provisions.

25. See notes 31, 36, 47 and 48 for sources of these numbers.
26. See “Written Testimony of Chiraag Bains to the House on H.R. 1, the For the People Act,” Demos, February 14, 2019, at 3. <https://www.demos.org/testimony-and-public-comment/written-testimony-chiraag-bains-house-hr-1-people-act>.
27. See *supra* note 15, *Yick Wo v. Hopkins*.
28. Only in Maine and Vermont do citizens maintain their right to vote throughout their full interaction with the criminal legal system. See Jean Chung, “Felony Disenfranchisement: A Primer,” The Sentencing Project, June 27, 2019, <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>, for a comprehensive overview of state penal disenfranchisement laws. These laws are made possible by a carve-out of 14th Amendment protections against vote denial established by the Supreme Court’s decision in *Richardson v. Ramirez*, 418 U.S. 24, 53-56 (1974), for those who engaged in “rebellion, or other crime.”
29. Michelle Alexander, *The New Jim Crow: Mass Incarceration in an Age of Colorblindness* (New York: The New Press, 2012).
30. In 2016, the Sentencing Project estimated that felony disenfranchisement laws formally disenfranchised 6.1 million Americans; see Christopher Uggen, Ryan Larson, and Sarah Shannon, “6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement,” The Sentencing Project, 2016, <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>. In 2018, a supermajority of Floridians passed Amendment 4, which automatically restored the voting rights of 1.4 million Floridians who had served time and completed probation and parole; see Frances Robles, “1.4 Million Floridians With Felonies Win Long-Denied Right to Vote,” *The New York Times*, November 7, 2018, <https://www.nytimes.com/2018/11/07/us/florida-felon-voting-rights.html>. However, in 2019, Republican lawmakers in Florida passed a law requiring returning citizens pay all outstanding fines and fees before their voting rights are restored, which has made hundreds of thousands of newly-eligible Floridians again ineligible to register and vote until they pay this modern-day poll tax. See Chiraag Bains, “Florida Prices Hundreds of Thousands of Returning Citizens Out of the Vote in a Stunning and Unconstitutional Move,” Demos, June 29, 2019, <https://www.demos.org/press-release/florida-prices-hundreds-thousands-returning-citizens-out-vote-stunning-and>; and *Can’t Pay, Can’t Vote: A National Survey of the Modern Poll Tax*, Campaign Legal Center and the Civil Rights Clinic at Georgetown Law, July 25, 2019, 23, [https://campaignlegal.org/sites/default/files/2019-07/CLC\\_CPCV\\_Report\\_Final\\_0](https://campaignlegal.org/sites/default/files/2019-07/CLC_CPCV_Report_Final_0).

pdf. Kentucky and Iowa also recently restored the voting rights of some people formerly incarcerated for felony convictions via executive order; see Michael Wines, “Kentucky Gives Voting Rights to Some 140,000 Former Felons,” *The New York Times*, December 12, 2019, <https://www.nytimes.com/2019/12/12/us/kentucky-felons-voting-rights.html> and Katarina Sostaric, “Governor Acts to Restore Voting Rights to Iowans With Felony Convictions,” *National Public Radio*, August 5, 2020, <https://www.npr.org/2020/08/05/899284703/governor-acts-to-restore-voting-rights-to-iowans-with-past-felony-convictions>. As a result, new estimates put the total number of disenfranchised people nationwide between 5 and 6 million.

31. *Id.*, Sentencing Project.
32. See *supra* note 14.
33. *Can't Pay, Can't Vote: A National Survey of the Modern Poll Tax*, Campaign Legal Center and the Civil Rights Clinic at Georgetown Law, July 25, 2019, [https://campaignlegal.org/sites/default/files/2019-07/CLC\\_CPCV\\_Report\\_Final\\_0.pdf](https://campaignlegal.org/sites/default/files/2019-07/CLC_CPCV_Report_Final_0.pdf); see also Beth A. Colgan, *Wealth-Based Penal Disenfranchisement*, 72 Vand. L. Rev. 55 (2019), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3312439](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3312439); note Colgan employs a different methodology for assessing state-based statutes, rules, and policies governing penal disenfranchisement and finds that a full 48 states plus the District of Columbia employ some form of wealth-based penal disenfranchisement.
34. Demos litigated against this practice in *Tommy Ray Mays II v. LaRose*, No. 18-1376 (S.D. Ohio filed Nov. 6, 2018); for a description of the problem, see <https://www.demos.org/case/mays-v-larose>.
35. The population of Washington, D.C. in 2018 was 702,455. U.S. Census Bureau, *Quick Facts: District of Columbia*, <https://www.census.gov/quickfacts/DC>. The populations of most of the territories are not counted between decennial censuses, so we use the 2010 population estimates for the territories: Puerto Rico 3,979,000; Guam 181,000; Virgin Islands 110,000; American Samoa 66,000; Northern Mariana Islands 48,000. U.S. Census Bureau, *Statistical Abstract of the United States: Puerto Rico and the Island Areas*, 817. <https://www.census.gov/prod/2011pubs/12statab/outlying.pdf>.
36. The residents of Washington, D.C. have lacked voting representation in Congress since the city was created to be home to the U.S. capital in 1790. See “D.C. Home Rule,” Council of the District of Columbia, <https://dccouncil.us/dc-home-rule/>. Puerto Rico and Guam became territories after they were handed over by the Spanish at the end of the Spanish-American War in 1898; the U.S. also took over colonization of the Philippines from the Spanish, though the country achieved independence after WWII. The U.S. annexed American Samoa in 1900 (along with Hawai’i, which achieved statehood in 1959) and purchased the U.S. Virgin Islands from Denmark in 1917. The Northern Mariana Islands came under U.S. control after WWII; while they were technically part of a Trust Territory of the Pacific Islands under the sovereignty of the United Nations, they were effectively controlled by the United States, and in 1986 they became an official U.S. territory and their residents became U.S. citizens. See Daniel Immerwahr, *How to Hide an Empire* (New York: Farrar, Straus and Giroux, 2019), 17 and 391-392.
37. While the U.S. flag flies over 16 territories, these represent the 5 that are permanently inhabited.

38. Neil Weare, “Equally American: Amending the Constitution to Provide Voting Rights in U.S. Territories and the District of Columbia,” *Stetson Law Review*, Vol 46, February 2, 2017, 2, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2910745](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2910745).
39. Washington, D.C. and the territories are able to elect one delegate each to the U.S. House of Representatives, but as non-voting members, these delegates have limited power with which to effectively advocate for the residents they serve. D.C. and the territories lack even non-voting representation in the Senate, an even more powerful and consequential body than the House.
40. Residents of the territories can vote for president in primaries. See William Gallo, “US Presidential Election Ends at Conventions for Territorial Citizens,” VOA NEWS, July 28, 2016, <https://www.voanews.com/usa/us-presidential-election-ends-conventions-territorial-citizens>. Residents of Washington, D.C. gained the right to vote for president in 1961, with the ratification of the 23rd Amendment to the U.S. Constitution.
41. Under international law, the territories have the right to independence and self-government. See United Nations General Assembly Resolution 1514, “Declaration on the Granting of Independence to Colonial Countries and Peoples,” adopted December 14, 1960, <https://www.un.org/dppa/decolonization/en/general-assembly>. D.C. is denied meaningful home rule as Congress reviews, and has the power to veto, all Council-passed legislation before it becomes law and has authority over the city’s budget. See “District of Columbia Home Rule Act of 1973,” Public Law 93-198; 87 Stat. 774. <http://dccouncil.us/wp-content/uploads/2018/11/Home-Rule-Act-2018-for-printing-9-13-182.pdf>.
42. See, for example, Daniel Aga, “Statement by Mr. Daniel Aga for the ‘Caribbean regional seminar on the implementation of the Third International Decade for the Eradication of Colonialism: the future for decolonization in the Non Self-Governing Territories: what are the prospects?’” Kingstown, Saint Vincent and the Grenadine, May 16-18, 2019, The United Nations. Accessed from author, Daniel Aga, in November 2019. Also available at [https://www.un.org/dppa/decolonization/sites/www.un.org.dppa.decolonization/files/2017\\_5\\_nsgt\\_american\\_samoa.pdf](https://www.un.org/dppa/decolonization/sites/www.un.org.dppa.decolonization/files/2017_5_nsgt_american_samoa.pdf). See also Aaron C. Davis, “D.C. poised to change license plate slogan in push to become 51st state,” *The Washington Post*, April 19, 2016, [https://www.washingtonpost.com/local/dc-politics/dc-poised-to-change-license-plate-slogan-in-push-to-become-51st-state/2016/04/19/edd0e538-063f-11e6-b283-e79d81c63c1b\\_story.html](https://www.washingtonpost.com/local/dc-politics/dc-poised-to-change-license-plate-slogan-in-push-to-become-51st-state/2016/04/19/edd0e538-063f-11e6-b283-e79d81c63c1b_story.html).
43. For a comprehensive look at the VRA, the *Shelby v. Holder* (2013) decision, and state and local voting changes since then, see *Democracy Diminished: State and Local Threats to Voting Post-Shelby County, Alabama v. Holder*, NAACP Legal Defense Fund, June 2019, <https://www.naacpldf.org/wp-content/uploads/June-2019-Democracy-Diminished-Report.pdf>; see also “Written Testimony of Chiraag Bains to the House on H.R. 1, the For the People Act,” Demos, February 14, 2019, <https://www.demos.org/testimony-and-public-comment/written-testimony-chiraag-bains-house-hr-1-people-act>; *New Voting Restrictions in America*, Brennan Center for Justice, 2019. <https://www.brennancenter.org/new-voting-restrictions-america>.
44. See generally, Spencer Overton, *Stealing Democracy: The New Politics of Voter Suppression* (New York: W.W. Norton & Co, 2006); Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2009 edition); Tova Wang, *The Politics of Voter Suppression: Defending and Expanding Americans’ Right to Vote*, The Century Foundation (Ithaca: Cornell University Press, 2012); Ari Berman, *Give Us the Ballot: The Modern Struggle for Voting Rights in America* (New York: Farrar, Straus and Giroux, 2015).

45. *Democracy Diverted: Polling Place Closures and the Right to Vote*, The Leadership Conference on Civil and Human Rights, September 2019. <https://civilrights.org/democracy-diverted/>. See also Mark Niese and Nick Thieme, “Precinct closures harm voter turnout in Georgia, AJC analysis finds,” the *Atlanta Journal-Constitution*, December 13, 2019, <https://www.ajc.com/news/state--regional-govt--politics/precinct-closures-harm-voter-turnout-georgia-ajc-analysis-finds/11sVcLyQCHuQRC8qtZ6lYP/>.
46. See Bernard L. Fraga and Michael G. Miller, *Who Does Voter ID Keep from Voting?* (working paper), December 14, 2018, [https://www.dropbox.com/s/lz7zvtyxxfe5if8/FragaMiller\\_TXID\\_2018.pdf?dl=0](https://www.dropbox.com/s/lz7zvtyxxfe5if8/FragaMiller_TXID_2018.pdf?dl=0); *Election: Issues Related to State Voter Identification Laws*, U.S. Government Accountability Office, September 2014, <https://www.gao.gov/assets/670/665966.pdf>; *North Carolina State Conf. of the NAACP et al. v. McCrory*, Case No. 16-1468, at \*11 (4th Cir., July 29, 2016), <http://electionlawblog.org/wp-content/uploads/nc-4th.pdf>; Chiraag Bains, “Written Testimony of Chiraag Bains to the House on H.R.1, the For the People Act,” February 14, 2019, <https://www.demos.org/testimony-and-public-comment/written-testimony-chiraag-bains-house-hr-1-people-act>; Ben Nadler, “Voting Rights Become a Flashpoint in Georgia’s Governor’s Race,” the Associated Press, October 9, 2018, <https://apnews.com/fb011f39af3b40518b572c8cce6e906c>; Taylor N.T. Brown and Jody L. Herman, *Voter ID Laws and their Added Costs for Transgender Voters*, The Williams Institute at UCLA, March 2016. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Voter-ID-Laws-and-Their-Added-Costs-for-Transgender-Voters-March-2016.pdf>; Caleb Gayle, “Strict Voter ID Laws Threaten the Franchise of Trans Americans,” *Pacific Standard*, June 28, 2019, <https://psmag.com/social-justice/strict-voter-id-laws-threaten-the-franchise-of-trans-americans>; Lila Carpenter, “Signature Match Laws Disproportionately Impact Voters Already on the Margins,” *American Civil Liberties Union*, November 2, 2018, <https://www.aclu.org/blog/voting-rights/signature-match-laws-disproportionately-impact-voters-already-margins>.
47. Charles Stewart III, *2016 Survey of the Performance of American Election*, Massachusetts Institute of Technology, 37, <https://www.documentcloud.org/documents/4106327-MIT-Charles-Stewart-Voter-Turnout-Study-2016.html>.
48. Demos analysis of Census data. Census Bureau, Current Population Survey, November 2016 Voting and Registration Supplement. Voting eligible means U.S. citizen and 18 years old or over.
49. Laura Williamson, Pamela Cataldo, and Brenda Wright, *Toward a More Representative Electorate*, Demos, December 21, 2018. <https://www.demos.org/research/toward-more-representative-electorate>.
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51. Shruti Banerjee and Stuart Naifeh, “How the Wisconsin Voter Purge Targets Black Voters,” Demos, December 20, 2019, <https://www.demos.org/blog/how-wisconsin-voter-purge-targets-black-voters>. See also Michael C. Herron and Daniel A. Smith, “Estimating the Differential Effects of Purging Inactive Registered Voters,” (incomplete conference draft, prepared for the 2018 Election Sciences, Reform, and Administration Conference at the University of Wisconsin-Madison), July 22, 2018.

52. *Husted v. A. Philip Randolph Institute*, 584 U.S. \_\_\_, 138 S. Ct. 1833 (2018). Demos litigated *Husted* with the ACLU of Ohio and the ACLU. See <https://husted.demos.org/>.
53. Jacqueline De Leon, Dr. Dan McCool, Dr. James Thomas Tucker, *Obstacles At Every Turn: Barriers to Political Participation Faced by Native American Voters*, The Native American Rights Fund, June 2020, at 9. [https://vote.narf.org/wp-content/uploads/2020/06/obstacles\\_at\\_every\\_turn.pdf?\\_ga=2.56441451.173218200.1596053312-2131433728.1594666288](https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf?_ga=2.56441451.173218200.1596053312-2131433728.1594666288).
54. Natalie Landreth, Matthew L. Campbell, and Jacqueline DeLeon, “A History of Native Voting Rights,” Native American Voting Rights Coalition, <https://www.narf.org/cases/voting-rights/>.
55. See *supra* note 53, at 2.
56. Native American Voting Rights Coalition, Midwestern Field Hearing, Bismarck, ND, September 5, 2017, <https://vote.narf.org/field-hearings/>.
57. Abraham Lincoln, “The Gettysburg Address,” November 19, 1863, [https://rmc.library.cornell.edu/gettysburg/good\\_cause/transcript.htm](https://rmc.library.cornell.edu/gettysburg/good_cause/transcript.htm).
58. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).
59. Press release, “Lawyers’ Committee Announces Settlement of Major Voting Rights Lawsuit in North Carolina,” August 24, 2017, <https://lawyerscommittee.org/lawyers-committee-announces-settlement-major-voting-rights-lawsuit-north-carolina/>; “Meet our Board of Commissioners,” official website of Jones County, North Carolina, <https://www.jonescountync.gov/?SEC=BC8C271B-663E-4EA8-A26E-E4BF585B6889>.
60. Gerrymandering has been used to distort representation for more than 2 centuries, but the distortions it creates have been made significantly more severe today thanks to advanced mapping technologies. See Van R. Newkirk II, “How Redistricting Became a Technological Arms Race,” *The Atlantic*, October 28, 2017, <https://www.theatlantic.com/politics/archive/2017/10/gerrymandering-technology-redmap-2020/543888/>; and *Rucho v. Common Cause*, 588 U.S. \_\_\_, 139 S. Ct. 2484, 2512-2513 (2019) (Kagan, J., dissenting).
61. See, e.g., *Shaw v. Reno*, 509 U.S. 630 (1993).
62. Brian Klaas, “Gerrymandering is the Biggest Obstacle to Genuine Democracy in the United States. So Why is No One Protesting?” *The Washington Post*, Feb. 10, 2017, [https://www.washingtonpost.com/news/democracypost/wp/2017/02/10/gerrymandering-is-the-biggest-obstacle-to-genuine-democracy-in-the-united-states-so-why-is-no-one-protesting/?utm\\_term=.ea831294f666](https://www.washingtonpost.com/news/democracypost/wp/2017/02/10/gerrymandering-is-the-biggest-obstacle-to-genuine-democracy-in-the-united-states-so-why-is-no-one-protesting/?utm_term=.ea831294f666).
63. James Madison, “The Federalist No. 37,” Congress.gov, <https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-37>.
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66. Malcom X, “The Ballot or the Bullet,” King Solomon Baptist Church, Detroit, Michigan, April 12, 1964, <http://americanradioworks.publicradio.org/features/blackspeech/mx.html>.
67. See the “Prison Gerrymandering Project,” Prison Policy Initiative, <https://www>.

- [prisonersofthecensus.org/impact.html](https://prisonersofthecensus.org/impact.html); and *Mass Incarceration: The Whole Pie 2020*, Prison Policy Initiative, March 24, 2019. <https://www.prisonpolicy.org/reports/pie2020.html>.
68. *Id.*, see also Brenda Wright, “Where Criminal Justice and Democracy Intersect: The Strange Case of Prison Gerrymandering,” Demos, July 22, 2016, <https://www.demos.org/blog/where-criminal-justice-and-democracy-intersect-strange-case-prison-gerrymandering>.
  69. See *supra* note 10.
  70. See Andrew Gelman and Pierre-Antoine Kremp, “The Electoral College magnifies the power of white voters,” Vox, December 17, 2016, <https://www.vox.com/the-big-idea/2016/11/22/13713148/electoral-college-democracy-race-white-voters>; and Michael Barbaro, “Send Her Back’: White Voters and Trump’s Path to Re-election,” *The Daily*, July 24, 2019, <https://www.nytimes.com/2019/07/24/podcasts/the-daily/2020-electoral-college-race.html>.
  71. Wyoming gets 3 electors, one for its single representative and 2 for its 2 senators, while California gets 55 electors, one for each of its 53 representatives and 2 for its 2 senators. These numbers represent each state’s population divided by its number of electors. For population statistics, see “Quick Facts: Wyoming,” U.S. Census Bureau, July 1, 2018, <https://www.census.gov/quickfacts/WY>; “Quick Facts: California,” U.S. Census Bureau, July 1, 2018, <https://www.census.gov/quickfacts/CA>.
  72. *Id.*, Wyoming is 84 percent white, non-Hispanic, 16 percent people of color; California is 37 percent white, non-Hispanic, 63 percent people of color.
  73. “Faithless Electors,” Fairvote, [https://www.fairvote.org/faithless\\_electors](https://www.fairvote.org/faithless_electors).
  74. Kiersten Schmidt and Wilson Andrews, “A Historic Number of Electors Defected, and Most Were Supposed to Vote for Clinton,” *The New York Times*, December 19, 2016, <https://www.nytimes.com/interactive/2016/12/19/us/elections/electoral-college-results.html>.
  75. *Chiafalo et al. v. Washington*, 591 U.S. \_\_\_\_ (2020).
  76. Benjamin Forest, “Reforming the U.S. Senate: Original Intent and Representational Inequality,” *Political Geography*, Vol. 74 (2019) 102011, DOI: <https://doi.org/10.1016/j.polgeo.2019.04.003>, <https://www.sciencedirect.com/science/article/pii/S0962629819300083?via%3Dihub>. See also Colin McAuliffe, “The Senate is an Irredeemable Institution,” Data For Progress, December 17, 2019, <https://www.dataforprogress.org/memos/the-senate-is-an-irredeemable-institution>.
  77. Akhil Reed Amar, “The Troubling Reason the Electoral College Exists,” *Time Magazine*, Nov. 8, 2018, <http://time.com/4558510/electoralcollege-history-slavery/>.
  78. Leon Freidman, “Why Do We Have the Electoral College?,” Huffington Post, Nov. 11, 2017, [https://www.huffingtonpost.com/leon-friedman/why-do-we-have-the-electo\\_b\\_12885468.html](https://www.huffingtonpost.com/leon-friedman/why-do-we-have-the-electo_b_12885468.html).
  79. Tara Law, “The Presidents Won the Electoral College, But Not the Popular Vote,” *Time Magazine*, May 15, 2019, <https://time.com/5579161/presidents-elected-electoral-college/>. In 2000, George W. Bush received 500,000 fewer votes than his opponent, Al Gore. In 2016, Donald Trump received almost 3 million fewer votes than his opponent, Hillary Clinton.

80. See principally *Buckley v. Valeo*, 424 U.S. 1 (1976), *Citizens United v. the Federal Elections Commission*, 588 U.S. 310 (2010), and *McCutcheon v. the Federal Elections Commission*, 572 U.S. 185 (2014). For a detailed description of each and a list of additional cases contributing to this misguided Supreme Court doctrine, see Adam Lioz, *Buckley v. Valeo at 40*, Demos, December 15, 2015, at 11. <https://www.demos.org/research/buckley-v-valeo-40>.
81. Sean McElwee, *Whose Voice, Whose Choice? The Distorting Influence of the Political Donor Class in Our Big-Money Elections*, Demos, Dec. 8, 2016. <https://www.demos.org/research/whose-voice-whose-choice-distorting-influence-political-donor-class-our-big-money>.
82. David Callahan & J. Mijin Cha, *Stacked Deck: How the Dominance of Politics by the Affluent & Business Undermines Economic Mobility in America*, Demos, February 13, 2013. <https://www.demos.org/research/stacked-deck-how-dominance-politics-affluent-business-undermines-economic-mobility-america>; Adam Lioz, *Stacked Deck II: How the Racial Bias in Our Big Money Political System Undermines Our Democracy and Our Economy*, Demos, July 23, 2015. <https://www.demos.org/research/stacked-deck-how-racial-bias-our-big-money-political-system-undermines-our-democracy-and>.
83. *Id.*, Lioz at 77 (footnote 19).
84. *Reflective Democracy Research Findings*, Women Donors Network, 2017. <https://wholeads.us/wp-content/uploads/2018/09/reflective-democracy-2017-research-summary.pdf>.
85. “The Electability Myth: The Shifting Demographics of Political Power in America,” The Reflective Democracy Campaign of the Women’s Donor Network, June 2019. [https://wholeads.us/wp-content/uploads/2019/08/The-Electability-Myth\\_-\\_The-Shifting-Demographics-of-Political-Power-In-America-8-1-19.pdf](https://wholeads.us/wp-content/uploads/2019/08/The-Electability-Myth_-_The-Shifting-Demographics-of-Political-Power-In-America-8-1-19.pdf).
86. See *supra* notes 23 and 24.
87. “For the People Act” (H.R.1), 116th Congress, 2019. H.R. 1 has passed the House of Representatives and is awaiting a hearing in the Senate. H.R.1 includes comprehensive democracy reforms as wide-reaching as voter registration and ballot access to campaign finance, gerrymandering, and ethics reform. See Congress.gov for the full bill language <https://www.congress.gov/bill/116th-congress/house-bill/1/text>; for a summary of its provisions, see “H.R.1 The For The People Act,” [https://www.commoncause.org/wp-content/uploads/2019/01/H.R.-1-Section-by-Section\\_FINAL-002.pdf](https://www.commoncause.org/wp-content/uploads/2019/01/H.R.-1-Section-by-Section_FINAL-002.pdf).
88. For example, in 2018 alone, a strong majority of Florida voters supported Amendment 4, restoring the right to vote to most Floridians with felony convictions after they have been released from prison; a near supermajority of voters in Nevada supported automatic voter registration; and voters in Michigan overwhelmingly voted in favor of redistricting reform to end extreme gerrymandering in their state. Several other states have approved pro-voter reforms in recent years; see Elena Nunez and Jay Riestenberg, *Democracy on the Ballot*, Common Cause, October 24, 2018. <https://www.commoncause.org/resource/democracy-on-the-ballot/>.
89. *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966). The poll tax was made unconstitutional in 1964, with the ratification of the 24th Amendment. However, some states continued the practice until they were forced to stop after the *Harper* decision.

90. The term “one person, one vote,” so widely held and cited today, is also missing from the U.S. Constitution. For decades before the Supreme Court finally intervened, severe malapportionment plagued districts across the United States. In *Reynolds v. Sims*, plaintiffs alleged that the lack of fair representation in Alabama’s apportionment scheme violated the 14th Amendment. In an 8-1 decision in 1964, the Court agreed, recognizing the powerful “one-person, one-vote” standard for apportionment and redistricting that today is regarded as fundamental to American democracy. *Reynolds v. Sims*, 377 U.S. 533 (1964).
91. See *Thornburg v Gingles*, 478 U.S. 30, (1986), which applied Section 2 of the Voting Rights Act to strike down electoral systems diluting the voting strength of persons of color.
92. Danielle McLean, “Republicans are undermining Michigan’s redistricting effort, secretary of state says,” ThinkProgress, May 20, 2019, <https://thinkprogress.org/republicans-are-undermining-michigans-redistricting-effort-secretary-of-state-says-944a99601ec2/>; P.R. Lockhart, “Florida Legislature approves bill requiring former felons to pay fines and fees before voting,” Vox, May 3, 2019, <https://www.vox.com/policy-and-politics/2019/5/3/18528564/amendment-4-florida-felon-voting-rights-fees>.
93. *Crawford v. Marion County Election Board* 553 U.S. 181, (2008).
94. Wendy Underhill, *Voter Identification Requirements: Voter ID Laws*, National Council of State Legislatures, January 17, 2019. <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.
95. See *supra* note 46, Fraga and Miller.
96. See *supra* note 43.
97. See *supra* note 52.
98. See *supra* note 80.
99. *Rucho v. Common Cause*, 588 U.S. \_\_\_\_, 139 S. Ct. 2484 (2019).
100. “Reps. Pocan and Ellison Introduce Right to Vote Constitutional Amendment,” press release, February 17, 2017, <https://pocan.house.gov/media-center/press-releases/reps-pocan-and-ellison-introduce-right-to-vote-constitutional-amendment>.
101. Heather Gerken, “The Right to Vote: Is the Amendment Game Worth the Candle?” Yale Law School Faculty Scholarship Series, 2014, 16, [https://digitalcommons.law.yale.edu/fss\\_papers/5169/](https://digitalcommons.law.yale.edu/fss_papers/5169/); see also Professor Pamela Karlan note in *In Pursuit of an Affirmative Right to Vote*, Advancement Project, July 2008, footnote 34 on page 7, [https://b3cdn.net/advancement/ae94ee5ad8686f5760\\_27m6vr0j7.pdf](https://b3cdn.net/advancement/ae94ee5ad8686f5760_27m6vr0j7.pdf).
102. The first 10 amendments, collectively known as the Bill of Rights, were ratified at one time, on December 15, 1791.
103. See *supra* note 76.
104. Eric Orts, “The Path to Give California 12 Senators, and Vermont Just One,” *The Atlantic*, January 2, 2019, <https://www.theatlantic.com/ideas/archive/2019/01/heres-how-fix-senate/579172/>.

105. Such a proposal is not written up anywhere, as far as we know, but a colleague at another democracy reform organization has considered it.
106. John D. Dingell, “I Served in Congress Longer than Anyone. Here’s How to Fix it,” *The Atlantic*, December 4, 2018, <https://www.theatlantic.com/ideas/archive/2018/12/john-dingell-how-restore-faith-government/577222/>.
107. Recently, Senators Durbin and Warren introduced a new right-to-vote amendment. See “Durbin Introduces Joint Resolution To Enshrine The Right To Vote In U.S. Constitution,” August 5, 2020, <https://www.durbin.senate.gov/newsroom/press-releases/durbin-introduces-joint-resolution-to-enshrine-right-to-vote-in-us-constitution>. Unfortunately, this report was in production at the time, so we were unable to include a detailed analysis of their new proposal.
108. H.R.J. Res. 28, *Proposing an amendment to the Constitution of the United States regarding the right to vote*, Representative Jesse L. Jackson, Jr., 108th Congress (2003), <https://www.congress.gov/108/bills/hjres28/BILLS-108hjres28ih.pdf>.
109. See *supra* note 9, Briffault at 36.
110. Jesse L. Jackson, Jr., “Democrats Should Fight for a ‘Right to Vote’ Amendment,” *The Nation*, November 15, 2005; no longer available online.
111. Jamin Raskin, *Overruling Democracy: The Supreme Court vs. the American People* (New York: Rutledge 2003), 43.
112. *In Pursuit of An Affirmative Right to Vote*, The Advancement Project, July 2008, 7. [https://b3cdn.net/advancement/ae94ee5ad8686f5760\\_27m6vr0j7.pdf](https://b3cdn.net/advancement/ae94ee5ad8686f5760_27m6vr0j7.pdf).
113. H.J. Res. 44, Representatives Mark Pocan and Keith Ellison, 113th Congress (2013).
114. “Right to Vote Amendment,” FairVote, [https://www.fairvote.org/right\\_to\\_vote\\_amendment](https://www.fairvote.org/right_to_vote_amendment).
115. See *supra* note 19.
116. Jamin Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. Pa. L. Rev. 1391 (1993), 1393. [https://scholarship.law.upenn.edu/penn\\_law\\_review/vol141/iss4/3/](https://scholarship.law.upenn.edu/penn_law_review/vol141/iss4/3/).
117. Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 312; Frances Fox Piven, Lorraine C. Minnite, and Margaret Groarke, *Keeping Down the Black Vote* (New York: The New Press, 2009), 100; and Laura Williamson, Pamela Cataldo, and Brenda Wright, *Toward a More Representative Electorate*, *Demos*, 2018, 4. <https://www.demos.org/research/toward-more-representative-electorate>.
118. See *supra* note 58.
119. In *Washington v. Davis*, 426 U.S. 229 (1976), the Supreme Court held that government discrimination under the 14th Amendment can only be found when a policy or law has a discriminatory purpose rather than just a disproportionate effect on a protected group.
120. See *supra* notes 71 and 72.

121. Stephen Ohlemacher, “Which State Sends Most Taxes to DC? Hint: It’s Not a State,” the Associated Press, April 16, 2017, <https://apnews.com/bb851fbec8e7463cbef631abd070888a>.
122. The Washington, D.C. Admission Act (H.R. 51), Rep. Eleanor Holmes Norton, 116th Congress, 2019.
123. A recent analysis by the ACLU found the bill to be constitutional. See “ACLU Legal Analysis of the Washington, D.C. Admission Act,” the American Civil Liberties Union, August 12, 2019, <https://www.aclu.org/archive-docs/aclu-legal-analysis-washington-dc-admission-act>.
124. See *supra* note 122.
125. Note that the question of citizenship in the territories can be controversial, and not all residents of the territories desire U.S. citizenship. See, for example, Daniel Aga, “Statement by Mr. Daniel Aga for the ‘Caribbean regional seminar on the implementation of the Third International Decade for the Eradication of Colonialism: the future for decolonization in the Non Self-Governing Territories: what are the prospects?’” Kingstown, Saint Vincent and the Grenadine, May 16-18, 2019, The United Nations. Accessed from author, Daniel Aga, in November 2019. Also available at <https://fddocuments.us/amp/document/written-statement-of-the-american-samoa-government-on-of-american-samoarevpdf.html>.
126. See *supra* note 41.
127. There were 3.7 million Puerto Ricans living on the island during the last census, compared to 54,000 residents of the Commonwealth of the Northern Mariana Islands. See *supra* note 35.
128. See *supra* note 41.
129. See *supra* note 125, Statement by Daniel Aga.
130. John Gonzales is the president of the Northern Marianas Descent Corporation, an NGO that advocates for people of Northern Marianas descent with respect to land ownership and rights, and a member of the 2nd Marianas Political Status Commission. He shared this view of American democracy in an email exchange with Demos.
131. One such process has been laid out by LatinoJustice / PRLDEF, in their “Statement on Decolonization of Puerto Rico,” June 18, 2018, <https://www.latinojustice.org/en/news/latinojustice-prldef-statement-decolonization-puerto-rico>.
132. See Prison Policy Initiative resources on the impact of the justice system on communities, [https://www.prisonpolicy.org/research/community\\_impact/](https://www.prisonpolicy.org/research/community_impact/).
133. For example, in 2015, opponents of full representation for all persons brought a case to the Supreme Court, *Evenwel v. Abbott*, 578 U.S. \_\_\_, 136 S. Ct. 1120 (2016). In *Evenwel*, plaintiffs challenged the long-standing practice of drawing legislative districts based on total population, alleging that districts should instead be based only on voter-eligible citizens. The Supreme Court rejected this challenge, reasoning that the one-person, one-vote principle permits states to include all residents, including persons not registered or eligible to vote, in the population counts used for redistricting. Despite this decision, opponents of the one-person, one-vote principle have signaled that they will continue pressing states to voluntarily exclude non-voting-eligible persons from the population counts used for redistricting.

134. See *supra* note 43.
135. “Democracy For All Amendment (H.J.R. 2),” Senator Udall, 116th Congress, 2019. This language was informed and is supported by a broad and diverse coalition of money-in-politics advocates.
136. *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).
137. John Lewis, “Together, You Can Redeem the Soul of Our Nation,” *The New York Times*, July 30, 2020, <https://www.nytimes.com/2020/07/30/opinion/john-lewis-civil-rights-america.html>.
138. See *supra* note 3.

# Dēmos

We are a dynamic “think-and-do” tank that powers the movement for a just, inclusive, multiracial democracy.

Through cutting-edge policy research, inspiring litigation and deep relationships with grassroots organizations, Dēmos champions solutions that will create a democracy and economy rooted in racial equity.

Our name means “the people.” It is the root word of democracy, and it reminds us that in America, the true source of our greatness is the diversity of our people.

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