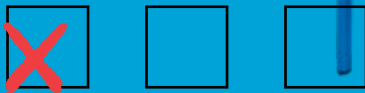


Lift Every Voice

The Urgency of Universal Civic Duty **VOTING**



A Report from the Working Group on Universal Voting

CONVENED BY

The Brookings Institution

AND

The Ash Center for Democratic Governance
and Innovation, Harvard Kennedy School

B | Governance Studies
at BROOKINGS



HARVARD Kennedy School

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and Innovation



The members of our Working Group have participated in meetings, conference calls, drafting, and editing in an 18-month path to this final Report. While we may not all agree on every word in the report or every item in the recommendations section, we are all in agreement that the concept of making voting a universal civic duty in the United States would significantly enhance our democracy by broadening civic participation in all communities. We believe it is worthy of a broad public discussion, which we hope to initiate with this report. (Organizations are listed for identification purposes only.)

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The Origins of this Report and a Note of Thanks


In the fall of 2018, the Brookings Institution and the Ash Center for Democratic Governance and Innovation at Harvard Kennedy School launched the Universal Voting Working Group to study and advance the idea of universal civic duty voting in the United States. This report is the culmination of that work—and the beginning, we hope, of a larger conversation. Organized by Miles Rapoport, Ash Center Senior Practice Fellow in American Democracy, and E.J. Dionne Jr., Brookings Senior Fellow and Harvard Visiting Professor, the working group included 25 members. Amber Herrle, then of the Brookings Institution, took on the responsibilities of principal editor and project coordinator, and Cecily Hines made indispensable contributions throughout as an organizer, editor, and advisor on legal issues.

The full working group met five times for extended sessions, assembled subgroups on particular issues, and produced multiple internal memos on various aspects of the idea. Those memos laid the basis for substantial parts of this report.

The working group examined comparative systems of civic duty voting, and three experts shared their scholarship on and practical involvement in such systems: Kim Beazley, former deputy prime minister of Australia; Jérémy Dodeigne, professor of political science at Université de Namur in Belgium; and Shane Singh of the University of Georgia, who has written extensively on universal voting, particularly in Latin America. In addition to studying comparative systems of civic duty voting, the group also convened a subgroup to explore incentives and penalties. The working group also hosted a dialogue with Jason Brennan, a leader among scholars strongly opposed to civic duty voting.

We also hosted meetings with representatives from a broad range of organizations working to defend and advance the voting rights of the Black, Latinx, and Asian American and Pacific Islander communities. Their feedback on earlier iterations of this proposal was invaluable and led to important revisions and additions. The organizers of the project are deeply grateful to the working group members, Janai Nelson, Cornell William Brooks, Maria Teresa Kumar, and Terry Ao Minnis, who made these subgroup meetings possible. We also thank Marcia Avner, who worked with Hines to organize a meeting with state and local leaders in Minneapolis.

We are grateful for the financial support of the Carnegie Corporation, the Resilient Democracy Fund, and the Blue Haven Initiative. Great thanks are also due to the Democracy Fund and to Robert Griffin, the Voter Study Group's research director, for all the work he put into polling conducted specifically for this report and for making invaluable suggestions on the design of the survey research.



This report is the collective product of the working group. The final draft was written by Dionne, Rapoport and Herrle, with Hines involved (as will be clear below) in shaping many of the key sections. But in the end, every member of the group had an important influence throughout the process. The overall report also built on a thoughtful background memorandum that Brenda Wright and Allegra Chapman had written previously on behalf of Demos and Common Cause. William Galston and E.J. Dionne’s earlier paper on universal voting also helped inform parts of this report.

This report would not have been possible without the exceptional memos that shaped particular sections: Josh Douglas, Hines, and Herrle on the desirability of high turnouts; Shane Singh on lessons from abroad; Herrle on responding to objections of civic duty voting; and Mary Janicki on implementation. Our section on legal issues was written by a team of Hines, Wright, Chapman, and Douglas. Cornell William Brooks contributed key concepts on the links between civic duty voting and the broader historical struggle for civil and voting rights. Janai Nelson, Cheryl Clyburn Crawford, and Brooks offered important suggestions throughout on the imperative of racial equity and gave drafts of the report very helpful close readings.

Megan Bell at the Brookings Institution and Roma Venkateswaran were critical in researching, fact-checking, organizing responses from the group, and finalizing the report.

A note to readers: The report does not include a traditional executive summary. The preamble serves this purpose in outlining our key recommendations while also laying out our larger aspirations.

This report reflects the views of its authors and not those of the Brookings Institution, the Ash Center, the John F. Kennedy School of Government, or Harvard University. But we are greatly indebted to our colleagues at both—particularly to Darrell West, vice president and director of Governance Studies at Brookings, and Archon Fung, who leads democratic governance programs at the Ash Center. Their support and encouragement were unstinting and deeply appreciated.

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Preamble


Imagine an American democracy remade by its citizens in the very image of its promise, a society where the election system is designed to allow citizens to perform their most basic civic duty with ease. Imagine that all could vote without obstruction or suppression. Imagine Americans who now solemnly accept their responsibilities to sit on juries and to defend our country in a time of war taking their obligations to the work of self-government just as seriously. Imagine elections in which 80 percent or more of our people cast their ballots—broad participation in our great democratic undertaking by citizens of every race, heritage, and class, by those with strongly-held ideological beliefs, and those with more moderate or less settled views. And imagine how all of this could instill confidence in our capacity for common action.

Our purpose is to propose universal civic duty voting as an indispensable and transformative step toward full electoral participation.

This report is offered with these aspirations in mind and is rooted in the history of American movements to expand voting rights. Our purpose is to propose universal civic duty voting as an indispensable and transformative step toward full electoral participation. Our nation's current crisis of governance has focused unprecedented public attention on intolerable inequities and demands that Americans think boldly and consider reforms that until now seemed beyond our reach.

We see voting as a civic responsibility no less important than jury duty. If every American citizen is required to participate as a matter of civic duty, the representativeness of our elections would increase significantly, and those responsible for organizing elections will be required to resist all efforts at voter suppression and remove barriers to the ballot box. Civic duty voting would necessarily be accompanied by a variety of legislative and administrative changes aimed at making it easier for citizens to meet their obligation to participate in the enterprise of self-rule.

Our intervention reflects a sense of alarm and moral urgency, but also a spirit of hope and patriotism. Members of our working group undertook this work to fight back against legal assaults on voting rights guarantees and the proliferation of new techniques and laws to keep citizens from casting ballots. We did so mindful of the public's declining trust in our democratic institutions. We joined together to end a vicious cycle in which declining trust breeds citizen withdrawal which, in turn, only further increases the sense of distance between citizens and our governing institutions.

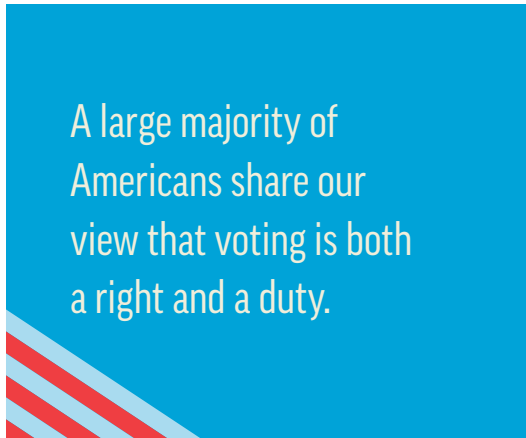


It would, however, be a great mistake to see only negative portents in our current situation. If some states have engaged in voter suppression, others have enhanced voting rights through automatic voter registration, same day voting, increased opportunities for early voting, and mail ballots. These reforms have had a measurable and positive impact on participation—and enjoyed enthusiastic citizen support.

Our nation’s struggle to realize the fullness of the franchise began in the battles for the 13th, 14th, and 15th Amendments to the Constitution after the Civil War that constituted our nation’s Second Founding.² It continued with the ratification of the 19th Amendment in 1920 and the Voting Rights Act of 1965. Native Americans were not granted full citizenship until the passage of the Snyder Act in 1924 and were not fully granted voting rights until Utah did so in 1962, the last state to formally guarantee the franchise to Indigenous peoples. Nearly a decade later, amidst the Vietnam War in which the youngest Americans were drafted but could not vote, the 26th Amendment extended the franchise to 18-year-olds.

In calling for what has been known as mandatory attendance at the polls (the phrase makes clear that no citizen would be forced to vote for anyone against his or her will), and might now, with the spread of mail voting, be called mandatory participation in elections, we hope to underscore that *rights and duties are intimately related*. During Reconstruction and the Civil Rights eras, few reforms were more important or more empowering than the right of Black Americans to sit on juries. They demanded that they be included in the pool of those who might be *required* to sit through trials because their own liberties depended upon being included in the process of judging whether a fellow citizen would be jailed, fined, or set free. *In the case of jury service, the right and the duty are one in the same*. The same can be said of voting. The franchise, said a voting rights advocate of the Reconstruction era, is “an essential and inseparable part of self-government, and therefore natural and inalienable.” W. E. B. Du Bois saw voting as central to the larger aspiration of being treated as an equal, “a co-worker in the kingdom of culture.”³

We also believe our proposals would pass constitutional scrutiny. Our report includes a careful and detailed legal analysis because the issue of the constitutionality has regularly arisen in debates over the idea. Knowing that it would face legal challenge if adopted, we examine the constitutional implications of various implementation and enforcement policies at every level of government. Universal civic duty voting, we argue, should survive legal challenges. It is consistent with our Constitution’s guarantees of free speech, robust forms of collective action, and effective government.



A large majority of Americans share our view that voting is both a right and a duty.



In the course of our report, we present public opinion data gathered explicitly for this study by the Democracy Fund + UCLA Nationscape Project. We freely acknowledge that—for now—there is far more opposition than support for the idea of requiring everyone to vote. At the same time, a large majority of Americans share our view that voting is both a right and a duty. Our conclusion from the data is that while nearly two-thirds of Americans oppose mandatory electoral participation, about half the country is at least open to persuasion, a significant opening for a novel concept that has never been advanced in an organized and energetic way. To begin this process, this report seeks to answer legitimate criticisms and practical objections. We propose, for example, that all who have a conscientious objection to voting and all who present any reasonable excuse for not doing so would be exempted from the obligation and any penalty. Voters would be free to return a blank or spoiled ballot, and a ‘None of the Above’ option would also be included.

Nations that have embraced carefully implemented versions of universal civic duty voting have enjoyed dramatic increases in participation.

We also address equity concerns related to penalties. Even small fines could be discriminatory against poor people, and immigrants’ rights activists raise legitimate concerns that inadvertent voting by noncitizens could subject them to unfair penalties. These concerns shaped our recommendations which make clear that the fine for not voting be very small and be set aside for those willing to meet a very modest community service requirement. The fine would be limited to no more than \$20, it could not be compounded over time, nor would civil or criminal penalties be imposed for not paying the fine. If the experience in Australia and other nations with versions of compulsory voting can be taken as a guide, most nonvoters would never face a fine. We also detail protections for noncitizens to prevent exploitation of the system by public officials hostile to immigrants.

Our emphasis is not on imposing sanctions but on sending a strong message that voting is a legitimate expectation of citizenship. Nations that have embraced carefully implemented versions of universal civic duty voting have enjoyed dramatic increases in participation. “Compulsory voting makes democracy work better,” concluded Lisa Hill

of the University of Adelaide, “enabling it to function as a social activity engaged in by all affected interests, not just a privileged elite.”⁴

The country’s politics typically places the interests of older Americans over the interests of the younger generations—which, by definition, makes our system less forward-looking. This problem is aggravated by the under-representation of the young in the voting process. Their participation is held down by rules and requirements that are easier for older and more geographically settled Americans to follow and to meet. As part of our proposal to declare that all adults are required to vote, we propose many ideas, beginning with election day registration and an expansion of voting opportunities, that would welcome the young into full participation. Since the economic fallout from the COVID-19 pandemic is placing particular burdens on young Americans, especially those just entering the workforce, their engagement in the democratic project is more vital than ever.

Universal civic duty voting would also help ensure increased political participation in communities of color that have long confronted exclusion from our democracy. With the reforms that



would necessarily accompany it, civic duty voting would permanently block voter suppression measures. The reprehensible police killing of George Floyd shocked the conscience of the nation and forced its attention to entrenched racial injustice. Floyd’s death, and those of Rayshard Brooks and Breonna Taylor, called forth large-scale protests around the country against police violence that has long been an enraging fact-of-life in Black neighborhoods. The new movement is demanding a thoroughgoing overhaul of policing but also a larger confrontation with racism. The demand for equal treatment has been reinforced by unequal suffering during a pandemic whose costs to health, life, and economic well-being have been borne disproportionately by communities of color. Voting rights, equal participation, and an end to exclusion from the tables of power are essential not only for securing reform, but also for creating the democratic conditions that would make social change durable. Police brutality, as an expression of systemic racism, is not merely about how Americans are policed but whose voices are heard on policing. Universal voting could amplify long-suppressed voices so that long-denied solutions to systemic racism are represented in the voting booth and enacted in legislatures.

“Give us the ballot,” Martin Luther King Jr. declared in 1957, “and we will transform the salient misdeeds of bloodthirsty mobs into the calculated good deeds of orderly citizens.”⁵ As our nation opens its mind and its heart to forms of social reconstruction that were far removed from the public agenda only months ago, we believe that transformative adjustments to our voting system are now in order.

The new activism points to the need for a renewed civic life, and universal voting would assist in its rebirth. Citizens, political campaigns, and civil rights and community organizations could move resources now spent on protecting the right to vote and increasing voter turnout to the task of persuading and educating citizens. Media consultants would no longer have an incentive to drive down the other side’s turnout, which only increases the already powerful forces working to make our campaigns highly negative in character. Candidates would be pushed to appeal beyond their own voter bases. This imperative would raise the political costs of invoking divisive rhetoric and vilifying particular groups. Low turnout is aggravated by the hyper-polarization in our political life that is so widely and routinely denounced. Intense partisans are drawn to the polls while those who are less ideologically committed and less fervent about specific issues are more likely to stay away. Of course, democratic politics will always involve clashes of interests and battles between competing, deeply held worldviews. But by magnifying the importance of persuasion, universal voting could begin to alter the tenor of our campaigns and encourage a politics that places greater stress on dialogue, empathy, and the common good.⁶ And some citizens, initially empowered by their votes, would be drawn to deepen their participation in other aspects of civic life.

To say that everyone should vote is the surest guarantee that everyone will be enabled to vote. Stressing the obligation to participate will, we believe, expand the freedom to participate. As we will detail in these pages, civic duty voting must be accompanied by other voting reforms. They include automatic voter registration at state agencies; restoration of voting rights for citizens with felony convictions; early voting; expanded mail-in voting; and no-excuse absentee voting.

Universal civic duty voting would also help ensure increased political participation in communities of color that have long confronted exclusion from our democracy.

But we also need to recognize the disparities in American society that affect participation. This has been put in sharp focus in the 2020 primaries. The high turnout and willingness of voters to adapt to the changes in elections in the face of the pandemic deserves to be celebrated. But we must also recognize that barriers to voting were often concentrated in lower income and Black or Latinx communities, where turnout was suppressed by dramatically curtailed opportunities for in-person voting and distrust of voting by mail. “Long lines are voter suppression in action,” election lawyer Marc Elias observed—one reason the 2014 bipartisan Presidential Commission on Election Administration insisted that no voter should have to wait more than 30 minutes to cast a ballot.⁷

And while the polemics around easier voting have often taken on a partisan cast—the recriminations around the April 2020 primary and State Supreme Court election in Wisconsin in the midst of the pandemic are an unfortunate example—we would note that a number of Republican secretaries of state and many conservatives support mail ballots and other reforms to ease access to voting. Writing in *National Review* in support of broad participation through no-excuse absentee and drive-through voting during the pandemic, Rachel Kleinfeld and Joshua Kleinfeld warned: “The United States is already at high levels of polarization and historically low levels of trust in government and fellow citizens. We cannot afford an election our people don’t believe in.”⁸ This captures the spirit behind our proposals.

Civic duty voting is a full embrace of democracy: It insists that every citizen has a role to play in our nation’s public life and in constructing our future.

Essential as these various enhancements and repairs to our system are, we believe that civic duty voting itself is the necessary prod to the changes we need because it would clarify the priorities of election officials at every point in the process: *Their primary task is to allow citizens to embrace their duties, not to block their participation.* We see it as a message to political leaders: It will encourage them to understand that their obligations extend to all Americans, not just to those they deem to be “likely voters.” And we see it as a full embrace of democracy: It insists that every citizen has a role to play in our nation’s public life and in constructing our future.

Our hope is that this report will spur national discussion in two spheres: the need to make our system more voter-friendly, and the obligation of citizens themselves to embrace the tasks of self-government. Ultimately, we hope our country as a whole can embrace this idea as a decisive step in our long struggle to ensure that all Americans are included in our Constitution’s most resonant phrase, “We, the people.”

Seeking the Consent of All of the Governed: Why We Should Want Higher Turnout



The underlying premise of this report is that high levels of participation are good for democracy. Many would understand this concept as self-evident: A representative democracy is most representative when everyone participates. We open by defending this view because it is by no means universally held.

The Declaration of Independence exalts “certain unalienable Rights” and declares that to secure these rights, “Governments are instituted among Men, deriving their just powers from the consent of the governed.” Our founding republican concept is that our government is legitimate *only* when it is based on the “consent of the governed.” Of course, at the Founding, that “consent” included the participation of only white male



property owners. But as Martin Luther King Jr. argued, the Declaration amounted to a “promissory note” to *all* Americans.⁹ We have embarked on over 200 years of making our “more perfect union” more inclusive.

Yet what does “the consent of the governed” mean when only about half of the electorate shows up to choose our leaders? Since the Voting Rights Act was enacted in 1965 to secure Black citizens’ unfettered exercise of franchise, turnout in the United States has hovered at around 57 percent in presidential elections and 41 percent in midterm elections.¹⁰ In a close election with turnout at 60 percent (the high end of the norm in most presidential elections), the winner receives votes from only about 30 percent of the population theoretically eligible to vote. In most non-presidential elections, turnout is typically below 50 percent, meaning that the winning party receives votes from roughly a quarter of eligible voters in a close election and less than 30 percent even in a landslide. Our elected leaders pass laws that affect every aspect of our daily lives. But they derive their powers from a minority of Americans—those who show up. Do those leaders have true democratic legitimacy, since nonparticipants cannot be assumed to be giving their “consent”? Indeed, as we will see, many of them express skepticism about the workings of the system.

If those who voted were a representative sample of the country as a whole, they might be seen as offering a rough approximation of consent. But they are not representative. Different groups of Americans participate at very different rates. This makes our “representative” form of democracy significantly less representative.

The Good News and the Not-So-Good News of 2018

To underscore this idea, consider the midterm election of 2018, which in many ways is a good news story for participation. The turnout was the highest in midterm contests since 1914 (a time when women and most Black Americans could not vote). But even in this election, the good news was tempered by some not-so-good news.

On the positive side was the startling increase in turnout over the previous midterm elections in 2014 when only 41.9 percent of eligible voters cast ballots. (We would note that the self-reported Census figures are slightly higher than the generally accepted turnout rate of 50 percent for 2018 and 36.7 percent for 2014, reported by the U.S. Elections Project.)

Reaction to the Trump presidency, which increased the stakes in politics, was clearly a key force behind the rise in turnout. Republican candidates for the House of Representatives received roughly 10 million more votes than Republican candidates had four years earlier, but Democratic candidates received 25 million more votes than the party’s candidates earned in 2014.¹¹

Reform of the voting process in some states also appears to have increased participation by making it easier to cast a ballot. In 2018, 40 percent of voters reported casting a ballot in-person before election day or voting by mail.¹² These alternatives are among the most promising path to increasing turnout going forward, as we will be detailing in our discussion of reforms complementary to civic duty voting. Voter turnout rates are slightly higher than the national average—and



significantly higher than in states with restrictive voting policies—in Oregon, Washington, and Colorado. All three made access to the ballot easier through policies that included vote-by-mail, voter registration on election day, and automatic voter registration.¹³

TABLE ONE: Change in Voter Turnout by Characteristics: 2014 to 2018 (%)

Characteristic	2014 Voter Turnout	2018 Voter Turnout	Difference
Total	41.9	53.4	11.5
Age			
18–29	19.9	35.6	15.7
30–44	35.6	48.8	13.2
45–64	49.6	59.5	9.9
65+	59.4	66.1	6.7
Sex			
Male	40.8	51.8	10.9
Female	43.0	55.0	12.0
Race and Hispanic Origin			
White alone, non-Hispanic	45.8	57.5	11.7
Black alone, non-Hispanic	40.6	51.4	10.8
Asian alone, non-Hispanic	26.9	40.2	13.3
Hispanic (any race)	27.0	40.4	13.4
Educational Attainment			
Less than a high school diploma	22.2	27.2	5.0
High School diploma or equivalent	33.9	42.1	8.2
Some college or associate’s degree	41.7	54.5	12.8
Bachelor’s degree	53.2	65.7	12.5
Advanced degree	62.0	74.0	12.0
Citizen Group			
Native-born citizen	42.7	54.2	11.5
Naturalized citizen	34.1	45.7	11.7
Metropolitan Status			
Metropolitan area	41.5	53.7	12.2
Principal city	39.1	52.4	13.3
Balance of metro area	42.9	54.4	11.5
Nonmetropolitan	44.3	52.1	7.7

Source: U.S. Census Bureau; Current Population Survey Voting and Registration Supplements: 2014 and 2018.



Election officials check voters identification during midterm election voting, at Key School in Arlington, Virginia on November 6, 2018. [Shutterstock/Rob Crandall]

There were other forms of progress in participation. Some of the largest turnout increases were among groups that typically stay away from the polls in midterm elections. As Table One, drawn from Census Bureau data, shows, the share of 18 to 29-year-olds who voted nearly doubled, from 19.9 percent in 2014 to 35.6 percent in 2018. This brought youth turnout to its highest level in at least three decades.¹⁴ For voters aged 30 to 44, the increase was also large: from 35.6 to 48.8 percent.¹⁵

There were increases across all racial groups, and the largest were, again, among groups with historically low midterm voting rates, Asian Americans and Hispanics. A study by Univision found that Hispanic turnout nearly doubled between 2014 and 2018 in seven states: Arizona, Colorado, Georgia, New Mexico, North Carolina, Ohio, and Pennsylvania. The turnout increases were especially large among Hispanic voters who identified as Independents.¹⁶

But here is where the not-so-good news begins to kick in. Despite their turnout increases, many of these groups continued to be underrepresented in the electorate. The 35.6 percent rate among the under 30s was an achievement in historical terms, but still far lower than the 59.5 percent turnout among voters aged 45 to 64, and the 66.1 percent rate among voters over 65. Hispanic (40.4 percent) and Asian (40.2 percent) turnout was still well below Black turnout (51.4 percent), which, in turn, was slightly below white non-Hispanic turnout (57.5 percent). To state the obvious: the actual electorate is significantly older and whiter than the pool of potential voters.

It's worth pausing on the importance of the Hispanic vote. While Hispanics make up a significant *potential* share of the American electorate, Hispanic citizens turn out at disproportionately low



rates. In every presidential election since 1996, more eligible Hispanic voters did *not* vote than did.¹⁷ A variety of factors explain this including language barriers, xenophobic and anti-immigrant rhetoric that can chill civic participation, skepticism about the electoral system and voter suppression. But under a universal voting system, the question shifts from who is voting to who makes up the electorate. This year non-whites will account for one-third of the eligible voters, up from one-quarter in 2000. And the Hispanic population in the U.S., according to the Pew Research Center, will account for 13 percent of all eligible voters—they are projected to be the largest minority group in the United States this year.¹⁸ The share of Hispanic and Asian American eligible voters has nearly doubled since 2000 and the Black share of eligible voters remains at 12 percent.¹⁹ However the low voter turnout rates among Hispanics and Asian Americans mean that many of the voices in these growing populations will not be heard.

The electorate continued to have a strong class skew, with educational attainment a reasonable indicator of class position. Table One makes clear that the turnout increases between 2014 and 2018 were much lower among voters without high school diplomas—and also among those who graduated from high school but did not attend college—than among college attenders. Even with a 5.0 percent increase in turnout, only 27.2 percent of Americans with less than a high school diploma voted in 2018. By contrast, those with a bachelor’s degree saw their turnout increase by 12.5 percent to 65.7 percent; and those with advanced degrees had a 12.0 percent turnout increase to 74 percent. In sum: the 2018 electorate tilted even more toward those with more educational advantages than did the 2014 electorate.

Boosting turnout, we insist, is not only a matter of justice, representation, and, ultimately, consent. It is also vital to the long-term legitimacy of the democratic system itself, a crucial concern at a moment when liberal democracy is under the sharpest challenge it has confronted since the 1930s.

The 2016 American Values Survey, conducted by the Public Religion Research Institute and the Brookings Institution, dramatically illuminated this problem.²⁰ The survey asked if respondents agreed or disagreed with the statement: “Politics and elections are controlled by people with money and by big corporations so it doesn’t matter if I vote.” The survey found that 57 percent of respondents agreed with the statement, including 22 percent who agreed “completely.” Answers to the question were strongly linked to the likelihood of voting. Among likely voters, 48 percent agreed, and just 15 percent agreed completely. But among those who were not likely to vote, 72 percent agreed, including 33 percent who agreed completely.

The Knight Foundation’s 100 Million Voter Project, an extensive endeavor to understand the attitudes and profiles of nonvoters, similarly found that nonvoters reliably had lower faith in electoral systems and lower levels of civic engagement. Only 38 percent of unregistered nonvoters expressed confidence that election results represent the will of the people.²¹

Our hope is to replace a vicious cycle with a virtuous cycle that encourages participation, creates a more representative electorate, and tears down barriers to voting. This system will not instill public confidence in democracy among skeptics overnight. But it is a necessary step, and it has strengthened the democratic systems in many other nations.

Lessons from Abroad



Today, 26 countries have some form of civic duty voting.²² To see the results, look to Australia, Uruguay, and Belgium, three countries with civic duty voting policies where voter turnout in the 2000s remained near 90 percent of registered voters.²³

(Readers should note that voter turnout in most countries is calculated as a percentage of registered voters. The U.S. uses the tougher standard of measuring turnout against the entire pool of potentially eligible voters, registered or not. Even taking this difference into account, U.S. turnout is lower than most other democracies.)



Casting a ballot in countries with civic duty voting is often easier than it is in the United States. Registering to vote is a straightforward and accessible process, if not always automatic; requesting a ballot or finding your polling place typically does not require calls to your local supervisor of elections nor constantly checking online resources to ensure that your polling location has not changed; and voting in person does not mean standing in line for hours. We believe that any system of civic duty voting would require that the United States eliminate the barriers and obstacles to voting and move toward an easy and seamless voting system.

The Australian Model

Australia's experience with compulsory attendance at the polls is the best known among Americans, the most durable effort of its kind, and thus worth discussing at the outset.

With turnout dropping to less than 60 percent in the early 1920s, Australia adopted a law in 1924 requiring all citizens to present themselves at their polling place on Election Day and providing for fines at the level of routine traffic tickets for those who did not. Over time, courts and election authorities have established "valid and sufficient" reasons for not voting. They include travel, illness, or religious objection.

This is a case where a public policy intervention can be rated as an instant success. In the 1925 election, the first held under the new law, turnout soared to 91 percent. Turnout has hovered around that level ever since. The impact extended beyond the act of voting. In Australia, citizens are more likely than they were before the law was passed to view voting as a civic obligation.²⁴ The percentage of ballots intentionally spoiled or left blank is quite low. The Australian experience suggests that when citizens know that they are required to vote, they take this obligation seriously. Their sense of civic duty makes them reluctant to cast uninformed ballots and inclines them to learn the basics about issues, parties, and candidates.

It is compulsory for Australians over the age of 18 to register to vote. In some states, voters are automatically enrolled when they turn 18, but registration can also be done online or at any number of government offices (including the Post Office), and Australia instituted a Federal Direct Enrolment and Update program that assists in registration without individuals needing to complete their own enrollment application. Only voters who are enrolled to vote can be fined for not voting, but resistance to registration is not widespread. According to Australian Electoral Commission (AEC) figures in April, 2020, 96.3 percent of eligible Australians were enrolled to vote.²⁵

Federal elections are held every three years (unless a government calls them early or falls) and always occur on a Saturday. Like many U.S. states, Australia allows early-voting and vote-by-mail for those who are unable to cast a ballot on election day.²⁶ The government also provides "Mobile Voting Teams" for residents who live in remote areas or are in nursing homes or hospitals. About

Any system of civic duty voting would require that the United States eliminate the barriers and obstacles to voting and move toward an easy and seamless voting system.



A polling official hands a ballot paper to a voter as others cast their votes during Australia’s general election at a school hall in Sydney, October 9, 2004. [REUTERS/Will Burgess WB/FA]

8 percent of ballots cast in Australia’s 2019 elections were mailed, and 32 percent of votes came from the early-voting period.²⁷ These numbers are similar to past alternative voting patterns in the United States—although alternative voting is, of course, greatly increasing since the onset of COVID-19.²⁸

For those casting a ballot on election day, citizens can vote at any polling place in their home state or territory, which they can locate through the AEC website. When it comes to ensuring that voters are prepared for election day, the AEC hosts a website with interactive ballots so that citizens can practice filling one out.²⁹ When election day comes, voters are generally pleased with wait times and their experience at the polls—78 percent of those who voted on election day reported that they were satisfied with the wait time.³⁰

We do not claim that Australia’s system has been perfect. By initially excluding Indigenous Australians from the original mandate to vote, it had an exclusionary effect. While non-white immigration has increased somewhat in recent years, the country is also far less racially diverse than the United States. Nonetheless, Australia may well provide the best example of what voting could look like if the policies outlined in this report were implemented. But it is not alone in embracing civic duty voting, and the idea is not as distant from the American experience as many might think.



Civic Duty Voting Abroad—and in the United States

Countries have adopted civic duty voting for a variety of reasons. Colonial ties often played a role—the Democratic Republic of the Congo, for example, inherited the practice from Belgium. Cyprus adopted this policy for some time, influenced by Greece and Turkey. There is also a “neighborhood effect.” Countries are more likely to adopt it if nearby states already mandate voting. In Latin America, civic duty voting was first introduced in Central America; from there it spread southward.

While civic duty voting exists in many thriving democracies, authoritarian governments have sometimes implemented it as a way of claiming legitimacy for their regimes. At times, it was introduced as part of a package of broader reforms. Fiji and Thailand adopted it alongside new constitutions in the 1990s. Finally, civic duty voting is often implemented for strategic reasons by parties and interests that expect to benefit from larger turnouts. At times, it has also been instituted to bolster the power of the working class; in other cases, it was aimed at diluting worker influence.³¹

It is also part of a distant civic tradition in the United States. In the colonial era, voting was mandatory (for the pool of citizens with the franchise) in Plymouth Colony, as well as in the British colonies of Delaware, Maryland, and Virginia. Following the Declaration of Independence, the first constitution of the state of Georgia included a clause penalizing electoral abstention.³² Around the turn of the 20th century, Kansas City introduced a law levying additional taxes on those who abstained from voting, although these were struck down by the Missouri Supreme Court.³³ North Dakota and Massachusetts amended their constitutions to allow civic duty voting legislation; and while it was never introduced in either state, the amendment for “compulsory voting” is still in the Massachusetts constitution.^{34,35,36} In 1919, Oregon held a referendum on a constitutional amendment that would have allowed civic duty voting, but it was rejected by voters.³⁷

Today, the U.S. is in the regional minority, as most democracies in the Americas have instituted some form of civic duty voting. These include other large democracies, such as Argentina, Brazil, and Mexico, as well as Costa Rica, Paraguay, and Uruguay. Venezuela and Chile abolished civic duty voting in 1993 and 2012, respectively.

In Europe, some form of compulsory voting is the rule in Belgium, Bulgaria, Greece, Liechtenstein, Luxembourg, Turkey, and the canton of Schaffhausen, Switzerland. Italy, Cyprus, Spain, and the Netherlands all at one time instituted a system of civic duty voting.

Today, the U.S. is in the regional minority, as most democracies in the Americas have instituted some form of civic duty voting.



TABLE 2: Where Civic Duty Voting is Used Today

Country or Federal Subunit	Severity of Penalties and Enforcement
Argentina	Low
Australia	Medium
Belgium	Medium
Bolivia	Low
Brazil	Medium
Bulgaria	Stayed by Court
Costa Rica	Low
Dem. Rep. of the Congo	Low
Dominican Republic	Low
Ecuador	Medium
Egypt	Medium
Gabon	Low
Greece	Low
Honduras	Low
Gujarat, India*	Stayed by Court
Karnataka, India*	Low
Liechtenstein	Low
Luxembourg	Medium
Mexico	Low
Nauru	High
Panama	Low
Paraguay	Low
Peru	High
Samoa	Scheduled for 2021
Singapore	Medium
Schaffhausen, Switzerland	Medium
Thailand	Medium
Turkey	Low
Uruguay	High

*In Gujarat and Karnataka, the law only applies to select local elections.

Note: This categorization of rule severity is based on data from the Varieties of Democracy project and political scientist and civic duty voting expert Shane Singh’s own reading of constitutions, electoral laws, and news sources.

Australia, as we have already seen, as well as Nauru, Singapore, and Thailand have some form of civic duty voting. The Indian state of Karnataka adopted civic duty voting in 2015 for some local elections as a package of voting reforms to improve local government, while the state of Gujarat’s civic duty voting legislation was passed in 2014 but stayed by the state’s High Court in 2015. Samoa, which already had universal voter registration, will require attendance at the polls for the first time in 2021, while Fiji abolished the requirement to vote in 2013. In Africa, civic duty voting is used by the Democratic Republic of the Congo, Egypt, and Gabon. Table 2 lists the places in the world where civic duty voting is used today.

Enforcement and Penalties

Penalties (and their enforcement) vary widely among countries. In some places, the penalty for abstention is a simple fine. In others, nonvoters are barred from obtaining certain public services.

In Australia, for example, the initial federal penalty is AUD\$20 (about US\$14). However, an AEC Report found that in 2007, only about 13 percent of nonvoters paid the AUD\$20 fine for abstaining from casting a ballot.³⁸ In the Swiss canton of Schaffhausen, the fine is six francs (about US\$6). In Singapore, abstainers are required to pay S\$50 (about US\$40) to vote in subsequent elections or run for office.

Other countries penalize abstainers through non-monetary sanctions. In Peru, there are three tiers of fines determined by the poverty level of the abstainer’s district, ranging from US\$6.50 to US\$24. Those who do not pay their fine can be barred from many public services, including banking and being issued a passport. In Belgium, the first instance of nonvoting can attract a fine of €5 to €10 (about US\$5.50 to US\$11) and the second €10 to €25, and if one does not vote four or more times within a 15-year period, he or she can be disenfranchised for 10 years.



Enforcement of penalties for abstention also varies across countries. In general, countries with steeper penalties for nonvoting are more likely to apply them. Belgium, for example, has not fined or sued nonvoters in nearly two decades. In countries including Costa Rica, Greece, Honduras, Mexico, and Paraguay, voting is required, but there are no penalties for not doing so.

It is common for countries to exempt certain age groups from voting requirements. Those aged 70 and over are not required to vote in Argentina, Bolivia, Brazil, Greece, and Peru. In Ecuador and Schaffhausen, Switzerland, the cutoff age is 65. The cutoff age is 75 in the state of Gujarat in India, in Luxembourg, and in Paraguay. Argentina, Brazil, and Ecuador further exempt those aged 16 and 17, who are allowed to vote but are not compelled to do so.

In many countries, such as Australia and Belgium, voting is only mandatory for those who are registered, which may not include all residents. In Australia, people without a fixed address, such as seasonal workers or those without permanent housing, are not mandated to register or vote in federal elections. In other countries with civic duty voting, such as Brazil and Peru, it is solely the government's responsibility to maintain accurate and up-to-date electoral rolls. In Belgium, citizens are registered to vote automatically by the government, but foreign nationals who reside in Belgium and wish to participate in certain municipal elections must apply to be added to the electoral register. As a general rule, the mandate to vote is limited to those who are on the electoral rolls.

Finally, civic duty voting usually provides exceptions to the mandate to vote for those with a valid excuse. What is considered "valid" varies across nations, but commonly accepted justifications include sickness and disability, natural disasters, travel, and religious belief. The proposal laid out in this report also advises the inclusion of a conscientious objector exception.

Incentive-Based Systems

A few countries, and some American jurisdictions, have attempted or considered using incentives to promote universal voting. Bulgaria experimented with a lottery system in the 2005 parliamentary elections, as did a municipality in Norway in 1995. In Bulgaria, turnout declined by nearly 10 percent from the previous election, but in Norway, the lottery was associated with a 10 percent increase in the subsequent election.³⁹ Both eventually abandoned the lottery system.

In 2015, the Southwest Voter Registration Education Project launched "Voteria," which would award one voter a \$25,000 lottery prize for voting in a historically low-turnout Los Angeles County school board election.⁴⁰ All who voted in the election were eligible for the lottery. A subsequent study found that, among those who knew about the lottery, about a quarter (disproportionately including Latinx voters and low-income voters) said it made them more likely to vote.⁴¹

In Arizona, the Voter Reward Act was on the ballot in 2006. It would have established a \$1 million prize "to be awarded to a randomly selected person who voted in the primary or the general election." But the measure failed by a 2-to-1 margin.⁴²



There have also been experiments with nonmonetary incentives. Colombia, for example, has used an incentive system in which political participation earns voters reduced fees for government services and favorable access to public employment and educational opportunities.⁴³

Australia offers an interesting blend of enforcement and incentive. Compulsory attendance at the polls has fostered a civic spirit that rallies voters to the polls in what amounts to a national celebration of democracy. “Voting in Australia is like a party,” an Australian voter named Neil Ennis told *The New York Times* in 2018. “There’s a BBQ at the local school. Everyone turns up. Everyone votes. There’s a sense that: We’re all in this together. We’re all affected by the decision we make today.” When Australians who vote in person appear at the polls, they are often offered a “democracy sausage” after they cast their ballot—although one voter expressed interest in “more vegetarian options at the sausage sizzles.”⁴⁴

There is at least some academic evidence that partying is good for democracy. One study of randomized localities that have voting festivals found that voting “parties” increase turnout by about 6.5 percentage points in elections where the expected baseline turnout was 50 percent. In low turnout elections (with expected turnouts of 10 percent), the festivals increased turnout by 2.6 percentage points.⁴⁵

Results of Civic Duty Voting

The success of Australia in boosting turnout through compulsory attendance at the polls is not isolated. The evidence is clear that civic duty voting increases turnout, especially if there are enforced sanctions. In countries with medium and high enforcement, turnout is roughly 85 percent. Its impact is made clear in Figure 1 and has been documented in a variety of empirical analyses.⁴⁶

The evidence is clear that civic duty voting increases turnout.

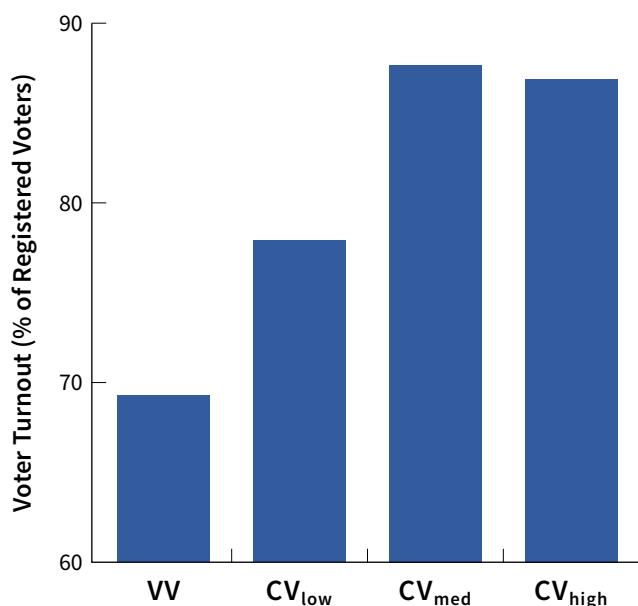
Civic duty voting also tends to iron out disparities in turnout along class, ethnic, and racial lines, though this may not be the case when penalties are more likely to affect the upper classes, such as an embargo of passport services.⁴⁷

Unsurprisingly, mandating participation in an election does increase the rate of invalid balloting.⁴⁸ Shane Singh found that the increase in invalid votes is largely “due to the behavior of individuals who are politically unaware and uninterested, individuals who are negatively oriented toward the democratic process, and, especially, individuals who are untrusting of democratic actors and institutions.”⁴⁹

Beyond turnout, there is some evidence that where voting is mandatory, voter choices tend to be less reflective of ideological preferences, and small and extremist parties may win more seats.⁵⁰ On balance, it appears that civic duty voting helps the political left, though the studies are divergent. We would underscore that our support for the idea is based on civic, not ideological, objectives—especially since, as we have argued, there is also evidence



FIGURE 1: Civic Duty Voting and Turnout across Countries



Note: Data and classification of civic duty voting rule severity taken from Version 8 of the Varieties of Democracy Project. The classifications are as follows: VV (Voluntary voting); CV_{low} (Civic duty voting without sanctions or with sanctions but no enforcement); CV_{med} (Civic duty voting with enforced sanctions but that impose minimal costs upon abstainers); CV_{high} (Civic duty voting with enforced sanctions that impose considerable costs upon abstainers). Included elections are from 1945–2017 in countries considered “Free” by Freedom House.

suggesting that universal voting would strengthen the role of less ideological voters.⁵¹ Mandatory voting is also associated with reductions in income inequality and it has been shown to induce or strengthen psychological attachments to political parties of all stripes.⁵² Parties, for their part, place more emphasis on their policies and ideological position—and rely less on clientelistic strategies such as vote buying—when campaigning in civic duty voting systems.⁵³

In short: Where it has been introduced, universal civic duty voting has largely achieved its purpose of expanding turnout and creating a far more representative electorate. But what would it take to bring this reform to the United States? We turn next to whether there are constitutional obstacles to the practice.

Is Civic Duty Voting Constitutional?



It's important to stress at the outset that the proposal outlined in this report is for *mandatory participation in elections*, not *mandatory voting*. Like almost all systemic reforms, it will face intense legal scrutiny and challenges to its constitutionality.

For this reason, our working group devoted time and intellectual energy to the constitutional implications of various enforcement policies, and the choices that state and local governments will have to make in implementing civic duty voting.⁵⁴ We believe it can and should survive legal challenges, and that it is consistent with our Constitution's guarantees of free speech, robust forms of collective action, and effective government.



Speech or Conduct?

Americans are already accustomed to “attending” or participating in a number of state-required activities: jury duty, selective service, the census, and paying taxes. None of these compel, or stifle, any individual’s right to speech, and neither would the requirement of civic duty voting.

Freedom of speech long has been interpreted as both an affirmative right (the right to protest peacefully and the right to freedom of assembly) and as a negative one (the right not to speak).⁵⁵ With respect to the second framing—the right *not* to speak—the Supreme Court has historically protected individuals from government compulsion to “utter what is not in [their] mind[s]”⁵⁶ and ensured their right to “refrain from speaking.”⁵⁷ For example, public schools may not compel students to pledge allegiance to the flag,⁵⁸ drivers may refuse to purchase state license tags with objectionable mottos,⁵⁹ and private companies need not advertise for the government.⁶⁰

At first blush, these instances might seem to spell trouble for a civic duty voting program. Some might argue that a voting requirement (and even an elections participation requirement) could be seen as government-compelled speech. But the Supreme Court, in the cases addressing the three issues just identified, did not entirely outlaw the practices. Some schools still conduct pledges of allegiance (but can’t force students to participate), and New Hampshire continues to offer “Live Free or Die” license tags (which drivers may reject). The Court’s rulings permit objectors to opt out—or prohibit government from compelling conduct—while allowing willing participants to continue engaging in the complained-of activity. That is key to consideration of a civic duty voting requirement: Practices implicating speech—or conduct with a speech element—may be imposed, so long as the government permits an opportunity to opt out. A conscientious objector option would offer those seeking to abstain from voting an opportunity to do so.

A civic duty voting program, however, need not unconstitutionally regulate expressive conduct, because the act of engagement itself—merely *participating in* an election—is not *inherently* expressive. A program that allows individuals to comply with the participation requirement by leaving the ballot blank, or by checking “none of the above,” would not give a hypothetical outside observer any way of determining what message the individual intended to communicate, or if there was a message at all. As the Supreme Court has explained, conduct that communicates receives First Amendment protection only if the speaker had “an intent to convey a particularized message” and “in the surrounding circumstances the likelihood was great that the message would be understood by those who viewed it.”⁶¹ Writing in the *Southern California Law Review* on this subject, Sean Matsler noted that “since no one clear meaning can be ascribed to the ‘none of the above’ option, it is not communicative and therefore not a valid subject of constitutional protection.”⁶² As a counterargument, some may claim the government’s compelling election attendance—even just for purposes of signing in—is itself a First Amendment violation insofar as showing up, with nothing more, amounts to a form of speech demonstrating support for the

We believe it can and should survive legal challenges, and that it is consistent with our Constitution’s guarantees of free speech, robust forms of collective action, and effective government.



democratic process, generally, and for voting, more specifically. That “anarchist” argument, though, likely fails for the same reason claims that filing and paying taxes, showing up for jury duty, and signing up for selective service likely fail: Such regulations are within the constitutional power of the Government, they further an important or substantial governmental interest, the governmental interest is unrelated to the suppression of free expression, and the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.⁶³

Even if a court were to find that the regulated conduct—i.e., the requirement to participate in or attend elections—implicated expression, the regulation itself would likely be considered justified when weighed against the alleged burdens imposed. This is because the government is not requiring the voter to vote for any one candidate. As a note in the December 2007 edition of the *Harvard Law Review* stated, “requiring someone to vote for a particular cause or candidate would clearly violate the First Amendment, but requiring someone to vote for the candidate of his or her choosing is viewpoint neutral,” and thus subject to a more lax level of scrutiny by the courts (one in which the judiciary could view an elections-attendance requirement in furtherance of an “important” state interest that was also “substantially related” to furthering that interest).⁶⁴ The government interest here, of course, would be in ensuring truly democratically-elected leaders and representative bodies, something only achieved through consistent turnout by the majority of voting eligible citizens. Since no such consistency has developed on its own over the centuries, the government may justifiably issue regulations to achieve that interest. Such regulations, moreover, don’t suppress free speech—the voter is free to check-in as having participated (in person or by mail) and walk away without casting a ballot. Given what we know of turnout rates in countries with comparable universal voting policies, we can rest assured that the regulation will nevertheless be effective (and thus further the government interest): Turnout rates, as we have already seen, often surpass 80 percent.⁶⁵

Even if Elections Implicate Speech, they Involve Conduct that Government may Regulate

The Supreme Court, in *Burdick v. Takushi*, held that “when a state election law provision imposes only ‘reasonable, nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters, ‘the State’s important regulatory interests are generally sufficient to justify the restrictions.’” Although many scholars have criticized this more lenient standard, given that it can allow states to engage in practices that restrict the right to vote, it should apply just the same to efforts to include more people in the electorate.⁶⁶

Further, the First Amendment burden on a citizen’s expressive power would at most be minimal: The citizen need only cast a ballot (or check a box for “conscientious objector” etc.) with no obligation to participate further, and an outside observer—given the privacy of the ballot—couldn’t determine the content or extent of participation. The citizen, moreover, enjoys full freedom to denounce or critique the process as desired. That minimal burden,⁶⁷ under the Court’s balancing test, would be compared against the State’s interest in promoting representative government, reducing barriers to voting, and ensuring the broadest possible participation. In weighing these



injuries and interests against each other, the Court would likely defer to the needs of the State, since the primary “function of the election process is to winnow out and finally reject all but the chosen candidates ... not to provide a means of giving vent to short-range political goals, pique, or personal quarrel[s].”⁶⁸

And it needs to be underscored: Requiring *participation* in elections does not negatively impact what some have asserted is the right *not* to vote. As Derfner and Herbert point out, the Supreme Court hasn’t yet explicitly extended First Amendment protections to the right to vote, but that doesn’t mean that it will not or that it should not.⁶⁹ Indeed, as they observe, “[I]t seems like an obvious proposition that a citizen registering to vote or casting a ballot is engaging in free speech, a fundamental right entitled to full protection under the First Amendment.”⁷⁰ Moreover, the Court has regularly described voting as a form of speech, even if it hasn’t specifically used the word “speech”:

Supreme Court case law supports a theory of First Amendment protection for voters. The Court has repeatedly characterized the fundamental right to vote in terms of “voice” and expression. In *Wesberry v. Sanders*, the Court explained: “[N]o right is more precious in a free country than that of having a voice in the election of those who make the laws.” In *Reynolds v. Sims*, the Court held: “[E]ach citizen [must] have an equally effective voice in the election of members of his state legislature.” In *Norman v. Reed*, the Court noted that voting gives “opportunities of all voters to express their own political preferences.”... The list goes on at length.⁷¹

Voting amounts to speech, which *should be* afforded the full protections of the First Amendment. As Janai Nelson, a working group member, pointed out in her *Florida Law Review* article, since speech in the form of voting is part of the public discourse, First Amendment protection serves the broader goal of democratic legitimacy.⁷² Further, adoption of such a standard, as mentioned above, would most likely protect voters from some states’ unfair and discriminatory voter suppression practices.

It’s impossible, of course, to predict how the current or some future Supreme Court might rule. In the past, the Court has viewed regulations or restrictions on the vote under a stricter standard, and it might use this standard when evaluating civic duty voting.⁷³

But we believe a civic duty voting program requiring election attendance rather than voting itself survives a First Amendment review under either the stricter or more lenient standard. The proposal here would, in fact, *enhance* individual freedom of expression because it would require governments to facilitate registration for all eligible citizens, eliminate laws that actively suppress voters, and ensure that citizens have non-burdensome paths to participate in elections.



Requiring *participation* in elections does not negatively impact what some have asserted is the right *not* to vote



Monetary or Other Penalties

Monetary penalties, in amounts similar to parking fines, should also survive constitutional analysis. The government would be within its right to charge a small fee in the event the individual fails to participate in the election. State and federal governments routinely impose fees and/or penalties for failures to report for jury duty, participate in selective service, and pay one's income taxes. In such instances, the government penalizes conduct—or failure to engage in some government-required conduct—and not speech.⁷⁴ Any monetary fines should not be subject to increases through penalty fees or interest and should not be the basis for criminal enforcement under any circumstances. Non-monetary alternatives, such as community service, should be available for those who would face financial hardship from even a small fine.

Incentivizing the Vote

As detailed earlier, policymakers should also consider using positive incentives to encourage civic duty voting.

Current federal law, however, creates potential roadblocks to using incentives to promote civic duty voting, at least in federal elections. Two federal statutes principally govern the legality of offering benefits for voting: Section 11(c) of the Voting Rights Act, 52 U.S.C. § 10307(c), and 18 U.S.C. § 597.⁷⁵ Section 11(c) of the Voting Rights Act prohibits “pay[ing] or offer[ing] to pay or accept[ing] payment either for registration to vote or for voting” in federal elections. It applies in any election in which a federal candidate appears on the ballot, including those in which a federal candidate is unopposed and in which a benefactor intends payment to influence only the election of state and local candidates.⁷⁶ 18 U.S.C. § 597 proscribes “mak[ing] or offer[ing] to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate” as well as “solicit[ing] accept[ing], or receiv[ing] any such expenditure in consideration of his vote or the withholding of his vote.” Like Section 11, Section 597 applies both to federal elections and elections that include a mix of federal and state/local elections.

These federal statutory provisions clearly are aimed at dissuading candidates and interested parties from bribing individuals to vote for or against a particular candidate or ballot measure. This is the context in which they have been applied to date.⁷⁷ These provisions have not yet been applied in the specific context of assessing the legality of a government-offered, viewpoint-neutral, and nonpartisan program to encourage voting participation as an end in itself, without regard to the voter's choice of candidates or ballot measures.

Nonetheless, in the absence of changes to these federal laws, experimentation with incentives for voting would be safest, at the outset, in state or local elections where state law does not prohibit such incentives. State supreme court decisions in Alaska and Mississippi have confirmed the legality of incentives under the laws of those states.⁷⁸ The Alaska Supreme Court decision noted that California and Washington have similar statutory provisions.⁷⁹ Several other states, in addition, have statutory language similar to that of Alaska and Mississippi, including Indiana,⁸⁰ Minnesota,⁸¹ Nebraska,⁸² New Hampshire,⁸³ New Mexico,⁸⁴ Pennsylvania,⁸⁵ South Carolina,⁸⁶ Washington,⁸⁷ West Virginia,⁸⁸ and Wyoming.⁸⁹



A Chinese-American couple sit down at a table to fill out their election ballot at a polling station in the Chinatown section of San Francisco, November 2, 2004. [Reuters]

Legal Issues for State and Local Implementation of Civic Duty Voting

One path forward for civic duty voting is for state or local governments to experiment with the idea for their own elections. Indeed, numerous voter expansions, such as women’s suffrage and lowering the voting age to 18, began at the local or state levels and eventually expanded nationwide.⁹⁰ More recently, other election reforms, such as the use of ranked choice voting, began at the local level and have now expanded to at least one state (Maine). As Supreme Court Justice Louis Brandeis wrote: “[A] single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”⁹¹ Localities could serve as fountains of experimentation on an even smaller scale.⁹²

The question remains, however, as to whether state or local law would allow the implementation of civic duty voting. The answer is relatively easy if a state wishes to adopt the practice for statewide elections: States have the authority to regulate their own elections for state offices so long as the rules do not violate the U.S. Constitution or federal law. As discussed above, there are good reasons to believe that civic duty voting is consistent with the federal constitution and federal statutes. Thus, if a state wished to implement civic duty voting for state elections, it could simply pass a new state constitutional amendment or state law to that effect. We are unaware of any state constitutional provisions that would forbid civic duty voting. Indeed, the Massachusetts Constitution explicitly gives the state legislature the power to provide for “compulsory voting.”⁹³



The analysis is more complicated, however, if a locality wishes to adopt civic duty voting for local elections. A local government would have to consider both the state constitution and state statutes to determine if it has the authority to mandate participation in local elections. For each of these legal authorities, the locality would have to consider (1) whether there are any state-level legal prohibitions of civic duty voting, and (2) whether the locality enjoys “home rule” or the power to adopt its own rules for its own elections.

Localities only enjoy the powers conferred to them under the state constitution or state statutes. Thus, any locality seeking to adopt civic duty voting must consult the home rule provisions of both its state constitution and state statutes to determine if it has that authority. In addition, judicial opinions may put a gloss on a locality’s home rule powers either generally or for elections specifically.

Regarding substantive prohibitions, there are likely few impediments to civic duty voting unless a court were to read the state’s constitutional language on voting extremely narrowly. For instance, the Ohio Constitution provides that “Every citizen of the United States, of the age of eighteen years ... is entitled to vote at all elections.”⁹⁴ Might a court construe the language “is entitled” in this phrase to mean “is entitled but is not required?” We believe this reading is weak but raise it to highlight the potential arguments that proponents might need to refute. Other state constitutions, however, have broader language that make interpretations along these lines even less plausible.⁹⁵ In addition, many state constitutions explicitly disenfranchise persons serving felony sentences or mentally disabled individuals, so any civic duty voting rule would need to exclude those individuals unless the state constitution is amended—amendments that, in the spirit of this report, we would recommend.

Our review of state constitutions and state statutes suggests that localities in 12 states offer the best possibilities for a civic duty voting provision for local elections, though there may be other states where civic duty voting could be implemented. Those 13 states include Arkansas, California (in “charter cities”), Illinois, Maryland (except in Baltimore), Missouri (only in Kansas City), New Jersey, New Mexico, Ohio, Oklahoma (for cities with a population over 2,000), Rhode Island, South Dakota, Washington (for “first class” cities), and Wisconsin.⁹⁶ Washington, D.C. is also a possibility, though Congress has the authority to veto any D.C.-specific laws. In certain states, such as Arizona, Colorado, and Nevada, the question of local authority for election rules is murkier. And other states, such as Connecticut and Maine, have explicit prohibitions on localities enacting local-specific voting laws. The upshot is that local proponents must attend carefully to state constitutions and state statutes to determine whether the locality has the legal authority to enact a voting rule for state offices.

The Need for Persuasion:

Where the Public Stands on Universal Civic Duty Voting



It is not unusual for advocates of a new idea to commission polling designed to show widespread public support for the policy they are proposing. We break with that habit here in the interest of honesty and realism.

Since our purpose is to change the trajectory of the public conversation about voting and to push a novel idea into the mainstream discussion, we set out to gauge public opinion knowing, in light of earlier surveys, that we would find more opposition than support for universal civic duty voting. We sought to discover which aspects of the idea were most troublesome to its opponents even as we also inquired into public thinking about voting itself—whether it was seen a right, a duty, or both.



Voters cast their ballots in U.S. midterm elections in Ferguson, Missouri, November 4, 2014. [REUTERS/Whitney Curtis]

The Democracy Fund + UCLA Nationscape Project fielded a series of questions for this project in a survey of 6,304 U. S. adults between January 30 and February 5, 2020. From the standpoint of this report, the two main findings were in tension with each other.

Respondents were asked: “Thinking about voting, which of the following comes closest to your view, even if none of them is exactly right.” They were then given three options. Overall, 61 percent said that “voting is a right and a duty,” while 34 percent said it was “a right but not a duty.” The remaining 6 percent said it was neither a right nor a duty. Thus, a substantial majority of Americans agree with the underlying premise put forward here: that voting is *both* a right and a duty.

But this did not translate into support for a rough version of our proposal. Respondents were also asked: “From what you know, do you favor or oppose the following proposal: Increasing voter turnout by making registration and voting more convenient while also imposing a \$20 fine on those who do not vote in a national election. The fine would be waived for those who provide a reason for not voting, such as illness or a moral objection.”

Overall, 26 percent favored the proposal (including 12 percent who “strongly” favored it, and 14 percent who “somewhat” favored it), while 64 percent opposed it—16 percent “somewhat” and 48 percent “strongly.” These results were similar to findings on attitudes toward mandatory voting from the Pew Research Center and YouGov when they polled on the issue in 2017 and 2015, respectively.⁹⁷



TABLE 3: Attitudes on Voting as a Right, a Duty, or Neither (%)

Characteristic	Voting is a right and duty	Voting is a right but not a duty	Voting is neither a right nor a duty
Total	61	34	6
Gender			
Female	62	32	6
Male	59	36	5
Age			
18–29	49	43	8
30–44	56	37	7
45–64	66	30	5
65+	69	28	4
Race			
White	62	33	5
Black	57	37	6
Hispanic	57	35	8
Other	60	33	6
Party ID			
Democrat	69	27	4
Republican	69	28	3
Independent	47	44	9
Something Else	34	51	15
Ideology			
Very Liberal	73	23	4
Liberal	67	30	4
Moderate	62	35	4
Conservative	58	36	6
Very Conservative	72	24	4
Not Sure	34	48	18

The Democracy Fund + UCLA Nationscape Project Survey (Jan. 30 to Feb. 5, 2020). N=6,304



TABLE 4: Attitudes Toward Civic Duty Voting

Characteristic	Strongly favor	Somewhat favor	Somewhat oppose	Strongly oppose	Don't know
Total	12	14	16	48	10
Gender					
Female	9	14	18	49	10
Male	16	15	13	46	10
Age					
18–29	13	18	18	37	14
30–44	17	16	15	41	11
45–64	12	12	16	52	9
65+	6	12	14	60	8
Race					
White	11	14	15	52	8
Black	15	13	12	47	13
Hispanic	18	16	14	38	14
Other	7	19	25	33	17
Party ID					
Democrat	15	18	17	42	8
Republican	15	14	16	48	7
Independent	7	11	16	52	14
Something Else	5	9	10	56	20
Ideology					
Very Liberal	34	17	13	29	7
Liberal	13	22	19	40	6
Moderate	10	15	16	50	8
Conservative	9	10	17	57	8
Very Conservative	14	10	13	56	7
Not Sure	6	7	12	44	31

The Democracy Fund + UCLA Nationscape Project Survey



There were striking differences in the pattern of responses on the two questions as Tables 3 and 4 show. Two of the strongest groups supporting the idea of voting as both a right and a duty were at opposite ends of the ideological spectrum—73 percent of those who called themselves “very liberal” and 72 percent of those who called themselves “very conservative.” At 69 percent, Republicans and Democrats were equally likely to see voting as both a right and a duty—and were far more inclined to do so than those who did not ally with one the traditional parties.

On the other hand, the only ideological group supporting the civic duty voting proposal itself were those who called themselves very liberal, 51 percent of whom backed the idea, including 34 percent who favored it strongly. Among conservatives, 74 percent were opposed, including 57 percent who opposed it strongly, while 69 percent of very conservative respondents opposed it, including 56 percent opposed very strongly. Interestingly there was very little partisan difference on the question: 33 percent of Democrats supported the civic duty voting proposal, as did 29 percent of Republicans. Partisans were slightly more inclined to support the idea than others, no doubt reflecting a greater commitment to the electoral system itself.

There were no significant differences between whites and Black Americans in their attitudes, although Hispanics (at 34 percent support) were more sympathetic to a voting requirement than other Americans.

The largest disjunction between answers on the two questions was generational. Support for the idea that voting was both a right and a duty rose steadily with age. At opposite ends were Americans under 30 years old, only 49 percent of whom saw voting as both a right and a duty, and Americans 65 and older, 69 percent of whom saw voting as both a right and a duty. This squares with other findings—not only in the U.S., but also around the democratic world—of an increasing skepticism among youth about electoral politics.⁹⁸ On the other hand, Americans under 30 were far more open to civic duty voting. Only 37 percent of them were strongly opposed to the proposal, compared with 60 percent of those 65 and over. Accounting for those “somewhat” opposed, Americans under 30 rejected civic duty voting by a margin of 55 percent to 31 percent, while those over 65 opposed it by 74 percent to 18 percent.

The upshot is that younger Americans, precisely because of their skepticism about the system, may be more open to proposals for fundamental reform. Older Americans are more inclined to support the system as is and are therefore especially skeptical of the changes we propose. On the other hand, those over 65 are the group most sympathetic to the civic values that underlie them. Thus, there are avenues of persuasion at both ends of the generational divide.

The survey also gave those who supported and opposed the proposal a list of five possible reasons for why they held their view. They were asked whether a given reason was a “major” reason for their view, a “minor” reason, or “not a reason”.



TABLE 5: Reasons for Opposing Civic Duty Voting

Reasons for Opposition	From what you know, do you favor or oppose the following proposal: Increasing voter turnout by making registration and voting more convenient...		
	Somewhat oppose	Strongly oppose	Total
People have a right to not participate in elections			
Major reason	59	85	78
Minor reason	32	10	15
Not a reason	9	5	6
There are already too many government taxes and fines			
Major reason	45	63	58
Minor reason	35	20	24
Not a reason	21	17	18
It would disproportionately punish those who already have the hardest time voting			
Major reason	44	47	46
Minor reason	36	25	28
Not a reason	20	28	26
It would cause too many uneducated people to vote			
Major reason	26	26	26
Minor reason	31	20	23
Not a reason	43	54	51
It would make it harder for the political party I support to win elections			
Major reason	12	10	10
Minor reason	19	14	15
Not a reason	69	76	74

The Democracy Fund + UCLA Nationscape Project Survey

No single reason for supporting the proposal was predominant, although the top two parallel arguments made here: 69 percent said a major reason for supporting it was that the idea “would make our government more representative”, while 67 percent said that their support rested on the view that “people have a civic duty to vote.” Not far behind in major reasons: 56 percent said it “would increase Americans’ confidence in the government”, while 55 percent said it “would combat voter suppression.”

The one reason that failed to draw majority support for universal civic duty voting was “would make it easier for the political party I support to win elections.” It was listed as a major reason by



just 33 percent, including 28 percent of Democrats and 44 percent of Republicans. The partisan finding is surprising in light of statements by President Trump and others in the GOP that higher turnout would hurt their party.

Overwhelmingly, the most important reason for opposition (listed as a major reason by 78 percent of opponents) was a belief that “people have a right not to participate in elections.” In addition, 58 percent said a major reason for opposing it was that “there are already too many government taxes and fines.” These were the only two reasons on the list, both of them of a libertarian sort, that drew majorities as major sources of opposition.

The third most popular reason for opposition (listed as a major reason by 46 percent) was that a requirement to participate would “disproportionately punish those who already have the hardest time voting.” Black Americans and Hispanics were slightly more inclined than whites to list this reason as important, and there was a sharp divide along party lines. Sixty percent of Democratic opponents listed disproportionate punishment as a major reason for their opposition, but only 45 percent of independents and 35 percent of Republicans did so. This finding underscores the importance of accompanying civic duty voting with reforms to make voting easier and more convenient.

Two reasons for opposition were rejected as either minor or not a factor at all: A fear that civic duty voting “would cause too many uneducated people to vote” (listed as major reason by only 26 percent of opponents) and a worry that “it would make it harder for the political party I support to win elections” (picked as a major reason by just 10 percent). The former is heartening for “small-d” democrats, the latter a hopeful portent that arguments over civic duty voting need not become mired in our country’s partisan polarization.

Since the task of persuasion will begin with Americans who are only “somewhat opposed” to civic duty voting, it’s worth noting that this group was significantly less likely than those who were “strongly opposed” to offer the two libertarian reasons in explaining their skepticism. Whereas 85 percent of strong opponents listed the right not to participate in elections as a major reason for rejecting the idea, only 59 percent of the somewhat opposed did so; and while 63 percent of strong opponents listed opposition to taxes and fines as an important reason for holding their view, just 45 percent of those somewhat opposed did so. The “moderately opposed” were as worried about punishing those who had the hardest time voting as they were about the taxes and fines themselves.

Advocates of a major reform must be both realistic and hopeful. Thus, we are under no illusions that public opinion is on the side of what we propose here. It has support from just over a quarter of the American public, and is strongly opposed by nearly half the country. Advocates of universal civic duty voting have work to do both in answering the arguments made against the idea, and in designing its implementation in ways that address the legitimate concerns of those who have doubts that it could work fairly and properly.

We do, however, take heart from the fact that a clear majority of Americans embrace the idea that voting is both a right and a duty. As important, about half the country already appears to be open to persuasion. While its strongest opponents have objections of principle, many less fervent critics are nearly as worried by how it would work in practice—issues that can be addressed by a well-crafted system. It is to the work of persuasion we turn next.

Responding to Objections to Civic Duty Voting



After President Obama proposed that the United States consider civic duty voting in 2015, critics were quick to voice their objections.⁹⁹ The prominent conservative thinker Jonah Goldberg wrote in the *National Review*: “My old boss, William F. Buckley Jr., often said liberals don’t care what you do so long as it’s compulsory. ... There’s probably no better illustration of this illiberal streak in liberalism than the idea of ‘compulsory voting.’”¹⁰⁰

Others argued that the idea was unconstitutional: “The president apparently does not believe that the right to speak, which is protected under the First Amendment, includes the right not to speak,” said the Heritage Foundation’s Hans von Spakovsky.¹⁰¹



Our legal analysis has already taken on von Spakovksy’s claim directly, but there are other objections from across the political spectrum that also deserve response. As we have seen from the polling, objections to civic duty voting generally fall into two categories: a broad libertarian argument against government compulsion and worries about the presumed effects of civic duty voting.

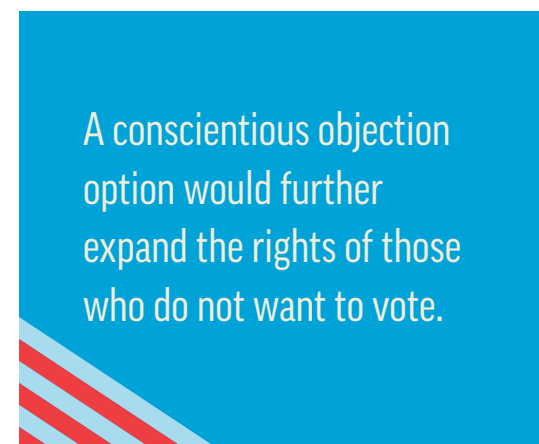
The Argument Against Compulsion

As the survey showed, the predisposition among Americans to push against any form of government compulsion is strong. But the civic duty voting requirement, as proposed in this report, would have several options for people who object to voting. One we would universalize is the option to mark their ballot “None of the Above” (NOTA); they could submit an entirely blank ballot (in person, by mail, or as otherwise permitted); or they could provide some explanation, including “conscientious objection,” as to why they cannot or will not vote. While countries with enforced civic duty voting policies allow for the submission of blank ballots, as we’ve similarly proposed, providing a NOTA option on the ballot would be an explicit and formal abstention of one’s vote.

Nevada already has a mechanism for abstention. A “None of These Candidates” option has been available on all ballots in state and federal elections since 1976.¹⁰² Since then, the NOTA vote share in Nevada’s presidential elections has ranged from less than half of a percent to 2.56 percent in the 2016 election. A 2020 voter experiment on the effects of NOTA found that including a NOTA option “increases participation and reduces the vote shares of non-establishment candidates.”¹⁰³

The best national example of widespread use of NOTA is in India, where a 2013 Supreme Court decision mandated that a NOTA option be added to all ballots and voting machines. In the first general election after the decision, NOTA votes accounted for 1.1 percent of the total.¹⁰⁴

A conscientious objection option would further expand the rights of those who do not want to vote. Throughout our history, religious groups such as the Quakers and Mennonites have objected on principle to participating in war and have resisted other forms of government compulsion. During the Vietnam War, conscientious objector status was extended to many outside the traditions of the “peace churches.” We recognize that a small, but significant, minority of Americans may object to participating in the democratic electoral process on principle.



The “Ignorant Voters” Argument

Responding to President Obama’s suggestion in 2015, Trevor Burrus of the Cato Institute warned Americans to consider that their “fully informed” vote “will count as much as a person who chooses his candidate by throwing a dart at [a] board with all the candidates’ pictures.”¹⁰⁵ This is a concern that Burrus shared with Jason Brennan, who has written at length about how “voters



Karen Moore votes while her granddaughters stand beside her for Early Voting at the Kentucky Exposition Center in Louisville on June 15, 2020. [REUTERS/Matt Stone/Courier Journal]

don't know best," and has argued that citizens lack the specialist "knowledge" required for voting. (The book chapter in which Brennan argues that "[c]ompulsory voting changes the quality of the electorate" is titled: "Should we force the drunk to drive?")¹⁰⁶

At a basic level, this argument is an objection to democracy itself—which some on the right have acknowledged with their insistence over the decades that "the United States is a republic, not a democracy." (We are, or aspire to be, a democratic republic.) Historically, citizens were excluded as being "unqualified" to vote on the grounds that they lacked information, education, or a sufficient property stake. But this is precisely the attitude toward voting that we have rejected by steadily broadening the franchise, eliminating not only property tests but also poll taxes and "literacy tests." The scare quotes are appropriate, since literacy tests were often used in the Jim Crow era to disqualify Black, but not white voters.

Brennan, for one, doesn't think much of the electorate that exists *now*, without compulsory voting. He writes that "most voters are already ignorant, biased, economically innumerate, and misinformed." He adds that "the median voter is better informed than the median nonvoter, but not by much."¹⁰⁷ If opponents of compulsory voting are primarily interested in an electorate that passes the sorts of tests they might administer to root out the "ignorant" and the "biased," their problem is not with compulsory voting but with broad democratic participation itself.

Moreover, there is an impressive political science literature, from V. O. Key Jr.'s classic *The Responsible Electorate* to Samuel Popkin's more recent *The Reasoning Voter*, arguing that voters



are more rational in their choices than democracy’s critics would suggest. As Key put it in the first sentence of his book: “The perverse and unorthodox argument of this little book is that voters are not fools.”¹⁰⁸ This view lies at the heart of this report. No democratic system—and, for that matter, no governing system—is perfect because human beings are not angels, as James Madison observed. But liberal democracy works because combining majority rule with guarantees of individual rights has historically done a better job than other regime types in preserving liberty and representing the popular will. The more inclusive electorate that civic duty voting would create will better represent the popular will. It’s worth noting that this democratic instinct was reflected in our survey even among opponents of our proposal, the vast majority rejected a fear of “undereducated voters” as a major reason for their view.

We also believe universal voting could *increase* citizen knowledge because it would free up resources now spent on turning out 40 to 60 percent of the electorate to the tasks of persuasion and voter education. It would also require candidates and parties to direct their campaigns to the entire electorate, and not simply those on some A-List of “likely” voters.

Universal voting could also strengthen the nation’s civic culture more broadly and encourage a new commitment to civics education. With voting a requirement for all, high schools would have new incentives to ensure that students receive the requisite tools for active citizenship, and other community institutions would have a similar interest. Universal voting would create new opportunities to build a culture of citizenship.

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Disparate Effects of Enforcement

There is a well-founded trepidation among some civil rights and voting rights advocates about the establishment of a monetary penalty for nonvoters. The multiplication of fines and fees has been a major and disenfranchising burden, particularly on low income communities of color. Civic duty voting cannot be isolated from the inequitable system within which it acts. Its implementation therefore has the potential to disparately impact the vulnerable groups it seeks to empower.

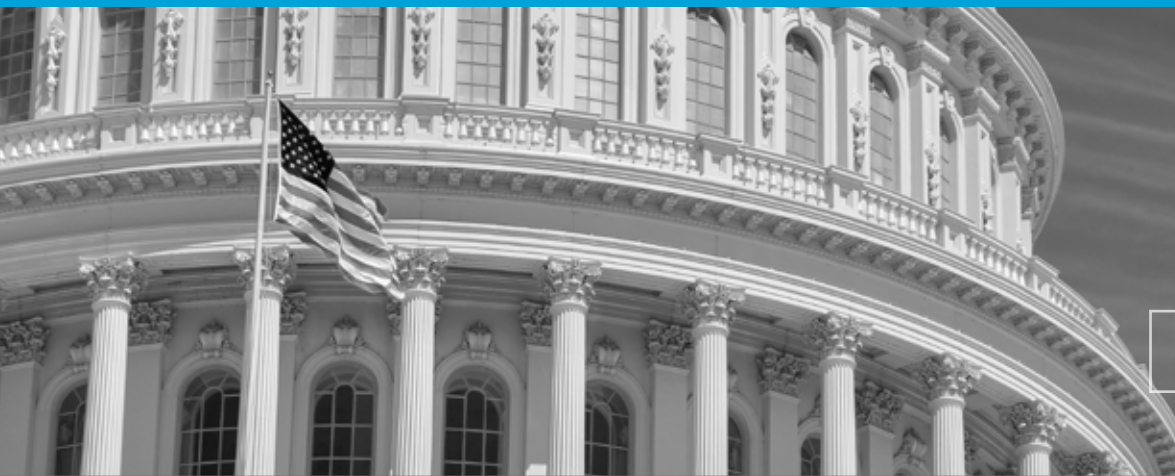
In a working session with leaders in the Latinx, Asian-American and Pacific Islander, and Native American communities, there was fear that civic duty voting could be implemented in bad faith by municipal or state officials who might abuse the policy to target members of communities they want to disfavor. We acknowledge the potential risks for marginalized communities, and we underscore that the collateral policies we call for are essential to mitigating negative outcomes. Policymakers must be watchful to avoid unintended economic and legal consequences. Thus, any fines must be kept low (to no more than \$20) and must not accrue late fees, increases, or lead to civil or criminal penalties for not paying. A community service requirement could also be a substitute for the fine. These recommendations are detailed in the Recommendations for Policy and Implementation section.

The push toward Automatic Voter Registration (AVR) also introduces another challenge of particular concern to leaders in the Latinx and Asian-American and Pacific Islanders communities. Under AVR there is the possibility that noncitizens could be accidentally registered to vote, through no action on his or her part.¹⁰⁹ Confirming eligibility to vote is essential to the policy design of AVR, but states must also put protections in place for noncitizens added to the electoral rolls through AVR to ensure that they are not considered guilty of fraudulent voting or attempting to vote, unless they willfully attempt to vote despite being aware of their ineligibility. Any civic duty voting policy must therefore also provide that those erroneously added to the electoral rolls are not penalized for failing to vote. Strong protections to this effect should be included in any civic duty voting statutory language (national, state, and local).

The purpose of civic duty voting is to increase participation, not to lay traps for voters or penalize vulnerable communities.

The purpose of civic duty voting is to increase participation, not to lay traps for voters or penalize vulnerable communities. Mitigating the possible disparate effects of the policy must be a top priority. Communities that have been historically marginalized and who have been discouraged or blocked from voting in the past have reason to be concerned that a process requiring citizens to vote could be used against them. In particular, as we have argued throughout, a civic duty voting requirement must be enacted in tandem with other reforms to the voting system. These are the focus of the next section.

Paving the Way for Universal Voting: The Urgency of Complementary Reforms



The modern voting rights movement has had to re-fight many battles to preserve the advances of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Many states and election jurisdictions continue to seek ways of restricting the vote. Their efforts were held back only by the renewal of the Voting Rights Act, which allowed for aggressive enforcement of equal rights by the Department of Justice.

But in 2013, the United States Supreme Court gutted key provisions of the Voting Rights Act in *Shelby County v. Holder*. This decision, combined with recent retrenchment by the Justice Department in enforcing the right to vote, has permitted state-based restrictive voting policies and



Civic duty voting will not work well—and could even exacerbate existing inequalities—if it is implemented in places where high barriers to voting exist.

administrative actions to flourish, rolling back advances once thought secure. In turn, advocates have been forced to engage in organizing, protest, litigation, legislative strategies, and ballot initiatives to combat the assault on voting rights. While these efforts have achieved some success, there remain substantial obstacles to full voter participation, especially in low-income communities, communities of color, voters with disabilities, and citizens whose first language is not English.

Yet as we have noted throughout, these setbacks have been accompanied by genuine progress. Even as the Supreme Court, the Justice Department, and some states have restricted access to the ballot, a thriving democracy movement has successfully advanced policies that *increase* participation by expanding access to voter registration and easing the voting process throughout the country.

The policies we outline below are a summary of the reforms that voting-rights groups have rallied behind; they are important and complementary reforms to the idea of universal voting. Civic duty voting will not work well—and could even exacerbate existing inequalities—if it is implemented in places where high barriers to voting exist. The reforms broadly fall into three categories: widening opportunities to register to vote; increasing the options for voting; and strengthening effective election administration.

Expanding Opportunities to Register

Same-Day Voter Registration: Historically, pre-voting registration was enacted as a hurdle to participation, targeting the influx of immigrants in the late 19th and early 20th centuries while also preventing the extension of the right to vote for Black Americans. Administratively, deadlines that cut off voter registration before election day allowed election officials time to create accurate lists of eligible voters. However, technological advances and the digitization of these lists make this administrative rationale anachronistic.

Twenty states and the District of Columbia will allow eligible citizens to register and vote on the same day in 2020—on Election Day or during early voting periods. Same day registration also allows voters to update or correct errors in existing registrations. The procedure, first adopted in the mid-1970s, has consistently led to significant increases in voter participation where it has been enacted.

Automatic Voter Registration: Sixteen states and the District of Columbia have adopted policies that automatically register citizens to vote, or update an existing voter registration, whenever a citizen interacts with the state Department of Motor Vehicles. In some jurisdictions, these opportunities are also extended to social service agencies and other government offices that collect citizenship information. Citizens are given the opportunity to opt out of registering, rather than being required to opt in. Oregon was the first state to move away from the opt-in model when the state implemented automatic registration in 2016. More than 300,000 new voters were added to the rolls.¹¹⁰ The process, still relatively new, has rapidly expanded since.



Significant concerns have been raised by organizations working to expand voting rights for naturalized citizens and people convicted of felonies about the potential for unintended consequences in the implementation of AVR. As we have already noted, it is important to ensure that people who are ineligible to vote, such as noncitizens or some people who are or have been incarcerated, are not placed in legal jeopardy by having their names erroneously added to the voter rolls in the process of automatic voter registration. AVR legislation should include protections and “safe-harbor” provisions, making it clear that voters who unintentionally register, vote, or attempt to vote in error will not face legal action. California and Vermont have these provisions to protect noncitizens in the small number of cases where this has taken place, but state legislation cannot address federal immigration consequences.

Restoring the right to vote for citizens with felony convictions: Nearly all states now allow citizens with felony convictions to have their voting rights restored after completion of their sentence. However, the policies concerning how probation, parole, and the payment of fines and fees are handled vary considerably across states. Decoupling people’s right to vote from their incarceration status, as Maine, Vermont, and Washington, D.C. have done, would be a major step forward. At a minimum, a uniform standard that provides full restoration of voting rights after a person’s release from prison would end a great deal of confusion and accidental violations.

Online registration: Forty states and the District of Columbia now allow people to register to vote online. This cost-saving measure, first implemented in Arizona in 2002, has eased voting registration for many.¹¹¹ The COVID-19 pandemic has given additional impetus for online registration as options for in-person registration narrow.

Preregistration of 16- and 17-year-olds: Twenty-three states now allow eligible young people to preregister before they are 18 years old, and their names are automatically placed on the electoral rolls upon their 18th birthday. Preregistration allows schools to catch students in high school before they disperse to the workforce or to college. Some studies have shown that this early registration makes it more likely that young people will become voters when they reach voting age.¹¹²

Expanding Options for Voting

States have also made significant progress since the days when voting was largely restricted to the first Tuesday after the first Monday in November. But there is still wide variation in access to voting opportunities and significant room for improvement.

Early voting: Forty states and the District of Columbia now allow people to vote early.¹¹³ A recent study on the impact of early voting in Ohio found “substantial positive impacts of early voting on turnout equal to 0.22 percentage points of additional turnout per additional early voting day.”¹¹⁴ The number of days that early voting is permitted varies greatly between states. For example, early voting in Florida must begin eight days before an election; Virginia enacted a law in the 2020 legislative session allowing 45 days of early voting. Early voting has also been included in many recommendations for how people can vote safely during the COVID-19 crisis.



A voter places their ballot in a curbside ballot drop box to help prevent the spread of coronavirus disease (COVID-19) during the Maryland U.S. presidential primary election as other voters stand in a long line waiting to cast their votes in College Park, Maryland, U.S., June 2, 2020. [REUTERS/Jim Bourg]

Vote-by-mail: Expanding voting by mail has been a central focus of discussions about how to allow people to vote safely in the 2020 elections. States requiring an excuse to cast an absentee ballot now face substantial pressure to find ways to waive those provisions, at least during the pandemic. In addition, many states are discussing how to send ballot applications, or ballots themselves, to every voter in their jurisdictions. These initiatives should be permanent and would be an important complement to universal voting.

Vote-by-mail is an important option in voting, but it should not be the only option. It is important for jurisdictions to continue to provide in-person voting options even with expanded vote-by-mail to ensure all voters have access and that certain communities are not left behind. During the pandemic, this means that investments must be made to ensure safe, in-person voting options that adhere to the recommended public safety measures. Radical cutbacks in the number of polling places were already shown during the 2020 primaries conducted during the pandemic to produce unconscionably long lines that are a threat both to health and to voting rights. And retirees, who often provide the labor force for supervising the polls, have been understandably reluctant to take on this task during the pandemic. Training a new and younger generation of election day workers is essential. The AmeriCorps program, the nation's colleges and universities, and local public school authorities should be encouraged to join in this effort.



Sixteen states still require an excuse, either by legislation or in their state constitutions, to vote by mail or vote absentee rather than in person. They should join the other 28 states and the District of Columbia in the move toward no-excuse absentee voting. Six states, including California, Colorado, Hawaii, Oregon, Utah, and Washington have gone beyond no-excuse absentee ballots by sending ballots to all or almost all voters. This should be the goal for all states.

Convenient placement of accessible precincts and vote centers: The placement of polling locations can present distance and travel challenges to some voters and can particularly affect rural and Indigenous voters. In addition, voters with disabilities can have their right to vote impaired when voting sites lack wheelchair accessibility or contain other physical challenges. All jurisdictions should place precincts and vote centers in enough places that it is not a hardship for people to get to them. All voting centers should meet Americans with Disabilities Act (ADA) requirements and allow people with disabilities maximum access and privacy in their voting process. Colorado conducts and releases audits that detail counties' compliance with ADA accessibility standards in their polling places after each election. Additional polling places and/or vote centers should also be appropriately spread throughout tribal lands, where access is now often severely limited.

Effective Election Administration

Even good election policies can be undermined if election administration does not give people confidence that their participation is valued and that their votes will count. Below are steps that election jurisdictions at all levels should undertake to administer elections professionally and effectively.

Maintenance of voting lists: Every jurisdiction should maintain accurate and up-to-date voting lists without overly-aggressive purging policies that often remove eligible voters from the electoral rolls. Aggressive purges have resulted in major legal battles in a number of states. States should carefully follow the list management procedures specified in the National Voter Registration Act and engage in careful cross-state cooperation through the Electronic Registration Information Center (ERIC).

Adequate funding of election administration: The funding of elections has become a major issue during the COVID-19 crisis, and substantial federal support will be required in an election that will certainly break all records for mail voting. This federal support should continue beyond the current crisis, especially since virtually all states and localities will confront serious fiscal strains in the aftermath of a severe economic downturn. Elections are often an afterthought in local budgeting. Together, all levels of government must come to see the importance of investments in the election process, which are investments in democracy itself.

The advances of registration and voting reforms are encouraging and important. They have had real effects on turnout. Developments in voting opportunities in blue, red, and purple states are positive steps toward increased participation. We strongly endorse their continued adoption and further spread. Advancing these reforms will give universal civic duty voting the very best opportunity to succeed.

Recommendations for Policy and Implementation



Our core recommendation is that participation in significant general elections at the federal, state, and municipal level should be made a universal civic duty for every eligible citizen in the U.S., subject to reasonable exceptions to protect individual rights and recognize hardships some may face in participating. Policy actions for every level of government flow from this fundamental purpose.



Civic duty voting, and the legislation to enact the policy at each level of government, may vary based on jurisdiction, but in our view should contain these key elements:

1 Universal civic duty voting should be applicable for all major general elections, but not for party primaries.

We know that achieving this goal will require steps at every level of government. Many states and localities hold elections every year involving combinations of national, state, and local offices. We can imagine many gradual paths toward this goal. As we have already suggested, the first steps toward universal civic duty voting may involve local experiments with municipal elections, or statewide experiments in gubernatorial elections. If universal civic duty voting were adopted, some states might consolidate elections to require fewer of them. But our goal should be to have citizens take on this basic civic responsibility at every level of government, and to have election laws and approaches to election administration that make voting as simple and easy as possible. We understand that in some jurisdictions with strong inclinations toward one party or the other, primaries often determine who will ultimately hold office. But we do not believe this requirement should be extended to primaries. However, we have reason to hope that the existence of civic duty voting and the range of reforms we are proposing will both encourage broader participation in primaries and make primary voting easier and more accessible.

2 The voting requirement should be enforced through a small fine for not voting—no more than \$20.

This fine should not be subject to increases through penalty fees or accrued interest, and should not be the basis for criminal enforcement under any circumstances. Jurisdictions can offer community service as an alternative penalty in lieu of a small fine. Jurisdictions can also consider the possibility of a phase-in of the system, such as the use of warnings, rather than fines, for the first election requiring voting, or the possibility of issuing a warning rather than a fine for the first infraction. No one will be denied government services or benefits for not participating in voting.

3 Jurisdictions should consider creating incentives for voting for eligible citizens.

A variety of broadly applicable incentives could be used, including discounted public fees, a refundable civic participation tax credit, or a lottery for which participation in the election is the entry.

4 An official or agency should be designated with the responsibility to design and implement the program at the appropriate level of government.

A jurisdiction's existing elections administering authority—an official or agency—can be designated as the entity that determines compliance. In many states, the Secretary of State is the chief election official. Elsewhere it is a Board of Elections or other body. Legislation should designate the official or agency that is responsible for implementing the various aspects of the program and coordinating the different entities whose participation is required.



The governing body must establish the acceptable reasons for not voting, with cross-sectional community input, although a system with expansive registration and voting options would minimize the need for most of these. They should include: absence from the voting district on Election Day or during the election period; health-based limitations; other work responsibilities; care-giving responsibilities; and conscientious objection, including religious objection.

After the election has been completed, the administering agency should send eligible voters who did not participate a letter asking the reasons for nonparticipation, including the acceptable reasons. Additional forms of communication such as emails and texts can be used as documentation. If there is no response, a follow up communication can be sent, and if there is no response to the second attempt, the small fine or other enforcement options would be assessed.

5 Legislation should be carefully tailored to ensure access for all communities and protect against misuse or unintended negative consequences.

It should include provisions for voting for language minorities and people with disabilities, provisions enabling appropriate voting by tribal communities, and provisions to ensure that non-citizens and people with felony convictions are protected from penalty if they are mistakenly and unknowingly registered or required to vote. All materials for civic duty voting, including official forms and public education, must be produced in multiple, appropriate languages.

6 All levels of government must dramatically expand funding for election administration.

Increased turnout will generate greater fixed and variable costs associated with running elections. Adequate funding for election administration is essential to the successful implementation and success of civic duty voting, and this is a state, local, and federal responsibility. Budgets should include recruitment and adequate training for election administrative staff, and for a diverse, bilingual, younger, and better paid set of workers for additional early and Election Day voting. Additional funding will be needed for adequate and updated machinery for existing precincts and vote centers as well as for new centers that will be created, for the equipment necessary for expanded mail voting, and for a dramatically expanded public education effort.

7 Election officials should conduct extensive and energetic public education.

In addition to disseminating information about candidates and ballot questions, voter communications must clearly explain the details of how and where voters can cast a ballot. Effective designs for marketing outreach, publicity, and voter education efforts matter. Officials can use a number of channels to inform voters of civic duty voting: public service announcements, social media, public agency postings, schools and libraries, comprehensive mailings, political parties and candidate campaigns, civic institutions, and nonprofit organizations. All of these efforts must use multiple languages and utilize communications outlets and mechanisms trusted in varied communities.



The voter education program should also take into account the need to reach young and first-time voters. Expanding civic education in schools and recruiting young people to serve as poll workers would be important in broadening engagement.

8 Schools should expand civic education.

Requiring every citizen to vote makes providing robust linguistically and culturally appropriate civic education in schools even more imperative. Civic education should be a curricular requirement in every school district.

Multiple civic actors have a role in effecting these recommended policies. Below are recommendations for each level of government and for nongovernmental entities.

What the Federal Government Should Do

Enact legislation adopting universal civic duty voting for all federal elections: While Congress cannot mandate election procedures for state and municipal elections, under the Elections Clause it can require all citizens to participate in federal elections. States would in almost all cases conform their state election procedures as well.

Restore and update the Voting Rights Act: Congress should restore and strengthen the Act, including pre-clearance provisions with an updated formula for application. The Justice Department should enforce the Act to eliminate any unnecessary or discriminatory obstacles to voting and permit incentives for voting.

Strengthen federal authority to set standards and modernize election administration: Congress should substantially expand the authority and funding of the Election Assistance Commission, giving it the ability to set national standards for election administration, ensure effective administration, and assure voting access and integrity.

Enact federal legislation requiring that states make registration and voting widely accessible to all voters: Policies should include expanded registration opportunities, including online registration, same-day registration, and automatic voter registration with appropriate safeguards and protections for noncitizens. Expanded voting opportunities should include early voting, increased options for voting by mail including no-excuse absentee voting, and an effective set of in-person voting options on Election Day. H.R. 1, already passed by the House, includes many of the reforms that should be considered. The federal government should finance the transition to these policies as well.

Mandate employers to give employees paid time to vote: All major employers should be doing this now, and many are, but a civic duty voting program heightens the necessity for employers to offer paid time off to vote.



What States Should Do

Pass state legislation adopting universal civic duty voting: All states should pass legislation requiring voting as a universal civic duty for all general state elections with the policy characteristics described above.

Adopt state Voting Rights Acts: States should also adopt their own legislation reflecting a strong commitment to protect the voting rights of all citizens with appropriate enforcement mechanisms for all election jurisdictions.

Pass enabling legislation for municipalities: States should also pass legislation, or, if required, constitutional amendments, enabling all municipalities in the state to enact universal civic duty voting for municipal elections.

Enact collateral reforms that enable successful implementation: States should enact the full suite of collateral reforms that remove barriers and make it as accessible as possible for eligible citizens to vote.

Advocate for federal legislation: States should advocate for the passage of universal civic duty voting at the federal level and for full federal funding of broadened elections.

What Counties, Cities, and Towns Should Do

Advocate for passage of federal and state legislation creating universal civic duty voting and enabling legislation for local jurisdictions: Working with other municipalities and civic organizations, municipal officials who want to adopt civic duty voting can take a leadership role in urging Congress and the states to adopt the policy for all federal and statewide general elections. Where it is not possible to win statewide enactment, municipalities can advocate for their state to adopt proper enabling legislation, if existing home rule legislation is insufficient.

Create a municipal program of universal civic duty voting: Cities or other local jurisdictions, with appropriate legal authorization, should create municipal programs analogous to the state programs proposed above, designing appropriate enforcement mechanisms.

Recruit, train, and fairly compensate election workers: The lack of effective and properly trained election workers has been a consistent challenge to reliable election administration. This has been painfully exacerbated during the COVID-19 crisis. Energetic recruitment of workers, including students, young people, and persons fluent in languages other than English, should be prioritized. AmeriCorps and other service programs should be mobilized as part of this effort. Adequate pay and manageable working shifts are important for election worker recruitment and retention. As the size and diversity of the participating electorate increases and computerized processes become the norm, mandatory and modernized training of poll and precinct workers is critical as well.



An elderly woman is handed an electronic voting machine so she can vote in the U.S. midterm elections from her wheelchair at a polling station at Tuckahoe Elementary School in Richmond, Virginia, November 7, 2006. [REUTERS/Jim Young]

What Civic Organizations, Businesses, and Community Members Should Do

Organize support for universal voting at the federal and state level: Like every policy expanding voter registration and voting, universal civic duty voting will require grassroots support and engagement to win serious consideration at all levels of government.

Advocate for adoption of civic duty voting at the municipal level: One strong impetus for the adoption of civic duty voting by states will be pressure from its citizens and local governments, particularly if municipalities within the state are adopting or seeking to adopt their own civic duty voting programs.

Give employees paid time to vote: All major employers should be doing this now, and many are, but a civic duty voting program heightens the necessity for employers to offer paid time off to vote. Employers can also offer employees paid time off to be poll workers and do other nonpartisan election activities.

Conclusion: We Must Think and Act Anew



Liberal democracy is under challenge around the world. American democracy, in particular, confronts low participation, inequities based on race and income, sharp polarization, and declining trust in our institutions. The COVID-19 crisis has exposed the costs of ongoing inequalities and of failing to take the need for effective government seriously. Our democratic system needs reform and renewal, and our political system must finally give full representation to those who, with good reason, feel excluded and cast aside.



We do not pretend that the adoption of universal civic duty voting will, by itself, resolve all the problems our democracy faces. We do believe it will dramatically increase participation, creating a voting population far more representative of all Americans. We believe that over time it can help rejuvenate our civic culture and expand confidence in our democratic system.

We offer this report in the hope of introducing an idea into the American debate that has worked well elsewhere. As we have argued throughout, we see it as a necessary step toward completing our nation's long struggle for democratic inclusion.

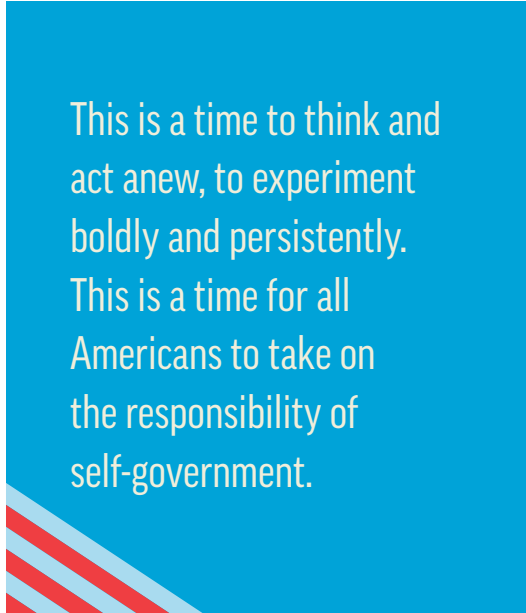
Our proposal may appear radical to some. But it has long been an accepted and practical feature of over two dozen democratic systems—in the case of Australia, for nearly a century. And especially when it comes to voting rights, practices that seemed radical quickly become the norm once they are adopted. The secret ballot (known, perhaps appropriately for our purposes, as the Australian ballot) was not commonly used until the last decade of the 19th century. It is now axiomatic. Extending the right to vote beyond white men with property, once seemed radical too. Now, restoring such limitations would be unthinkable.

Two of our greatest presidents gave voice to our nation's gift for experimentation and its daring in embarking on new paths.

“The dogmas of the quiet past are inadequate to the stormy present,” Abraham Lincoln declared in 1862. “The occasion is piled high with difficulty, and we must rise with the occasion. As our case is new, so we must think anew, and act anew. We must disenthral ourselves, and then we shall save our country.”¹¹⁵

And in 1932, Franklin D. Roosevelt set the tone for his coming administration when he said: “The country needs and, unless I mistake its temper, the country demands bold, persistent experimentation. It is common sense to take a method and try it: If it fails, admit it frankly and try another. But above all, try something.”¹¹⁶

This is a time to think and act anew, to experiment boldly and persistently. This is a time for all Americans to take on the responsibility of self-government.



This is a time to think and act anew, to experiment boldly and persistently. This is a time for all Americans to take on the responsibility of self-government.

Endnotes

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- 54 For our brevity, we’ve provided a shortened version here, but a more detailed version of this analysis is available for review, please email report authors for a copy of this analysis.
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- 56 *West Virginia State Board of Education v. Barnette*, 63 S.Ct. 1178, 1183, 319 U.S. 624, 633 (1943).
- 57 See *ibid.* at 645 (Murphy, J., concurring).
- 58 In *West Virginia State Board of Education v. Barnette*, a Jehovah’s Witness family filed suit against the local school district when their children were threatened with both reform school and delinquency, a punishable crime, after refusing to salute the flag and recite the pledge of allegiance. In a 6-3 decision, the Court declared the salute (plus pledge) “a form of utterance” (or expressive conduct) and held that the school’s requiring students to either perform it or be expelled was a violation of their First and Fourteenth Amendment rights. *West Virginia State Board of Education v. Barnette*, 63 S.Ct. 1178, 319 U.S. 624 (1943).
- 59 In *Wooley v. Maynard*, private citizens sued New Hampshire officials for requiring use of license tags with the “Live Free or Die” motto; the Supreme Court agreed that the underlying law amounted to a First Amendment violation given that it required individuals to “use their private property as a ‘mobile billboard’ for the state’s ideological message.” 97 S.Ct. 1428, 1435, 430 U.S. 705, 715 (1977).
- 60 In *Pacific Gas & Electric Co. v. Public Utilities Commission*, the Supreme Court held that a state may not “require a privately owned utility company to include in its billing envelopes speech of a third party with which the utility disagree[d].”
- 61 See *Spence v. Washington*, 418 U.S. 405 (1974).
- 62 Matsler, “Compulsory Voting in America,” 76 S. Cal. L. Rev. 953, 972. As a counterargument, some may claim the government’s compelling election “attendance”—even just for purposes of signing in is itself a First Amendment violation insofar as showing up, with nothing more, amounts to a form of speech demonstrating support for the democratic process and for voting more specifically. That “anarchist” argument, though, likely fails for the same reason claims that filing and paying taxes, showing up for jury duty, and signing up for selective service likely fail: All implicate expression, but they are nevertheless forms of conduct the government may regulate.
- 63 *United States v. O’Brien*, 88 S.Ct. 1673, 1679, 391 U.S. 367, 377 (1968).
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- 65 As was established by the Court in 1968: A government regulation is sufficiently justified if it is within the constitutional power of the Government, if it furthers an important or substantial governmental interest, if the governmental interest is unrelated to the suppression of free expression, and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. See: *United States v. O’Brien*, 88 S.Ct. 1673, 1679, 391 U.S. 367, 377 (1968).
- 66 *Burdick v. Takushi*, 112 S.Ct. 2059, 2063–64, 504 U.S. 428, 434 (1992), citing *Anderson v. Celebrezze*, 103 S.Ct. 1564, 1569–70, 460 U.S. 780, 788 (1983). See also: Richard L. Hasen, Voting Without Law?, 144 *U. Penn. L. Rev.* 2135 (1996). The content-neutral First Amendment restriction in *Burdick* was Hawaii’s prohibition on write-in voting. And though it did affect the manner of voting—burdening voters’ “limited interest in waiting until the eleventh hour to choose his preferred candidate”—that statute was upheld when weighed against the State’s constitutionally adequate ballot access statutes and its important government interest in avoiding factionalism and “party raiding.” *Id.* at 2066. The Court, moreover, found that restrictions placed on voters in Hawaii were minimal because the state provided numerous ways for candidates to get their names on the primary ballot before the 21-day cut-off date.

- 67 Some may say that the requirement to attend an election is not minimal, perhaps even severe, thereby requiring the Court to evaluate the government program with severe scrutiny. Two points in response: (1) the government could make the act of showing up easier by permitting individuals to “check in” through a mailed-in form (including government-paid postage) or by some online means (so long as voting itself is not conducted online until doing so is deemed safe and secure by appropriate bodies); (2) the Court, in *Crawford v. Marion County Election Board*, found the burden to procure documents necessary for obtaining of photo ID to be a minimal burden, and thus viewed the state’s photo ID requirement under a lower level of scrutiny. Authors of this paper disagree with the Court on that finding and ruling, especially since obtaining an ID for some can require several trips to government agencies and tens to hundreds of dollars. The burden imposed in a “universal voting” program to “attend” an election is much lesser—and requires no monetary payment.
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- 74 See the “Case for Compulsory Voting in America,” *supra*, quoting *Duren v. Missouri*, 439 U.S. 357, 364–66 (1979) (in which the Court holds the state may compel jury service “because of the importance of having a criminal jury [being one] that represents a fair cross-section of the community.”).
- 75 The federal government also uses 18 U.S.C. § 1952 and 18 U.S.C. § 1341 to prosecute election crimes, and could plausibly use them to prosecute a crime relating to benefits for voting. 18 U.S.C. § 1952 “prohibits the interstate travel or use of any interstate facility—e.g., mail or telephone—with the intent to promote any ‘unlawful activity,’ as well as performing or attempting to perform such acts,” where unlawful activity “is defined as including (among other things) bribery under either federal or state law and money laundering under federal law.” Caroline Williamson, et al., *Election Law Violations*, 56 *Am. Crim. L. Rev.* 711, 756 (2019) (citing 18 U.S.C. § 1952). 18 U.S.C. § 1341 “prohibits use of the United States Postal Service or a ‘private or commercial interstate carrier’ to defraud or inten[d] to devise any scheme or artifice to defraud.” *Id.* at 756–757 (citing 18 U.S.C. § 1341)).
- 76 See *United States v. Sloane*, 411 F.3d 643, 648 (6th Cir. 2005) (establishing that § 10307 applies to both federal and mixed-elections but “would not apply to ‘a purely local election, say for mayor, or for representative in a legislature, for sheriff, or for any other local office.’” (quoting *United States v. Cianciulli*, 482 F.Supp. 585, 616 (quoting 111 Cong. Rec. 8424 (1965))); *United States v. Bowman*, 636 F.2d 1003, 1011 (5th Cir. 1981) (“Congress may regulate any activity which exposes the federal aspects of the election to the possibility of corruption, whether or not the actual corruption takes place and whether or not the persons participating in such activity had a specific intent to expose the federal election to such corruption or possibility of corruption.”); *United States v. McCranie*, 169 F.3d 723, 727 (11th Cir. 1999) (“Again, whether the federal candidate is opposed or unopposed is of little consequence because the integrity of a mixed federal–state election is marred by fraudulent voting activities, even if these activities are only directed toward the state elections” (citing *United States v. Cole*, 41 F.3d 303 (7th Cir. 1994)). See also *United States v. Garcia*, 719 F.2d 99, 102 (5th Cir. 1999) (holding that the Constitution’s Necessary and Proper Clause and Article I grant Congress the authority to regulate mixed federal and state elections).
- 77 See, e.g., *United States v. Bowman*, 636 F.2d 1003 (5th Cir. 1981); *United States v. Garcia*, 719 F.2d 99 (5th Cir. 1983).
- 78 *Dansereau v. Ulmer*, 903 P.2d 555 (Alaska 1995); *Naron v. Prestage*, 469 So. 2d 83 (Mississippi 1985).
- 79 *Dansereau v. Ulmer*, 903 P.2d at 561; see Cal. Elec. Code § 18521 (stating that one may not offer compensation in exchange for “voting for any particular person”); Wash. Rev. Code Ann. § 29.85.060 (prohibiting any person from “directly or indirectly offering a bribe, reward, or any thing of value to a voter in exchange for the voter’s vote for or against any person or ballot measure, or authorizing any person to do so”).



- 80 Ind. Code Ann. § 3-14-3-19(b) (“A person who, for the purpose of inducing or procuring another person to: (1) apply for or cast an absentee ballot; or (2) vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention; gives, offers, or promises to any person any money or other property commits a Level 6 felony.”); Ind. Code Ann § 3-14-3-19 (“A person who, for the purpose of inducing or procuring another person to: (1) apply for or cast an absentee ballot; or (2) vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention; receives, accepts, requests, or solicits from any person any money or other property commits a Level 6 felony.”).
- 81 Minn. Stat. Ann. § 211B.13 (“A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election is guilty of a felony.”).
- 82 Neb. Rev. Stat. § 32-1536 (“Any person who accepts or receives any valuable thing as a consideration for his or her vote for any person to be voted for at an election shall be guilty of a Class II misdemeanor.”).
- 83 N.H. Rev. Stat. Ann. § 659:40 (“No person shall directly or indirectly bribe any person not to register to vote or any voter not to vote or to vote for or against any question submitted to voters or to vote for or against any ticket or candidate for office at any election.”).
- 84 N.M. Stat. § 1-20-11 (“Offering a bribe consists of willfully advancing, paying, or causing to be paid, or promising, directly or indirectly, any money or valuable consideration, office or employment, to any person for the following purposes connected with or incidental to an election: (A) to induce such a person, if a voter, to vote or refrain from voting for or against any candidate, proposition, question, or constitutional amendment.”).
- 85 25 Pa. Stat. Ann. § 3539 (“Any person who shall, directly or indirectly, give or promise or offer to give any gift or reward in money, goods, or other valuable thing to any person, with intent to induce him to vote or refrain from voting for any particular candidate or candidates or for or against any constitutional amendment or other question at a primary or election; or who shall, directly or indirectly, procure for or offer or promise to procure for such person any such gift or reward with the intent aforesaid; or, who with the intent to influence or intimidate such person to give his vote or to refrain from giving his vote for any particular candidate or candidates ... shall be guilty of a felon ...”).
- 86 S.C. Code Ann. § 7-25-60 (“(A) It is unlawful for a person at any election to: (1) procure, or offer or propose to procure, another, by the payment, delivery, or promise of money or other article of value, to vote for or against any particular candidate or measure; or (2) vote, offer, or propose to vote for or against any particular candidate or measure for the consideration of money or other article of value paid, delivered, or promised, vote or offer or propose to vote for or against any particular candidate or measure.”).
- 87 Wash. Rev. Code Ann. § 29A.84.620.
- 88 W. Va. Code Ann. § 3-9-13 (“It is unlawful for any person to offer or to pay money or any other thing of value to any person as consideration for the vote of the offeree or payee, as the case may be, to be cast for or against any candidate or issue in any election held in the state. Any person who violates the provisions of this subsection shall be guilty of a felony. ...”).
- 89 Wyo. Stat. Ann. § 22-26-109 (“Offering bribe consists of willfully advancing, paying, offering to pay or causing to be paid, or promising, directly or indirectly, any money or other valuable thing to a person, for any of the following purposes: (i) To induce a person to vote or refrain from voting for or against a candidate or ballot proposition or to sign or not sign a petition.”).
- 90 See Joshua A. Douglas, *The Right to Vote Under Local Law*, 85 *George Washington Law Review*. 1039, 1073 (2017).
- 91 *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).
- 92 See Joshua A. Douglas, *The Right to Vote Under Local Law*, 85 *Geo. Wash. L. Rev.* 1039, 1073 (2017).
- 93 Mass. Const. art. Article LXI (“The general court shall have authority to provide for compulsory voting at elections, but the right of secret voting shall be preserved.”).
- 94 Ohio Const. art. V, § 1.
- 95 See, e.g., Kentucky Const. § 145 (“Every citizen of the United States of the age of eighteen years who has resided in the state one year, and in the county six months, and the precinct in which he offers to vote sixty days next preceding the election, shall be a voter in said precinct...”).
- 96 For citations to the specific state constitutional and statutory provisions in these states, see the chart at the end of Joshua A. Douglas, *The Right to Vote Under Local Law*, 85 *Geo. Wash. L. Rev.* 1039, 1073 (2017).
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League of Women Voters activists rally for voting rights in front of Montclair Town Hall on Wednesday, July 1, 2020. [REUTERS/USA TODAY NETWORK]

