

# WHAT ARE WE AFRAID OF? THREE SUGGESTIONS FOR MAXIMIZING VOTER PARTICIPATION

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The United States of America, as President Lincoln noted in the Gettysburg Address, is founded on the principles of “government of the people, by the people, [and] for the people.”<sup>1</sup> This democratic republic<sup>2</sup> requires the people to be involved in the democratic process. Yet, citizen apathy seems to be growing in all parts of our democratic process. You hear it in daily conversations. You see it in people’s resignation that change demanded by popular consensus seems impossible to implement. The apathy grows as political gridlock increases. This risks the nation that I am so proud of and that has provided me with opportunities unlike anywhere else in the world. So, where should we first look to reengage citizens in their government?

To start, we must look to voting. No citizen involvement is more fundamental than voting. Our country should look to dramatically increase citizen involvement through voting in our elections. It is so basic: involved citizens are engaged citizens. American news reports of voting in emerging democracies is heralded and celebrated. Remember the purple thumbs of Iraqis voting in their first elections after American removal of Saddam Hussein? The airwaves and newspapers were full of reports noting the importance of voting in that nascent democracy. American politicians took turns on their respective legislative floors to laud the importance of

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1. Abraham Lincoln, The Gettysburg Address (Nov. 19, 1863).

2. “And if we consider the purpose of republican government to be distinct from that of democratic government in that it offers special protections for the rights of minorities and demands a broader understanding of the public interest, then it is good that North Dakota and Idaho are there to remind California and New York that the national interest cannot be understood solely by driving up and down State Route 1 on the Pacific Coast or mingling with those who had occasion to see *Hamilton* with the original Broadway cast.” Jay Cost, *Democracy or Republic?*, NATIONAL REVIEW (September 13, 2018) <https://www.nationalreview.com/magazine/2018/10/01/democracy-or-republic/>.

those purple thumbs. Yet, today, we cannot develop a national political consensus around increasing citizen participation in voting.

For me, much of my life can be marked by memories of elections and my votes in them. The role of America in the world was a central question of my first Presidential election in 1980. Local and state elections throughout the decade of the 1980's followed where I was challenged by considering issues no longer through the myopic lens of youth but through the wide-angle of adulthood. Children and the transition to baby boomer leaders followed. Then, terrorism, existential threats, economic calamity, profound demographic realities, climate and, now, pandemic threat all have been marked by local, state, and national elections. I can remember them all. My vote, offered as a tithe to the nation, is how I contribute. We should expect, I think even demand, no less from all citizens.

Now, I am not some perfect citizen with a perfect record of voting in elections. I get no gold star, certificate or plaque on the wall for perfect attendance. But, I do believe I could and should do more. We all can and should do more. Our nation needs it and the times demand it. The issues that our nation confronts today are as consequential as at any time in American history.

To be clear, I do not offer a harangue about one partisan effort concerning voting or a diatribe about a different partisan effort directed at voting. Indeed, most partisan debate and demonization regarding voting is grounded in the politics of voter turnout. Eliminating voter participation as a partisan matter will end one of the most divisive issues in modern American politics. This is an important benefit to the fundamental goal of increased citizen involvement. Our democratic republic requires that American democracy must be free and open to all eligible voters. Furthermore, as a republic, the health of our nation and effectiveness of our leaders requires an engaged citizenry. Leaders elected by some of the people to represent all of the people promotes the fracturing of our country that is so dangerous to its future.

U.S. citizen engagement in the voting process has been low and trending down for decades. In 2019, the U.S. Census Bureau reported, "The November 2018 election is widely recognized for its high voter turnout."<sup>3</sup> The report continued, "Fifty-three percent of the citizen voting-age population voted in 2018, the highest midterm turnout in four decades . . ."<sup>4</sup> This is not something to celebrate. Think about it. Let's assume a representative election where 53% of the eligible electorate voted in an election between two candidates and the winner received 51% of the vote. In that case, the winner's "mandate" came from a paltry 27% of the voting-age population. Is that showing our democracy working at its finest level? Is that elected official best suited to represent the interests of all citizens in our great republic?

U.S. Census Bureau data has tracked the low turnout in American Midterm Elections for the last forty years. The national average percentage of the voting-age population voting over the last eleven midterm elections based on the data below

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3. Jordan Misra, *Voter Turnout Rates Among All Voting Age and Major Racial and Ethnic Groups Were Higher Than in 2014*, U.S. Census Bureau (April 23, 2019), <https://www.census.gov/library/stories/2019/04/behind-2018-united-states-midterm-election-turnout.html>.

4. *Id.*

is 47.98%.<sup>5</sup> In other words, less than half of eligible voters engage in our democracy by voting.

Reported National Voting Rates Midterm Elections. 1980-2016<sup>6</sup>

1978	1982	1986	1990	1994	1998
48.9%	51.9%	49.4%	49.3%	48.3%	45.3%
2002	2006	2010	2014	2018	
46.1%	47.8%	45.5%	41.9%	53.4%	

Traditionally, national voter turnout is best in presidential year elections. The U.S. Census Bureau also collects and publishes this election data. Beginning with the 1980 U.S. Presidential election, its findings demonstrate an equally disappointing amount of voter participation. Although somewhat greater, the national average percentage of the voting-age population voting over the last ten presidential elections based on the data below is 62.74%. This means that nearly 40% of Americans do not participate in the election of their President and other elected representatives in these quadrennial elections.

Reported Voting Rates Presidential Elections. 1980-2016<sup>7</sup>

1980	1984	1988	1992	1996
64.0%	64.9%	62.2%	67.7%	58.4%
2000	2004	2008	2012	2016
59.5%	63.8%	63.6%	61.8%	61.4%

What is the story in Idaho? It is much, much worse. The Idaho Secretary of State does not report voting turnout based on the percentage of voting-age residents.<sup>8</sup> Rather, voting rates are reported as a percentage of registered voters.<sup>9</sup> This has the effect of inflating voting rates relative to national rates as reported by the U.S. Census Bureau. Nonetheless, the state average percentage of registered voters over the last thirteen statewide and national elections based on the data below is 67.33%.

5. *Id.*

6. *Id.*

7. Thom File, *Voting in America: A Look at the 2016 Presidential Election*, U.S. CENSUS BUREAU: RANDOM SAMPLINGS (May 10, 2017), [https://www.census.gov/newsroom/blogs/random-samplings/2017/05/voting\\_in\\_america.html](https://www.census.gov/newsroom/blogs/random-samplings/2017/05/voting_in_america.html).

8. IDAHO SECRETARY OF STATE, IDAHO ELECTION RESULTS, <https://sos.idaho.gov/elect/results/index.html#general> (last visited Sept. 6, 2020).

9. *Id.*

Reported Voting Rates Idaho General Elections. 1994-2018<sup>10</sup>

1994	1996	1998	2000	2002
67.0%	72.5%	58.5%	70.9%	61.3%
2004	2006	2008	2010	2012
76.8%	60.0%	77.3%	57.9%	74.3%
		2014	2016	2018
		56.1%	75.9%	66.8%

In order to better understand and compare Idaho's voting participation to the national figures an adjustment must be made to account for the difference in methodology and the resultant reported results. To be comparable, Idaho's results must be converted from a percentage of registered voters to a percentage of voting-age population. Registered voters are a subset of the voting-age population. So, assume that only two-thirds of voting-age residents are registered to vote. This increases the denominator by which the voter participation percentage rate is calculated. As a result, the adjusted voting rate in Idaho general elections between 1994 and 2018 becomes a mere 45.11%.<sup>11</sup> Is that reflective of an engaged populace required by a democratic republic?

This all leads to fundamental questions.

Has the lack of citizen engagement in voting been identified as a national emergency? No.

Is every elected representative of the people seeking solutions to this national crisis? No.

Have the two dominant political parties joined together to address this issue? No.

Should there be any effort undertaken by any person, party, or political subdivision that could be construed to suppress or impede voting? No.

The fact that these questions are all answered in the negative leads to one more overarching question about maximizing voter engagement: What are we afraid of?

America and its leaders cannot be afraid of the results of an engaged citizenry. Fear that the will of the people may be contrary to the base motivations and interests of politicians and political parties is not enough to jeopardize our national interest. The love of country must be of greater importance than love of an ideology. The apathy and malaise of the American people is a threat to our nation and way of life. It must be addressed. Therefore, I propose that the U.S. Congress adopt and the President sign into effect three common-sense laws to maximize voter participation.<sup>12</sup>

10. *Id.*

11. Brad Little was elected as Governor of Idaho in 2018 with 59.8% of the votes cast. *Id.* Using the adjusted voting rate for Idaho general elections, that means that Governor Little was elected by only 26.97% of the voting-age population of Idahoans.

12. For a discussion of the constitutionality of such an exercise of congressional power, see Carolyn Shapiro's *Democracy, Federalism, and the Guarantee Clause*. Carolyn Shapiro, *Democracy, Federalism, and the Guarantee Clause*, 62 ARIZ. L. REV. (forthcoming 2020).

### I. THE DEMOCRACY TOGETHER ACT

I propose a Democracy Together Act that would require all U.S. citizens eligible to vote be required to vote in every state-wide and national election. Mandatory voting exists in many countries around the world.<sup>13</sup> Most notably, Australia has had mandatory voting since 1918.<sup>14</sup>

The results in Australia reflect exceptionally high voter engagement and participation. Ninety-seven percent (97%) of the voting-age population is registered to vote.<sup>15</sup> In their 2019 House of Representative elections, 91.9% turned out to vote.<sup>16</sup> This is nearly double the voter turnout of a midterm U.S. election.

Of course, some people don't vote as a protest or because they do not see any candidate as being a desirable representative of the would-be voter's point of view. Mandatory voting can accommodate this by providing a "None of the Above" or similar option. This way a protest or other contrarian point of view can be noted. Wouldn't that more clearly guide elected leaders than the uncertainty of not knowing why half or more of the electorate didn't vote?

The Democracy Together Act also addresses the apathy American voters feel about elections. Over 15% of eligible voters decline to vote citing a lack of interest in the election.<sup>17</sup> With the enactment of mandatory voting, voters will engage in it. Likewise, around 4% of eligible voters don't vote due to registration issues.<sup>18</sup> Indeed, partisan warfare rages around America over voter registration issues.<sup>19</sup> The issues include motor voter laws, purging of voter lists, and proof of voter eligibility requirements. The Democracy Together Act eliminates these divisive issues. It also eliminates the excuse cited by voters surrounding registration.

The Democracy Together Act would require every American man and woman to register to vote at age eighteen. It might be argued that the Democracy for All Act will create a new, costly bureaucracy. Or, that it will be too difficult to get Americans to comply with the new Act. Neither of these is the case. Right now, almost every American male must register with the Selective Service when he turns eighteen years of age.<sup>20</sup> This is a requirement of the Military Selective Service Act

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13. Australian Electoral Commission, *Compulsory Voting in Australia*, at 6 (2006).

14. *Id.* at 4.

15. Australian Electoral Commission, *2018/19 Annual Report*, at 5.

16. *Id.*

17. U.S. Census Bureau, *Voter and Registration in the Election of November 2016*, Table 10 (2016).

18. *Table 10. Reasons for Not Voting, by Selected Characteristics: November 2016*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html> (last visited Sept. 6, 2020).

19. See, e.g., Danielle Root & Aadam Barclay, *Voter Suppression During the 2018 Midterm Elections*, CTR. FOR AM. PROGRESS, (Nov. 20, 2018), <https://www.americanprogress.org/issues/democracy/reports/2018/11/20/461296/voter-suppression-2018-midterm-elections/>.

20. *Selective Service*, USA.GOV, <https://www.usa.gov/selective-service> (last visited Sept. 6, 2020).

(MSSA).<sup>21</sup> For nearly fifty years since the MSSA was enacted, our country has registered virtually every male for military service.<sup>22</sup> Would it be that hard to add women? Couldn't all persons granted citizenship also be required to register to vote within a limited period of time after becoming Americans? We already have a national system of citizen registration in place. Let's also use it as our voter registration system.

## II. THE DEMOCRACY DAYS ACT

I propose a Democracy Days Act that would establish the second Monday (formerly Columbus Day) and Tuesday of October as "Democracy Days" with all state-wide and national elections held on these days.

Democracy Days would be a national holiday. Designating Democracy Days as a national holiday will elevate and draw attention to state-wide and national elections held each year.<sup>23</sup> Over a quarter of American voters cite illness, being busy on Election Day, schedule conflicts, and transportation issues as reasons they did not vote.<sup>24</sup> People want to vote but sometimes life gets in the way. Providing voters with a national holiday and two-day period to vote minimizes these impediments to voting. As a result, voter participation will increase.

Democracy Days would replace the non-holiday voting on the first Tuesday in November. This would have a minimally disruptive impact. This date is not a holiday and holds no special significance on state and national calendars. Indeed, Democracy Days shortens the time of our election seasons by a month. It seems unlikely anyone but political consultants will complain about that.

I have had some argue to me that two days for voting is too much time away from the demands of everyday life. Are two days out of our national calendar too much to celebrate our democratic republic? Is it too much to ensure the successful process of voting for our leaders and important issues of the day? Is not two days necessary to accommodate our growing population and to make sure that the delays and inconvenience of a compressed voting period are eliminated so that voting is satisfactory and not a dreaded experience? If America benefits from engaged citizens then the price of their engagement is an experience that does not subject the voter to long lines, delays, and inconvenience. It must include time to prepare to vote and celebrate the process. Our freedom to cast a vote is a beacon to free people and those yearning to be free around the world. We should celebrate voting. Two days is not too long for that.

Democracy Days will eliminate the formal recognition of Columbus Day. This holiday has traditionally celebrated the arrival of Christopher Columbus in the

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21. *About Selective Service, SELECTIVE SERVICE SYSTEM*, <https://www.sss.gov/about/> (last visited Sept. 6, 2020).

22. *See id.*

23. I am not advocating for the elimination of other dates in the year for local elections. I believe in local control of such matters. Furthermore, I view any effort to limit access to elections as being contrary to the traditions of our democratic republic.

24. *See* Table 10. Reasons for Not Voting, by Selected Characteristics: November 2016, *supra* note 18.

Americas in 1492.<sup>25</sup> It did not become a national holiday until 1937.<sup>26</sup> It was originally designed to celebrate Columbus as the first European to arrive in North America.<sup>27</sup> However, most historians believe that such a celebration is based on a historical inaccuracy.<sup>28</sup> Furthermore, since the 1970s objections have been made to celebrating Columbus Day due to the negative consequences he caused for indigenous people.<sup>29</sup> Again, no matter who discovered America or what your historical perspective is, we need to be eliminating those things that divide us. If a consequence of the designation of new Democracy Days is eliminating something that is divisive, then it is all the more reason to do it.

### III. THE ACCESS TO DEMOCRACY ACT

I propose an Access to Democracy Act that would establish national standards for all state-wide and national elections. Voters in each state should be guaranteed the same access to voting as voters in every other state. The Access to Democracy Act would focus on three key provisions to increase voting. First, the Act would require making polls available on a 24 hour per day basis. Second, the Act would mandate the broad use of voting by mail. Third, the Act would provide block grants to states in order to accommodate increased voter participation.

Enactment of the Democracy Together Act and Democracy Days Act, by definition, will dramatically increase the number of voters in statewide and national elections. Accordingly, our election process must be changed to accommodate this massive increase in voters. The Access to Democracy Act addresses this problem with each of its three key provisions.

Polls must be open longer. Creating 24-hour-per-day voting will extend voter options to attend the polls. The lives of some people just don't conform to the schedules of the majority of people, but this should not be a basis for disenfranchisement. For example, why should a hard-working voter miss the opportunity to vote solely because she can't leave work during normal polling hours?

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25. *Columbus Day 2020*, HISTORY, <https://www.history.com/topics/exploration/columbus-day> (last visited Sept. 6, 2020).

26. *Id.*

27. *Id.*

28. *E.g.*, Eric Weiner, *Coming to America: Who Was First?*, NPR (Oct. 8, 2007) <https://www.npr.org/templates/story/story.php?storyId=15040888>. It is most widely accepted that northern European explorers, Norsemen, arrived in Canada approximately 500 years before Columbus. *Id.* Some in Idaho's Basque community even subscribe to the theory that Basques discovered America, "[c]hronicles of the period indicate that Basques first came to North America in 1517, only seventeen years before French explorer, Jacques Cartier; however, some historians suggest they made the journey before Christopher Columbus in 1492." *Basque Whalers Established the First Industry in North America*, EUSKAL ETXEAK (2006), [http://www.euskadi.eus/contenidos/informacion/06\\_revista\\_euskaletxeak/en\\_ee/adjuntos/75\\_04\\_05\\_i.pdf](http://www.euskadi.eus/contenidos/informacion/06_revista_euskaletxeak/en_ee/adjuntos/75_04_05_i.pdf).

29. *E.g.*, *Why Columbus Day Courts Controversy*, HISTORY, <https://www.history.com/news/columbus-day-controversy> (last visited Sept. 6, 2020).

Access to voting should also be accomplished by the expansion of voting by mail in all states. Three states (Washington, Oregon, and Colorado) already have all-mail voting systems.<sup>30</sup> Australia uses an expansive vote-by-mail program, coupled with other robust ways to cast ballots, to achieve its outstanding voter participation.<sup>31</sup> Voting by mail eliminates the cumbersome absentee voting process. A voter is never absent, she is merely using an alternative to in-person voting.

I am in favor of many methods of expanding voting, but I do not propose voting by app or online at a website. Simply, current cyber-security risks are too great. The expansion of citizen engagement in voting does not have to come at the expense of confidence in elections. Indeed, the Access to Democracy Act would in many ways merely increase voter engagement through the tried and true process of walking into a voting booth and casting a ballot.

Access to Democracy Act block grants are necessary to allow states to have adequate resources to implement national voting standards and best practices. As an example, funds are needed to create community voting centers, purchase voting machines, train poll workers, fully staff polls, and ensure accessible facilities. Some national standards are important to fairly allow all American voters access to voting, but it would be a mistake to assume that the needs of each state are the same. The rural character and low population density of large parts of Idaho result in different challenges than the urban population centers found in Illinois. Accordingly, block grants are necessary to allow customized solutions for each state.

The Access to Democracy Act addresses the inefficiency of current American elections. In a recent Presidential election “over five million voters in 2012 experienced wait times exceeding one hour and an additional five million waited between a half hour and an hour.”<sup>32</sup> This is unacceptable in America. The exercise of our civic duty to vote cannot be this burdensome. Our voting, like our system of government, should be the envy of the world.

#### IV. CONCLUSION

What are we afraid of? Why hasn't America addressed its crisis of voter participation? In terms of electoral participation, the United States of America ranks a lowly 26th among Organization for Economic Co-operation and Development countries.<sup>33</sup> The data above shows that 24.8% of citizens find that our elections don't present candidates and issues that inspire them to vote. Our candidates and the issues they focus on will be forced to appeal more broadly to engage a mandatory voting electorate. This will have the effect of minimizing extreme positions that cause gridlock. With ideological gridlock reduced then American

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30. See Jordan Misra, *Voter Turnout Rates Among All Voting Age and Major Racial and Ethnic Groups Were Higher Than in 2014*, U.S. CENSUS BUREAU (Apr. 23, 2019), <https://www.census.gov/library/stories/2019/04/behind-2018-united-states-midterm-election-turnout.html>.

31. Australian Electoral Commission, *Voting options*, [https://www.aec.gov.au/Voting/ways\\_to\\_vote/](https://www.aec.gov.au/Voting/ways_to_vote/) (last visited Sept. 6, 2020).

32. Presidential Comm'n on Election Admin., *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration* 13 (2014).

33. Nicco Mele and Robert Pozen, *These Simple Fixes Could Boost Voter Turnout in a Major Way*, CNN (Sept. 23, 2019), <https://www.cnn.com/2019/09/23/opinions/simple-fixes-boost-voter-turnout-mele-pozen/index.html>.

compromise, a foundational feature of our political history, can return and with it, solutions to our common challenges. Is this what we are afraid of?

Again, we must be mindful of the words of President Lincoln in the Gettysburg Address. America is founded on the principles of “government of the people, by the people, [and] for the people.”<sup>34</sup> But, we must not forget that this requires the people to be involved in the democratic process. No such involvement is more fundamental than voting. To allow voter participation to decline is to risk that our great nation may “perish from the earth.”<sup>35</sup>

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34. *See supra* note 1.

35. *Id.*

