



SHAPING FUTURE IMPACT OF THE TWENTY-SIXTH AMENDMENT: HOW LESSONS FROM THE 2020 ELECTION AND VOTING DURING THE COVID-19 PANDEMIC ARE INSTRUCTIVE FOR ENGAGING THE NEXT GENERATION OF AMERICANS

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As Americans, we are and should be proud of our Democratic traditions. Expansion of the voting franchise over the past two centuries reflects the best of America. And part of being American is recognizing the importance of giving a voice to all Americans to participate in our democracy . . . .<sup>1</sup>

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## INTRODUCTION

In these remarks, U.S. Senate Majority Leader Charles Schumer suggested that over the course of our nation's history, the right to vote has evolved toward expansion of the franchise. Most prominently, the Fifteenth Amendment secured the vote for former slaves,<sup>2</sup> the Nineteenth Amendment for women,<sup>3</sup> and the Twenty-Sixth Amendment for eighteen-year-olds.<sup>4</sup> Similarly, the Twenty-Fourth Amendment abolished the poll tax.<sup>5</sup>

While these amendments signified the inclusion of a growing number of Americans in the country's civic life, securing the actual right to cast a ballot and have it count remained elusive without concerted social efforts and legislation to enforce that right. Indeed, even as passage of the Civil Rights Amendments and Reconstruction promised a new beginning for emancipated slaves, the Jim Crow era commenced,<sup>6</sup> prolonging the bitter struggle to vote by former slaves and their descendants.

Not until President Lyndon B. Johnson signed the Voting Rights Act of 1965 ("VRA"),<sup>7</sup> however, did African Americans secure the tools to enforce their right to vote. Similarly, amendments to the VRA in 1975<sup>8</sup>

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1. *Election Administration: Innovation, Administrative Improvements and Cost Savings: Hearing Before the S. Comm. on Rules & Admin.*, 113th Cong. 220 (2014) (statement of Senator Charles Schumer, Chairman, S. Comm. on Rules & Admin.).

2. U.S. CONST. amend. XV, § 1 ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.")

3. U.S. CONST. amend. XIX ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.")

4. U.S. CONST. amend. XXVI, § 1 ("The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.")

5. U.S. CONST. amend. XXIV, § 1 ("The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.")

6. See *Plessy v. Ferguson*, 163 U.S. 537, 552 (1896) (upholding the post-Reconstruction principle of "separate but equal" that prolonged racial segregation for another fifty-eight years).

7. 52 U.S.C. §§ 10301–10314, 10501–10508, 10701–10702.

8. *Id.* § 10503(b)(2)(A)(i)(I)–(II) (requiring bilingual voting materials in jurisdictions where "more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient," or "more

and 1982<sup>9</sup> provided effective tools to other marginalized communities, including language minorities and voters with disabilities. In 1993, Congress passed the National Voter Registration Act (“NVRA”),<sup>10</sup> expanding opportunities for all eligible Americans to register as part of the process of obtaining a driver’s license or other government transactions. And twenty years ago, Congress passed the Help America Vote Act (“HAVA”)<sup>11</sup> to both address the vulnerabilities in the country’s election infrastructure that came to light following the contested presidential election in 2000<sup>12</sup> and ensure that all Americans were able to vote privately and independently.<sup>13</sup>

Though the evolution of the voting franchise has historically expanded to include more Americans, that progression is not guaranteed.<sup>14</sup> Just as constitutional amendments, legislative victories, and other administrative developments steadily increased voter eligibility, barriers that historically kept Americans from voting also evolved.<sup>15</sup> Most infamously, the Jim Crow era devised literacy tests, poll taxes, and other roadblocks to prevent African Americans from participating in the aftermath of the Fifteenth Amendment until passage of the VRA.<sup>16</sup> Other communities remained marginalized through official acts like the Chinese Exclusion Act, which curbed immigration from

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than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient”).

9. § 10508 (“Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.”).

10. 52 U.S.C. §§ 20501–20511.

11. *Id.* §§ 20901–21145.

12. *See* *Bush v. Gore*, 531 U.S. 98, 105–11 (2000) (holding that Florida’s vote recount method violated the equal protection of voters, ultimately halting the process with Republican nominee Governor George W. Bush leading Democratic nominee Vice President Al Gore by 537 votes in the state and awarding the former Florida’s twenty-five electoral votes).

13. *See* § 21081(a)(3)(A) (requiring voting systems to be “accessible for individuals with disabilities” and to ensure “privacy and independence”).

14. *See* Atiba R. Ellis, *The Voting Rights Paradox: Ideology and Incompleteness of American Democratic Practice*, 55 GA. L. REV. 1553, 1553 (2021) (proposing that the central paradox to the right to vote is the antidemocratic principle of “worthiness,” which those in power—political, socioeconomic, and/or cultural—exercise to maintain their status).

15. *Id.* at 1556 (“The particular ideologies . . . have evolved over time, and, importantly, the rise of these ideologies often intersects with times when the franchise has expanded in response to modern norms of equality and universal participation.”).

16. *See* *Williams v. Mississippi*, 170 U.S. 213, 222–25 (1898) (upholding the state’s poll tax, disenfranchisement clauses, grandfather clause, and literacy tests, thus clearing the way for other states to follow).

China and barred naturalization (and in turn the right to vote).<sup>17</sup> Similarly, Native Americans, who predated the arrival of any population on the continent, remained largely barred from voting by state laws even after passage of the Indian Citizenship Act.<sup>18</sup>

More recently, as the false narrative persists that the 2020 election was not secure or reliable,<sup>19</sup> some state legislatures across the country have passed more restrictive measures in the name of “election integrity,”<sup>20</sup> like strict voter identification laws,<sup>21</sup> documentary proof of citizenship requirements,<sup>22</sup> and other efforts with the potential to disproportionately affect only certain communities.<sup>23</sup> As the U.S. Court of Appeals for the Fourth Circuit noted in striking down a North Carolina voter suppression bill,

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17. Chinese Exclusion Act, Pub. L. No. 47-126, 22 Stat. 58 (1882) (suspending the admittance of Chinese laborers into the United States) (repealed 1943). Other Asian exclusion laws followed, including the Immigration Act of 1924, widely barring immigration from Asia and Africa. *See* Immigration Act of 1924, Pub. L. No. 68-139, §11(d), 43 Stat. 153, 159 (1924) (also known as the Reed-Johnson Act or National Origins Act), *repealed by* Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965).

18. Indian Citizenship Act, Pub. L. No. 68-175, 43 Stat. 253 (1924) (granting birthright citizenship for American Indians).

19. *See, e.g.*, Kelly v. Commonwealth, 240 A.3d 1255, 1256, 1259 (Pa. 2020), *cert. denied*, 141 S. Ct. 1449 (2021) (rejecting an effort by Republican Congressman Mike Kelly to block certification of election results in Pennsylvania); Texas v. Pennsylvania, 141 S. Ct. 1230, 1230 (2020) (holding that the state of Texas lacked standing to block certification of election results in Pennsylvania, Georgia, Michigan, and Wisconsin); Republican Party of Pa. v. Degraffenreid, 141 S. Ct. 732, 732 (2021) (denying the petition for certification to the U.S. Supreme Court in three decisions that the Trump presidential campaign lost in the Pennsylvania Supreme Court).

20. *See, e.g.*, Act effective Sept. 29, 2021, 2021 Ariz. Legis. Serv. Ch. 343 (West) (requiring any mail-in ballot missing signature verification to be cured by 7:00 p.m. on election day); Election Integrity Act of 2021, 2021 Ga. Code Ann. Adv. Legis. Serv. Act 9 (West) (enacting an omnibus election reform bill with multiple restrictions and measures to reform the state board of elections, including authority to remove election officials); *see* Act effective Sept. 1, 2021, 2021 Tex. Sess. Law Serv. Ch. 1053 (West) (banning drive-thru voting, restricting assistance for voters with disabilities and language minorities, and prohibiting election workers from intervening harassment of voters by poll watchers).

21. *See, e.g.*, Election Integrity Protection Act of 2021, 2021 Tex. Sess. Law Serv. 2nd Called Sess. Ch. 1 (West) (requiring “the number of the voter’s [Texas] driver’s license, election identification certificate, or personal identification card issued by the Department of Public Safety” on both the mail ballot application and the ballot carrier envelope for mail ballot applications and mail ballot carrier envelopes).

22. *See, e.g.*, Act effective Sept. 24, 2022, 2022 Ariz. Legis. Serv. Ch. 99 (West) (requiring all voters in Arizona to show proof of citizenship).

23. *See Voting Laws Roundup: February 2022*, BRENNAN CTR. FOR JUST. (Feb. 9, 2022), [https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2022?\\_ga=2.229000476.1824263961.1648559480-1021263201.1638458614](https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2022?_ga=2.229000476.1824263961.1648559480-1021263201.1638458614).

[a]lthough the new provisions target African Americans with almost surgical precision, they constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist. Thus the asserted justifications cannot and do not conceal the State's true motivation.<sup>24</sup>

This pattern has been occurring against a national backdrop with a new generation of engaged citizens that have responded with a zeal not seen since the mid-twentieth century, which culminated in the passage of the Twenty-Sixth Amendment. From climate change<sup>25</sup> to gun violence,<sup>26</sup> racial justice,<sup>27</sup> and LGBTQ+ rights,<sup>28</sup> young Americans have entered the fray by marching in peaceful protest, testifying before local, state, and federal governmental bodies, and participating in the most basic aspect of civic life—voting. Though commendable, this level of direct engagement by young people fails to translate to higher voter participation rates,<sup>29</sup> subsuming their priorities to those of older Americans who typically vote at rates twenty points higher.<sup>30</sup>

This article will consider how election administration affects the vote for younger Americans. More specifically, the article focuses on voters ages eighteen to twenty who benefitted immediately from the passage of

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

25. See, e.g., *Greta Thunberg Tells World Leaders 'You Are Failing Us', As Nations Announce Fresh Climate Action*, UN NEWS (Sept. 23, 2019), <https://news.un.org/en/story/2019/09/1047052>.

26. See, e.g., *Senate Democrats, Survivors, Family Members to Hold Hearing on Protecting Children from Gun Violence*, SENATE DEMOCRATS (Mar. 5, 2018), <https://www.democrats.senate.gov/dpcc/hearings/senate-democrats-survivors-family-members-to-hold-hearing-on-protecting-children-from-gun-violence>.

27. See, e.g., *First Amendment Violations at Black Lives Matter Protests: Hearing Before the Subcomm. on C.R. & C.L. of the H. Comm. on Oversight & Reform*, 116th Cong. (2020).

28. See, e.g., *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 620 (4th Cir. 2020) (affirming District Court ruling in favor of a transgender student's claim that the school district discriminated against him by requiring him to use a separate, private bathroom rather than a general bathroom designated by gender).

29. See JARED A. McDONALD & MICHAEL J. HANMER, UNDERSTANDING AND CONFRONTING BARRIERS TO YOUTH VOTING IN AMERICA 2, 20–22 (2018), <https://preprints.apsanet.org/engage/api-gateway/apsa/assets/orp/resource/item/5dadbac81b0e9400125cbbd3/original/understanding-and-confronting-barriers-to-youth-voting-in-america.pdf> (contending that “young people find voting to be a relatively unsatisfying form of participation” compared with “more expressive activities, such as protesting or contacting elected representatives”).

30. See Press Release, U.S. Census Bureau, 2020 Presidential Election Voting and Registration Tables Now Available (Apr. 29, 2021), <https://www.census.gov/newsroom/press-releases/2021/2020-presidential-election-voting-and-registration-tables-now-available.html> (indicating voter turnout for ages sixty-five to seventy-four at 76% compared with 51.4% for ages eighteen to twenty-four).

the Twenty-Sixth Amendment.<sup>31</sup> Recognizing the importance of the Twenty-Sixth Amendment to securing the youth vote, this article will examine avenues for potential election administration reforms through the particular lens of lessons learned from the 2020 election and propose solutions to engage each successive generation of Americans as they reach voting age.

Part I of this article provides legal and legislative background of the Twenty-Sixth Amendment and the youth vote, including relevant statutes like the VRA, NVRA, and HAVA. It also reviews historic turnout rates for youth voters compared with 2020.

Part II explores litigation to expand the vote to more Americans through the Twenty-Sixth Amendment but concludes that this path may not be the most fruitful to increase youth voter turnout compared to legislative solutions that address these barriers.

Part III discusses the ways in which election officials' voter-centric efforts, coupled with additional resources, succeeded in addressing many of the barriers that voters faced because of the pandemic and how this success may be instructive in engaging young voters in the future.

Part IV details the ways that voter-centric laws serve Americans by providing options and solutions for voters who encounter unnecessary bureaucratic hurdles. Specifically, this part examines how certain administrative solutions, like same day and automatic registration, statewide portability, and mail ballots, can help younger Americans participate in the electoral process and how the automation of some of these procedures is critical to ensuring continued civic engagement in each new generation of voters.

Finally, Part V contends that while removing administrative barriers is critical, it is not a panacea. There are many challenges to sustained engagement of young voters. This section looks at challenges beyond election administration, addresses a recent survey that indicates young voters increasingly mistrust the election process, and examines the need for increased civic engagement and education to fully realize the promise of the Twenty-Sixth Amendment and repair the fissures that penetrated the body politic well before the 2020 election.

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31. Available data about this demographic is not disaggregated for this specific subset. For example, U.S. Census data focuses on voters ages eighteen to twenty-four, while other studies include an even larger group of voters ages eighteen to twenty-nine. Where available, the article relies on disaggregated data to discuss the specific group of voters ages eighteen to twenty.

## I. BACKGROUND

For over fifty years, Americans ages eighteen to twenty have enjoyed the privilege of participating in the democratic process. They secured that right following passage of the Twenty-Sixth Amendment.<sup>32</sup> While previous generations also sought to lower the voting age,<sup>33</sup> proponents did not meet success until the confluence of the Second Reconstruction, and the Vietnam War led to its ratification in a record 100 days.<sup>34</sup>

Since then, engagement by this age group has routinely remained below the rest of the voting age population. In the 2020 election, turnout for voters ages eighteen to twenty-nine reached 50%<sup>35</sup> for the first time since the historic 2008 election.<sup>36</sup> The increase is consistent with improved turnout rates for all registered voters in 2020, which climbed to an historic high of 67.7% of the total citizen voting age population (“CVAP”).<sup>37</sup> However, unlike older voters, younger Americans are affected at a disproportionately greater rate by similar election barriers.<sup>38</sup> Should those young voters also belong to traditionally marginalized communities—Black voters, Native Americans, language minorities, voters with disabilities, or voters in lower socioeconomic groups—the challenges could be compounding.

Recent litigation over election laws in North Carolina demonstrate the unique challenges for young voters. In *North Carolina State Conference of NAACP v. McCrory*,<sup>39</sup> the Fourth Circuit invalidated the state’s omnibus election law bill that the Republican legislature passed following the Supreme Court’s 2013 decision in *Shelby County, Alabama*

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32. U.S. CONST. amend. XXVI.

33. See Jenny Diamond Cheng, *Voting Rights for Millennials: Breathing New Life into the Twenty-Sixth Amendment*, 67 SYRACUSE L. REV. 653, 668 (2017) (noting that in legislation to lower the age of eligibility for the military draft during World War II, an amendment was proposed to also lower the voting age by constitutional amendment in federal elections).

34. See *The Twenty-Sixth Amendment, History, Art & Archives*, U.S. HOUSE OF REPRESENTATIVES (July 1, 1971), <https://history.house.gov/Historical-Highlights/1951-2000/The-26th-Amendment/>.

35. *2020 Election National Youth Voter Turnout*, CTR. FOR INFO. & RSCH. ON CIVIC LEARNING & ENGAGEMENT (“CIRCLE”), <https://circle.tufts.edu/2020-election-center> (last visited June 28, 2022).

36. See EMILY HOBAN KIRBY & KEI KAWASHIMA-GINSBERG, *THE YOUTH VOTE IN 2008* 2 tbl.1 (2009) (reflecting a turnout rate of 51% for voters eighteen to twenty-nine).

37. U.S. ELECTION ASSISTANCE COMM’N, *ELECTION ADMINISTRATION AND VOTING SURVEY: 2020 COMPREHENSIVE REPORT 1* (2021) [hereinafter EAVS 2020].

38. See Cheng, *supra* note 33, at 657–67 (discussing litigation in North Carolina, Tennessee, Virginia, and Wisconsin based on the Twenty-Sixth Amendment).

39. 831 F.3d 204, 242 (4th Cir. 2016).

*v. Holder*.<sup>40</sup> Many of the bill's measures affected young voters in ways similar to other marginalized communities while other provisions appeared to explicitly target them.<sup>41</sup> Among the restrictions it imposed, Parts 1 through 6 of House Bill 589, hereinafter referred to as the Voter Information Verification Act,<sup>42</sup> required photo identification to vote<sup>43</sup> and reduced the early voting period by one week.<sup>44</sup> It also cut same day voter registration<sup>45</sup> and pre-registration for sixteen and seventeen-year-olds.<sup>46</sup>

The case is particularly relevant because following the 2020 election, state legislatures in twenty-seven states responded to the most secure election in American history<sup>47</sup> by introducing more than 250 bills that reduce ballot access, especially in marginalized communities and for young voters.<sup>48</sup> The reactionary nature of these recent state measures stands inapposite to the bipartisan approach following earlier controversial elections.<sup>49</sup>

For example, after the Supreme Court's controversial decision tilted Florida's Electoral College votes to George W. Bush in the 2000 election,<sup>50</sup> the new administration, along with a bipartisan group of members of Congress, resolved to pass legislation to address election administration practices and election infrastructure that failed voters. They produced the Help America Vote Act, which celebrated its twentieth anniversary on October 29, 2022.<sup>51</sup>

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40. 570 U.S. 529, 557 (2013).

41. See Act of Aug. 12, 2013, 2013 N.C. Sess. Laws 1505, 1505–59 (Parts 1 through 6 constitute the “Voter Information Verification Act”).

42. *Id.*

43. *Id.* Voter Information Verification Act, sec. 2.1, § 163-166.13, sec. 2.2, § 163-166.14, sec. 2.3, § 163-82.7A, 2013 N.C. Sess. Laws 1505, 1506–08 (excluding student identification as an eligible form of identification).

44. *Id.* sec. 25.1, § 163-227.2, 2013 N.C. Sess. Laws 1505, 1540–41.

45. See *id.* sec. 16.1, § 163-82.6A, 2013 N.C. Sess. Laws 1505, 1535.

46. *Id.* sec. 12.1(a)–(j), §§ 163-82.4(d), 163-82.23, 163-82.19(a), 163-82.20, 115C-81(g1)(1), 115C-47(59), 2013 N.C. Sess. Laws 1505, 1531–34.

47. *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees*, CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY (Nov. 12, 2020), <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

48. *Voting Laws Roundup: February 2022*, *supra* note 23.

49. See, e.g., COMM'N ON FED. ELECTION REFORM, BUILDING CONFIDENCE IN U.S. ELECTIONS 1–2 (2005); see generally PRESIDENTIAL COMM'N ON ELECTION ADMIN., THE AMERICAN VOTING EXPERIENCE: REPORT AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION (2014).

50. See *Bush v. Gore*, 531 U.S. 98, 103 (2000).

51. Help America Vote Act, 52 U.S.C. §§ 20901–21145.



Briefly, HAVA: (1) increased standardization in some election administration practices,<sup>52</sup> including voting systems that guarantee the right to vote privately and independently for voters with disabilities,<sup>53</sup> provisional voting for voters whose eligibility is challenged,<sup>54</sup> guaranteed access to certain voting information,<sup>55</sup> the implementation of centralized statewide voter registration databases,<sup>56</sup> voter identification requirements,<sup>57</sup> and changes to the federal mail voter registration form;<sup>58</sup> (2) funded investments in the election infrastructure through grant funds;<sup>59</sup> and (3) established the U.S. Election Assistance Commission to facilitate implementation of these HAVA provisions, administer grant funds, and provide support and resources to state and local election authorities.<sup>60</sup> HAVA remains among the most recent bipartisan federal legislative efforts toward expanding access and opportunity to all eligible voters. It complements other federal statutes that helped to secure or enforce the rights of voters guaranteed in the Constitution and its amendments.

Decades before HAVA, the modern era of bipartisan election reform efforts began with the Voting Rights Act.<sup>61</sup> Under the VRA, the rights secured by the Fifteenth Amendment became enforceable, primarily through Section 5,<sup>62</sup> which requires states with a history of discrimination to preclear (i.e., obtain pre-approval) any voting changes with the Department of Justice or in federal district court,<sup>63</sup> and Section 2,<sup>64</sup> which allows plaintiffs to challenge a state's demonstrated intent to discriminate against voters because of their race.<sup>65</sup> In 1975, Congress reauthorized the VRA and included language access provisions for voters

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52. *See id.* § 21081.

53. *See id.* § 21081(a)(3) (“The voting system shall— (A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters . . .”).

54. *Id.* § 21082(a).

55. *See id.* § 21082(b).

56. *See id.* § 21083(a).

57. *See id.* § 21083(b).

58. *See id.* § 21803(b)(4).

59. *See id.* §§ 21001, 21003, 21041, 21051.

60. *See id.* §§ 20921, 20922.

61. *See id.* §§ 10301–10314, 10501–10508, 10701–10702.

62. *Id.* § 10304. *But see* *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 534–35, 557 (2013) (striking the preclearance formula under Section 4 of the VRA, which limited effectiveness of the preclearance provisions under Section 5).

63. § 10304.

64. *Id.* § 10301.

65. *Id.*

with limited English proficiency.<sup>66</sup> Under Section 203, a jurisdiction must provide translated ballots and voting materials if 10,000 of its voters, or 5% of CVAP, has limited English proficiency.<sup>67</sup>

Just seven years later, Congress again reauthorized the VRA.<sup>68</sup> Most prominently, the 1982 reauthorization strengthened Section 2 by applying a “results test” to voting laws that have a disparate impact on only certain communities.<sup>69</sup> For the disabled community, the 1982 reauthorization also proved significant because Congress added provisions to accommodate voters with disabilities.<sup>70</sup> Under Section 208, voters who are blind, otherwise disabled, or unable to read or write may receive assistance from a person of their choice.<sup>71</sup> Other groundbreaking legislation includes the National Voter Registration Act,<sup>72</sup> which tied voter registration to governmental services like obtaining a driver’s license or receiving public assistance.<sup>73</sup>

While the legacy of these bills has been the steady expansion of the franchise, more recent developments have created the conditions to roll back those rights. Nevertheless, *Shelby County*<sup>74</sup> and the continued attacks on the integrity of the 2020 election<sup>75</sup> have increased demand for federal voting rights and election reform legislation. Some advocates hope legislative progress will result in a Third Reconstruction<sup>76</sup> that can reverse the policies of the post-*Shelby County* era. Legislative efforts must therefore focus equally on engaging the youth vote because sustaining the country’s democratic traditions requires the participation and trust of young voters who will assume this heavy responsibility.<sup>77</sup>

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66. Act of Aug. 6, 1975, Pub. L. No. 94-73, sec. 203, § 4(f), 89 Stat. 400, 401–02 (1975).

67. § 10503(b)(2)(A)(i)(I)–(II).

68. Act of June 29, 1982, Pub. L. No. 97-205, sec. 3, § 2, 96 Stat. 131, 134 (1982).

69. § 10301(b).

70. sec. 5, § 208, 96 Stat. 131, 135 (1982).

71. § 10508.

72. *Id.* § 20501.

73. *Id.* § 20504.

74. *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529 (2013).

75. See, e.g., *Kelly v. Commonwealth*, 240 A.3d 1255, 1255–56 (Pa. 2020), *cert. denied*, 141 S. Ct. 1449 (2021) (rejecting an effort by Republican Congressman Mike Kelly to block certification of election results in Pennsylvania); *Texas v. Pennsylvania*, 141 S. Ct. 1230, 1230 (2020) (holding the state of Texas lacked standing to block certification of election results in Pennsylvania, Georgia, Michigan, and Wisconsin); *Republican Party of Pa. v. Degraffenreid*, 141 S. Ct. 732, 732 (2021) (denying the petition for certification to the U.S. Supreme Court in three decisions that the Trump presidential campaign lost in the Pennsylvania Supreme Court).

76. See Wilfred Codrington III, *The United States Needs a Third Reconstruction*, ATLANTIC (July 20, 2020), <https://www.theatlantic.com/ideas/archive/2020/07/united-states-needs-third-reconstruction/614293/>.

77. See, e.g., Youth Voting Rights Act, S. 4500, 117th Cong. (2022) (proposing several measures to lower the barriers to youth participation, including pre-registration of sixteen-

It is clear that more must be done to encourage and facilitate youth participation in our democracy. According to the Census Bureau, eligible voters ages eighteen to twenty-four historically voted at a rate of under 50%.<sup>78</sup> Voter registration rates for this group never exceeded 58.5%,<sup>79</sup> which it reached in 2008, until 2020, when it narrowly eclipsed that mark.<sup>80</sup> Based on a different dataset that measures the youth vote ages eighteen to twenty-nine, the turnout rates in four of the “battleground” states hovered around 50%: Arizona at 51%, Georgia at 51%, Ohio at 49%, and Pennsylvania at 54%.<sup>81</sup>

Turnout based on race, ethnicity, and gender among young voters ages eighteen to twenty-nine also provided revealing information. White voters had the highest turnout rate at 61%,<sup>82</sup> though the data indicates Asian (47%) and Latino (48%) youth are closing the gap.<sup>83</sup> The voting rate for Black youth was 43%.<sup>84</sup> Of these young voters, women constituted 55% and men 44%.<sup>85</sup> Compared to the overall turnout rate of 67.7% for all CVAP,<sup>86</sup> a gap clearly remains for the youngest voters.

Of significance, the Center for Information & Research on Civic Learning has projected a national demographic shift by 2025 in which 50% of Americans ages fourteen to twenty-four will be people of color.<sup>87</sup> By comparison, in 2020, people of color constituted 43% of eighteen to twenty-nine-year-olds.<sup>88</sup> This pattern means that, if recent trends hold, by 2025, turnout among eighteen to twenty-nine-year-olds could see a corresponding decline.

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and seventeen-year-olds, wider access to voter registration and polling sites at institutes of higher education, elimination of minimum residential requirements to vote in all federal elections and authorization to use a college domicile for registration, and eligibility of school IDs to satisfy voter ID requirements, among others).

78. *Historical Reported Voting Rates, Table A-1. Reported Voting and Registration by Race, Hispanic Origin, Sex and Age Groups: November 1964 to 2020*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/voting-historical-time-series.html> (last modified Oct. 26, 2021) [hereinafter *Table A-1*].

79. *See id.* But see KIRBY & KAWASHIMA-GINSBERG, *supra* note 36 (reflecting a turnout rate of 51% for voters eighteen to twenty-nine).

80. *See Table A-1, supra* note 78 (reflecting a new record for registration of 59.8% among CVAP ages eighteen to twenty-four).

81. *See 2020 Election National Youth Voter Turnout, supra* note 35.

82. *2020 Youth Voter Turnout by Race/Ethnicity and Gender*, CIRCLE (July 27, 2021), <https://circle.tufts.edu/latest-research/2020-youth-voter-turnout-raceethnicity-and-gender>.

83. *See id.*

84. *See id.*

85. *See id.*

86. *See* EAVS 2020, *supra* note 37, at 13.

87. *See id.*

88. *See id.*

## II. THE LIMITS OF ELECTION LITIGATION

Because elections at every level are consequential for their communities, litigation surrounding their procedures, administration, and results have high stakes. *Bush v. Gore*<sup>89</sup> certainly stands among the most high-profile election law cases in recent memory. But litigation over the rules governing how elections are administered pre-date the 2000 election by several decades, including the seminal decision in *Baker v. Carr*,<sup>90</sup> which opened the courts to election litigation guaranteeing the right to vote on an equal basis. Early challenges to election administration typically focused on citizens' fundamental right to vote, such as the eligibility of absentee ballots cast by qualified voters in reliance on local and state election officials' interpretation of state law.<sup>91</sup>

These cases, while highly significant in the development of election law jurisprudence, reflect an era when litigation was reserved for cases with the highest of stakes.<sup>92</sup> Since the 2000 election, however, the political parties have learned to weaponize litigation tactics as part of their electoral strategy.<sup>93</sup> According to an online litigation tracker for the 2020 election, fifty-eight cases across the country challenged various aspects of the 2020 presidential election.<sup>94</sup> And while this litigation strategy provides political campaigns with another avenue to enhance their chances of victory, relying on the courts has the potential to erode public confidence in the political and judicial branches of government.<sup>95</sup>

One instructive example of how litigation has the potential to roll back hard-fought rights of young voters is *Texas Democratic Party v.*

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89. 531 U.S. 98 (2000).

90. 369 U.S. 186, 237 (1962).

91. See, e.g., *Griffin v. Burns*, 570 F.2d 1065, 1070 (1st Cir. 1978) (holding that Rhode Island's post-primary election invalidation of absentee and shut-in ballots constituted a due process violation that deprived those voters of their ballot).

92. See RICHARD L. HASEN, *THE SUPREME COURT AND ELECTION LAW: JUDGING EQUALITY FROM BAKER V. CARR TO BUSH V. GORE 1* (2003) (stating that "[i]n the period 1901–1960, the Court decided an average of 10.3 election law cases per decade with a written opinion" but increased to sixty per decade following *Baker v. Carr*).

93. See generally RICHARD L. HASEN, *THE VOTING WARS: FROM FLORIDA TO THE NEXT ELECTION MELTDOWN* (2012).

94. See *Case Tracker*, OHIO STATE UNIV. MORITZ COLL. OF L.: ELECTION L. AT OHIO STATE MAJOR PENDING ELECTION CASES, <https://electioncases.osu.edu/case-tracker/> (last visited Oct. 24, 2022).

95. See Derek T. Muller, *Reducing Election Litigation*, 90 *FORDHAM L. REV.* 561, 574 (2021) ("One factor that counts against litigation might be voter confidence . . . as Professor Hasen has explained, 'When courts get involved in election disputes, . . . they run a risk of undermining the public's faith in the electoral process and in the fairness of the courts.'" (quoting Richard L. Hasen, *The Untimely Death of Bush v. Gore*, 60 *STAN. L. REV.* 1, 37 (2007))).

*Abbott*.<sup>96</sup> In this lawsuit, Texas voters, who sued in both state and federal courts, sought access to absentee ballots by asserting that Texas state law, which limited absentee ballots to just three instances including for voters sixty-five and older, discriminated on the basis of age in violation of the Twenty-Sixth Amendment.<sup>97</sup> The voters pointed to the many unknowns about the virus and the potential to exposure from voting in-person.<sup>98</sup> In the federal lawsuit, the district court issued a preliminary injunction against enforcement of the law,<sup>99</sup> the U.S. Court of Appeals for the Fifth Circuit lifted the stay,<sup>100</sup> and the U.S. Supreme Court ultimately denied the petition to appeal.<sup>101</sup>

The Fifth Circuit distinguished the right to vote from the right to receive an absentee ballot.<sup>102</sup> The appeals court then examined, and easily resolved, whether the Texas law “denied” younger voters that right, relying on both pre- and post-Amendment opinions that established denial as an absolute prohibition from voting.<sup>103</sup> It next assessed whether the Texas law “abridged” the rights of younger voters, ultimately deciding that the right to vote is abridged “if it makes voting *more difficult*” than before.<sup>104</sup> In sum, the Fifth Circuit found that “conferring a benefit on [one] class of voters does not deny or abridge the plaintiffs’ Twenty-Sixth Amendment right to vote.”<sup>105</sup> As demonstrated in this example, in upholding Texas election code limiting absentee ballots to certain age demographics, litigation opened the door to other potential age-discriminatory voting policies.

Voters, advocacy groups, and candidates also pursued litigation in response to changes that state legislatures, executives, and other election authorities implemented in response to the pandemic.<sup>106</sup> A second litigation tracker logged more than 350 election-related lawsuits that

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96. *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 174 (5th Cir. 2020).

97. *See In re State*, 602 S.W.3d 549, 552 (Tex. 2020); *see also Abbott*, 978 F.3d at 174.

98. *See Abbott*, 978 F.3d at 174 (citing *In re State*, 602 S.W.3d at 552).

99. *See Tex. Democratic Party v. Abbott*, 461 F. Supp. 3d 406 (W.D. Tex. 2020).

100. *See Abbott*, 978 F.3d at 194.

101. *See Tex. Democratic Party v. Abbott*, 141 S. Ct. 1124, 1124 (2021) (denying petition for writ of certiorari).

102. *See Abbott*, 978 F.3d at 183–84.

103. *See id.* at 176 (citing *McDonald v. Bd. of Election Comm’rs of Chi.*, 394 U.S. 802, 807–08 (1969)); *see also id.* at 188 (citing *Goosby v. Osser*, 409 U.S. 512, 521 (1973)).

104. *See id.* at 188–92.

105. *Id.* at 194.

106. *See generally* Benjamin E. Griffith & Lauren E. Ward, *Voting in a Pandemic: The Effects of COVID-19 on America’s Elections*, 66 S.D. L. REV. 401, 410 (2021) (discussing litigation in Wisconsin, New York, Texas, Louisiana, Oklahoma, Alabama, North Dakota, and Kentucky challenging post-pandemic measures affecting primary elections in those states).

were filed, citing the COVID pandemic as a basis for the challenge.<sup>107</sup> While many of these lawsuits were filed in the earliest weeks of the pandemic when much remained unknown about the virus,<sup>108</sup> they nevertheless provide guidance about the types of policies that could mitigate future disruptions to voting by increasing access to the ballot and focusing on voter-centric policies that accommodate voters to register and vote.

If implemented, these policies also reduce the need to litigate, which consumes valuable time and resources, and could result in a patchwork of rulings that fail to cohere until appealed to a higher court. The jurisprudence under the Twenty-Sixth Amendment also cautions against relying on litigation without further development of the legal framework that courts use to analyze these claims.<sup>109</sup> Given the deference afforded to the status quo by the Supreme Court in *Purcell v. Gonzalez*,<sup>110</sup> voters can also avoid the uphill task of convincing a court to alter election rules leading up to an election.

### III. LESSONS LEARNED FROM VOTING DURING A PANDEMIC

In February and March 2020, as the COVID-19 pandemic forced schools, offices, restaurants, and entertainment venues to close overnight,<sup>111</sup> the primary election season was well under way.<sup>112</sup> Federal, state, and local authorities quickly recognized that this viral threat would also disrupt the basic exercise of voting.<sup>113</sup>

While few could predict exactly what election administration would ultimately look like in 2020, it was clear very quickly that it would be

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107. See *COVID-Related Election Litigation Tracker*, STANFORD-MIT HEALTHY ELECTIONS PROJECT, <https://healthyelections-case-tracker.stanford.edu/> (last visited June 29, 2022).

108. See *id.*

109. See, e.g., Yael Bromberg, *Youth Voting Rights and the Unfulfilled Promise of the Twenty-Sixth Amendment*, 21 U. PA. J. CONST. L. 1105, 1112 (2019) (arguing for a standard of review under the Twenty-Sixth Amendment that is “sensitive to the particularities of young voters, who are especially susceptible to suppression in part because they are most likely to be voting for the first time”).

110. 549 U.S. 1, 5–6 (2006) (footnote omitted) (refusing to enjoin Arizona’s voter identification rules because of “the imminence of the election and the inadequate time to resolve the factual disputes” in a timely manner).

111. See, e.g., Cal. Exec. Order No. N-33-20 (Mar. 19, 2020).

112. See FED. ELECTION COMM’N, 2020 PRESIDENTIAL PRIMARY DATES AND CANDIDATE FILING DEADLINES FOR BALLOT ACCESS 1–6 (2020).

113. See, e.g., Press Release, U.S. Election Assistance Commission, EAC Announces Additional Resources for Election Officials Concerning Coronavirus (COVID-19) (Mar. 17, 2020), <https://www.eac.gov/news/2020/03/17/eac-announces-additional-resources-election-officials-concerning-coronavirus-covid>.

different from past years. Prior to 2020, voters predominantly voted in-person at their polling place on Election Day.<sup>114</sup> In the 2016 general election, 54.5% of voters cast ballots in person on Election Day.<sup>115</sup> For the 2018 midterm elections, 58.2% of voters reported doing so.<sup>116</sup> Voter preference, coupled with the options state and local officials provided Americans during the pandemic, resulted in the rate of in-person Election Day voting dropping to 30.5% in November 2020.<sup>117</sup> Instead, record numbers of voters chose to vote absentee or by mail.<sup>118</sup> In 2016, voters who used mail ballots stood at 24.5%.<sup>119</sup> In 2018, that rate was 25.6%.<sup>120</sup> Through the expansion of absentee and mail ballots in 2020, 43.1% of voters cast a ballot by mail,<sup>121</sup> 18.6 percentage points higher than in 2016 and 17.5 percentage points higher than in 2018.<sup>122</sup>

In-person early voting also increased following its adoption by more states and expanded opportunities to vote early, including longer periods of early voting and the use of vote centers.<sup>123</sup> Overall, forty-five states offer early in-person voting.<sup>124</sup> In 2020, 30.6% of voters reported using some form of early in-person voting.<sup>125</sup> By comparison, in 2016, 25.3% of voters reported voting in-person early and just 22% of voters did so in 2018.<sup>126</sup>

For voters with disabilities, the measures election officials took to guard against COVID-19 may have also helped increase accessibility to the ballot for this community. A 2021 Election Assistance Commission study about accessibility for the disabled community illustrates these advances.<sup>127</sup> In it, researchers from Rutgers University found that voter turnout in 2020 increased among voters with disabilities by 5.9 points

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114. See EAVS 2020, *supra* note 37, at 8.

115. See *id.*

116. See *id.*

117. See *id.* at 8, 11–14.

118. See *id.*

119. See *id.* at 10 & fig.3.

120. See *id.* at 10.

121. See *id.*

122. See *id.*

123. See *id.* (stating that twenty-one states reported using vote centers or allowing voters to cast a ballot outside of their polling place).

124. See *Early In-Person Voting*, NAT'L CONF. OF STATE LEGISLATURES (July 18, 2022), <https://www.ncsl.org/research/elections-and-campaigns/early-voting-in-state-elections.aspx>.

125. See EAVS 2020, *supra* note 37, at 1, 10, 38 tbl.3.

126. See *id.* at 10 fig.3.

127. LISA SCHUR & DOUGLAS KRUSE, DISABILITY AND VOTING ACCESSIBILITY IN THE 2020 ELECTIONS: FINAL REPORT ON SURVEY RESULTS SUBMITTED TO THE ELECTION ASSISTANCE COMMISSION 15 (2021).

compared to 2016.<sup>128</sup> This increase spanned every demographic category, including disability type, age, race, gender, and geographic region.<sup>129</sup>

Local election officials deserve a tremendous amount of credit for meeting voters where they were and providing several options that allowed voters to participate in whatever way they were most comfortable with during the pandemic. Voters certainly responded to these options with record numbers of Americans voting in 2020.<sup>130</sup> There were additional factors that contributed to the success of the administration of the 2020 election, including the influx of resources and significant communications efforts.

At the federal level, Congress appropriated \$400 million to “prevent, prepare for, and respond to coronavirus . . . for the 2020 Federal election cycle”<sup>131</sup> and charged the EAC with establishing guidelines for its distribution and accountability.<sup>132</sup> Under the Act, Congress restricted the funds to costs associated with the pandemic on primaries that included federal offices and the general election in November.<sup>133</sup>

States quickly applied for these funds, which the agency disbursed within thirty days.<sup>134</sup> These funds were spent to protect voters and election workers, including personal protective equipment; temporary staff to manage the much higher volume of absentee/mail ballots; communication to inform voters of changes in processes; printing mail-in ballots and envelopes, postage, processing equipment and ballot drop boxes; and expansion of polling locations.<sup>135</sup>

In addition to this much-needed federal funding, there were philanthropic contributions to assist election officials with the increased costs and challenges they faced. Most notably, the Chan Zuckerberg Initiative provided roughly \$400 million that was used for grants to state and local officials.<sup>136</sup> This money paid for personal protective equipment,

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128. See generally LISA SCHUR & DOUGLAS KRUSE, FACT SHEET: DISABILITY AND VOTER TURNOUT IN THE 2020 ELECTIONS (2021).

129. *Id.*

130. See EAVS 2020, *supra* note 37, at 8.

131. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281, 530 (2020).

132. *Id.*

133. See U.S. ELECTION ASSISTANCE COMM’N, 2020 ANNUAL REPORT 17 (2020).

134. *See id.*

135. *See id.* at 29–31.

136. See Press Release, Center for Tech and Civic Life, Priscilla Chan and Mark Zuckerberg Commit \$300 Million Donation to Promote Safe and Reliable Voting During COVID-19 Pandemic (Sept. 1, 2020), <https://www.documentcloud.org/documents/7070695-CTCL-CEIR-Press-Release-9-1-20-FINAL.html>; see also Press Release, Center for Tech and Civic Life, Priscilla Chan and Mark Zuckerberg Commit Additional \$100 Million for Safe and Reliable Voting to Meet Overwhelming Demand (Oct. 13, 2020), <https://www.techandcivicle.org/100m/>; *Election Offices that Received CTCL COVID-19*



additional office space to allow for social distancing, hazard pay and overtime to encourage poll workers and others to help with the election, and communications efforts to help voters understand their options and to encourage them to make plans to vote.<sup>137</sup>

These and other communications efforts were also a significant part of the 2020 election story. In addition to election officials, many other leaders,<sup>138</sup> corporations,<sup>139</sup> non-profits,<sup>140</sup> celebrities,<sup>141</sup> and others promoted critical election information in 2020. These efforts ranged from those that promoted voting as safely as possible during the pandemic<sup>142</sup> and encouraged Americans to “make a plan to vote,”<sup>143</sup> to public service announcements about very specific pieces of election administration rules that some people might have been unfamiliar with and efforts to recruit poll workers.<sup>144</sup> These efforts clearly made a tremendous

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*Response Grants*, CTR. FOR TECH & CIVIC LIFE (Mar. 12, 2021), <https://www.techandcivicle.org/grant-update-march/> (“In total, CTCL distributed approximately \$350 million in grant funds.”).

137. See CTR. FOR TECH. & CIVIC LIFE, *ELECTION OFFICIALS MADE DEMOCRACY HAPPEN IN 2020* (2021), <https://www.techandcivicle.org/wp-content/uploads/2021/11/Election-Officials-Made-Democracy-Happen-in-2020.pdf>; see also *A First Look at CTCL Grant Program Impact*, CTR. FOR TECH & CIVIC LIFE (Nov. 13, 2020), <https://www.techandcivicle.org/grant-update-november/>.

138. See, e.g., *#TrustedInfo2020*, NAT'L ASS'N OF SEC'YS OF STATE, <https://www.nass.org/initiatives/trustedinfo2020> (last visited June 29, 2022) (now “*#TrustedInfo2022*”).

139. See, e.g., NIKE, *YOU CAN'T STOP OUR VOICE* 5–9 (2020), <https://www.nike.com/pdf/nike-2020-voting-guide.pdf>.

140. See, e.g., *Election Information You Need Brought to You by League of Women Voters Education Fund*, VOTE 411, <https://www.vote411.org/> (last visited June 29, 2022).

141. Benjamin VanHoose, *Mark Ruffalo, Amy Schumer, Chris Rock, More Stars Strip Down to Explain ‘Naked Ballots’ in PSA*, PEOPLE (Oct. 8, 2020), <https://people.com/politics/mark-ruffalo-amy-schumer-more-celebs-strip-down-to-explain-naked-ballots-for-representus-psa/>.

142. See, e.g., Jo Ann Jenkins, *It’s Time to Plan for How to Safely Cast Your Ballot*, AM. ASS'N OF RETIRED PERSONS (Sept. 22, 2020), <https://www.aarp.org/politics-society/advocacy/info-2020/jenkins-election-voting-coronavirus.html> (highlighting AARP’s Protect Voters 50+ effort).

143. See, e.g., Darryll J. Pines, *Election 2020: Resources and Guidance on Civic Participation in the 2020 Presidential Election*, UNIV. OF MD., <https://umd.edu/election-2020> (last visited June 29, 2022); see also Jonathan Holloway, *Election 2020 - Register Now and Make a Plan to Vote*, RUTGERS OFF. OF THE PRESIDENT (Oct. 1, 2020), <https://www.rutgers.edu/president/election-2020-register-now>.

144. See, e.g., Juana Summers & Miles Parks, *The Most Important Mail You’ll Ever Send: A Ballot*, NPR (Aug. 11, 2020), <https://www.npr.org/2020/08/07/900210406/the-most-important-mail-youll-ever-send-a-ballot>; *Help Staff Your Local Polling Place*, POWER THE POLLS, <https://www.powerthepolls.org/> (last visited June 29, 2022).

difference.<sup>145</sup> As discussed, there were record numbers of early and mail voters,<sup>146</sup> which helped spread the vote out and limit polling place congestion as was suggested by Centers for Disease Control (“CDC”) guidance.<sup>147</sup> Additionally, despite the huge surge in first-time mail voters, rejection rates actually decreased.<sup>148</sup> At least some of this trend must be attributed to widespread voter education and communication efforts.

The successful administration of the 2020 general election in the face of unprecedented challenges presented by the COVID-19 pandemic was truly remarkable. This success was possible because so many Americans, from election officials to advocates and voters, came together and did what needed to be done to make it happen. While the 2020 election should be behind us, there are lessons that can be learned to help all Americans participate in future elections and may be particularly effective in addressing some of the challenges faced by our youngest voters.

#### IV. ADMINISTRATIVE SOLUTIONS

The response by election administrators during the pandemic provides guidance about the types of successful voter-centric measures that minimize bureaucratic barriers for voters before and on Election Day and encourages continued participation in future elections. In particular, automated processes—like automatic registration and all-mail elections—proved most successful in increasing participation by young voters while ensuring easier access for all voters in future elections.<sup>149</sup> This section will review some of those processes and recommend policies that could serve as federal floors for voting access or that states should consider adopting.

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145. See EAVS 2020, *supra* note 37, at 22 & fig.5 (reflecting a decrease to 52% in 2020 from 64.6% in 2016 in the number of jurisdictions reporting that it was either “very difficult” or “somewhat difficult” to recruit poll workers).

146. See *id.*; see also *infra* Part IV.B; Zachary Scherer, *Majority of Voters Used Nontraditional Methods to Cast Ballots in 2020*, U.S. CENSUS BUREAU (Apr. 29, 2021), <https://www.census.gov/library/stories/2021/04/what-methods-did-people-use-to-vote-in-2020-election.html>.

147. U.S. ELECTION ASSISTANCE COMM’N & CTRS. FOR DISEASE CONTROL & PREVENTION, *CONSIDERATIONS FOR ELECTION POLLING LOCATIONS AND VOTERS* 7 (2020).

148. See Declan Chin, *A Deep Dive into Absentee Ballot Rejection in the 2020 General Election*, MIT ELECTION DATA & SCI. LAB (Dec. 16, 2021), <https://elections-blog.mit.edu/articles/deep-dive-absentee-ballot-rejection-2020-general-election>.

149. See Kelly Beadle et al., *Most Youth Voted Early/Absentee, But Some Differences by Candidate Support & Race*, CIRCLE (Nov. 25, 2020), <https://circle.tufts.edu/latest-research/election-week-2020#when-and-how-young-people-voted>.

*A. Voter Registration*

As the precursor to participating at the ballot box, voter registration remains important to the election process. Though generally the province of the states,<sup>150</sup> federal legislation has previously addressed voter registration practices. Under the NVRA, state agencies provide voter registration opportunities at motor vehicle agencies and public assistance offices.<sup>151</sup> In 2002, Congress took additional action to modernize and improve voter registration through HAVA, mandating statewide voter registration systems.<sup>152</sup> HAVA also transferred responsibility of the mail-based registration form to the EAC from the Federal Election Commission.<sup>153</sup>

While intended to boost voter registration, eligible citizens continue to face barriers despite these federal efforts. In 2020, 72.7% of CVAP were registered to vote,<sup>154</sup> a rate similar to 2016 (70.3%)<sup>155</sup> and 2012 (71.2%).<sup>156</sup> Among young voters ages eighteen to twenty-four, 59.8% registered to vote in 2020.<sup>157</sup> Compared to the overall registration among CVAP, the lower rate in this demographic is attributed to multiple factors. In one study, more than one quarter (28%) cited a lack of time in their schedules or not enough time to meet the registration deadline.<sup>158</sup> The study noted the pandemic's disproportionate impact on the economic well-being of this age group.<sup>159</sup> Further disparities within this age group exist for the youngest voters (i.e., ages eighteen and nineteen), with 17% reporting that they did not know how to register to vote or had problems with the

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150. See U.S. CONST. art. I, § 4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . .”).

151. 52 U.S.C. §§ 20504, 20506.

152. See *id.* § 20507.

153. See *id.* §§ 20505, 20508(a)(2) (“The Election Assistance Commission . . . (2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form for elections for Federal office.”).

154. See *Table A-1, supra* note 78.

155. See *id.*

156. See *id.*

157. See *id.*

158. See Kelly Beadle et al., *Young People Embraced Voting by Mail, But Improvements Still Needed to Engage All Youth*, CIRCLE (Feb. 26, 2021), <https://circle.tufts.edu/latest-research/young-people-embraced-voting-mail-improvements-still-needed-engage-all-youth>.

159. See Kristian Lundberg & Rey Junco, *Deeply Affected by the Pandemic, Youth Are Committed to Helping Others*, CIRCLE (July 14, 2020), <https://circle.tufts.edu/latest-research/deeply-affected-pandemic-youth-are-committed-helping-others> (“Two-thirds of young people report feeling moderately or significantly economically affected by the COVID-19 pandemic . . .”).

registration application.<sup>160</sup> As the research suggests, in states that make it easier to register through methods like automatic and same day registration (coupled with more options for voting), the youth voting rate is higher.<sup>161</sup>

To sustain this momentum, policymakers should push for voter-centric reforms that allow and encourage Americans to participate. Such policies succeeded in new and updated registrations amid a global pandemic because authorities focused on good customer service measures that prioritized voter safety and met voters' needs at their convenience.<sup>162</sup> On a consistent basis, good governance ensures positive experiences for voters and can increase confidence in our democracy.

Under the NVRA, states cannot require voters to register to vote more than thirty days prior to an election.<sup>163</sup> Most states have shorter registration deadlines, ranging from fifteen to thirty days prior to an election.<sup>164</sup> Same-day registration allows voters to register and vote concurrently.<sup>165</sup> As of June 2022, twenty-one states and the District of Columbia have implemented same-day registration reforms.<sup>166</sup> In a study of the 2004 election, voting rates increased 7.1% in states with same-day

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160. See Beadle et al., *supra* note 158.

161. See Rob Griffin et al., *Who Votes With Automatic Voter Registration?*, CTR. FOR AM. PROGRESS (June 7, 2017), <https://www.americanprogress.org/article/votes-automatic-voter-registration/> (finding about 40% of AVR registrants and 37% of AVR voters were age thirty or younger though voters ages eighteen to twenty-nine comprised only 20% of CVAP in the state). A potential factor that may limit the effectiveness of automatic registration includes the decreasing rates of eligible teenagers who obtain a driver's license because it translates to fewer opportunities to register at the Department of Motor Vehicles, impedes the ability to get to the polls, and could be a barrier where voter identification laws are stricter. See Charlotte Hill, *Young People Face Higher Voting Costs and Are Less Informed About State Voting Laws* 7 (Aug. 8, 2020) (unpublished manuscript) (on file with Berkeley Institute for Young Americans); see also MICHAEL SIVAK & BRANDON SCHOETTLE, UNIV. OF MICH. TRANSP. RSCH. INST., *INFLUENCE OF CURRENT NONDRIVERS ON THE AMOUNT OF TRAVEL AND TRIP PATTERNS WITH SELF-DRIVING VEHICLES* 2 tbl.1 (2015) (reflecting a decrease in the percentage of eighteen- and nineteen-year-olds with a driver's license to 66.2% in 2013 from 83.9% in 1983).

162. Kelly Beadle et al., *The Impact of Voting Laws on Youth Turnout and Registration*, CIRCLE (Mar. 17, 2022), <https://circle.tufts.edu/latest-research/impact-voting-laws-youth-turnout-and-registration>.

163. See 52 U.S.C. § 20507(a)(1)(A) (establishing registration deadlines at state motor vehicle authorities, by mail, at voter registration agencies, and in other cases as "not later than the lesser of 30 days, or the period provided by State law, before the date of the election").

164. *Voter Registration Deadlines*, NAT'L CONF. OF STATE LEGISLATURES (July 12, 2022), <https://www.ncsl.org/research/elections-and-campaigns/voter-registration-deadlines.aspx>.

165. See *Same Day Voter Registration*, NAT'L CONF. OF STATE LEGISLATURES (June 13, 2022), <https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>.

166. See *id.*

registration.<sup>167</sup> A more recent study suggests that same-day registration is most effective in boosting voter turnout among younger voters.<sup>168</sup> The study suggests that same-day registration is effective for younger voters because their life circumstances make them more vulnerable to registration barriers, which remains the entry point for voting and consistent civic participation.<sup>169</sup> As examples, the study suggests that, unlike older voters, younger voters may be less settled in their careers, relationships, and residencies.<sup>170</sup> Further, as they become eligible to vote, some eighteen-year-olds move away from home for the first time to attend college or begin adulthood.<sup>171</sup> Expanding same-day registration policies would reduce registration barriers for young voters who are often unfamiliar with voter registration laws, more mobile, and often more vulnerable to disenfranchisement because of voter registration deadlines.

In lieu of, or in combination with, same-day registration, another policy that would ease registration issues is statewide portability, which allows voters to maintain their registered status regardless of where they move within a state.<sup>172</sup> Like same-day registration, portability automates the registration process for voters who may move from the residence where they had registered to vote.<sup>173</sup> While each state or locality dictates whether registration is portable, the NVRA establishes a federal precedent for addressing this issue at the national level. Specifically, the NVRA allows voters who have moved within a jurisdiction to vote at either (1) their old polling place, (2) their new polling place, or (3) an election administration office.<sup>174</sup>

Expanding the ability to update one's registration information statewide was simplified by technology. Initially, at the time of the NVRA's passage in 1993, voter lists only existed at the local jurisdiction with no mechanism for convenient sharing across a state.<sup>175</sup> After Congress adopted HAVA and required statewide voter registration

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167. Michael P. McDonald, *Portable Voter Registration*, 30 POL. BEHAV. 491, 495 (2008).

168. See generally Jacob M. Grumbach & Charlotte Hill, *Rock the Registration: Same Day Registration Increases Turnout of Young Voters*, 84 J. POLITICS 405 (2022).

169. See *id.* at 407.

170. See *id.*

171. See *id.*

172. See, e.g., Voter Empowerment Act of 2021, S. 954, 117th Cong. § 116 (2021) (proposing registration portability).

173. *VRM in the States: Portability*, BRENNAN CTR. FOR JUST. (Feb. 3, 2017), <https://www.brennancenter.org/our-work/research-reports/vrm-states-portability>.

174. 52 U.S.C. § 20507(e)(2)(A).

175. *Voter Registration List Maintenance*, NAT'L CONF. OF STATE LEGISLATURES (Oct. 7, 2021), <https://www.ncsl.org/research/elections-and-campaigns/voter-list-accuracy.aspx> ("[I]n the past, many states had collections of local lists rather than a single, statewide list . . .").

databases,<sup>176</sup> local election officials gained the ability to identify any of their voters' records to update their address. The expansion of portability could result in millions of additional votes being counted and prevent American citizens from disenfranchisement simply due to an intrastate change of address.

Indeed, the potential impact of portability for younger voters is significant because studies indicate that 12% of Americans change their address every year,<sup>177</sup> an issue relevant to younger voters who may be more inclined than older generations to move for educational or career opportunities.<sup>178</sup> Data from the 2020 Census reflects that voters who have been in the same residence for five years or more voted at a rate of 62.2%.<sup>179</sup> By comparison, even voters with three to four years of residency at the same address only voted at a rate of 13.8%.<sup>180</sup> Voters with one to two years at the same address voted at a rate of 12.8%.<sup>181</sup> And voters with less than a year at their address voted at a rate of just 9.9%.<sup>182</sup> By removing the added barrier of updating registration with every change of address, states can encourage higher participation rates.

### *B. Absentee and Mail Ballots*

The 2020 election posed significant challenges to election officials, requiring many to administer both a safe, socially distanced, in-person voting operation alongside the largest absentee or mail ballot operation their jurisdictions ever experienced. Absentee and mail ballot operations remain under the province of state law.<sup>183</sup> In the 2018 election, just three states offered statewide vote-by-mail (Colorado, Oregon, and Washington).<sup>184</sup> Another four states offered vote-by-mail in some

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176. 52 U.S.C. § 21083(a).

177. Press Release, U.S. Census Bureau, Census Bureau Reports National Mover Rate Increases After a Record Low in 2011 (Dec. 10, 2012), [https://www.census.gov/newsroom/releases/archives/mobility\\_of\\_the\\_population/cb12-240.html](https://www.census.gov/newsroom/releases/archives/mobility_of_the_population/cb12-240.html).

178. See Grumbach & Hill, *supra* note 168, at 405.

179. See JACOB FABINA & ZACHARY SCHERER, U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2020 8 tbl.2 (2022), <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p20-585.pdf>.

180. See *id.*

181. See *id.*

182. See *id.*

183. See U.S. CONST. art. I, § 4, cl. 1.

184. U.S. ELECTION ASSISTANCE COMM'N, ELECTION ADMINISTRATION AND VOTING SURVEY: 2018 COMPREHENSIVE REPORT 70 (2019), [https://www.eac.gov/sites/default/files/eac\\_assets/1/6/2018\\_EAVS\\_Report.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf) [hereinafter EAVS 2018].

jurisdictions (California, Minnesota, Nebraska, and Utah).<sup>185</sup> By 2020, that number doubled to fourteen states offering either statewide vote-by-mail or vote-by-mail in certain jurisdictions.<sup>186</sup>

In the states with available data that offered vote-by-mail, turnout for voters eighteen to twenty-nine exceeded even the national average of youth voters in all but one state (Colorado at 67%, Oregon at 59%, Washington at 58%, California at 54%, New Jersey at 67%, Nevada at 53%, and Vermont at 49%).<sup>187</sup> Even for voters ages eighteen and nineteen, turnout likewise met or exceeded the national average of youth voters in all but one state (Colorado at 57%, Oregon at 50%, Washington at 58%, California at 57%, New Jersey at 65%, Nevada at 61%, Vermont at 39%).<sup>188</sup> The data are encouraging but require additional analysis to determine whether a positive correlation exists between turnout rate in these all-mail election states and the use of mail ballots.

While both popular and widely accessible during the 2020 election, not all absentee and mail ballot operations were designed equally. For example, in Missouri, voting rights advocates sued to challenge alleged discrepancies in the way the state administered its absentee and mail ballot operations.<sup>189</sup> While plaintiffs originally convinced the district court to enjoin the state law governing absentee and mail ballot operations, the U.S. Court of Appeals for the Eighth Circuit reversed, holding that the discrepancies in how the state administered absentee and mail ballots did not pose a severe burden on voters despite the likelihood that some ballots would be rejected.<sup>190</sup>

Other issues complicated the return of absentee and mail ballots and may have led to confusion, especially for newer voters. For example, in seventeen states, absentee and mail ballots included pre-paid postage return envelopes to defray costs for individual voters and/or to ensure that ballots could be returned more easily, especially by younger voters who used the mail system at lower rates and might have been less familiar with it.<sup>191</sup> Some states included grace periods for voters to cure

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185. *See id.*

186. *See id.* (reflecting statewide vote-by-mail in Colorado, Washington, Oregon, California, Hawaii, Nevada, New Jersey, Utah, Vermont, and the District of Columbia and vote-by-mail in certain jurisdictions in Idaho, Minnesota, Montana, and Nebraska).

187. *See 2020 Election National Youth Voter Turnout, supra* note 35.

188. *See id.*

189. *See* Complaint at 19–22, *Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790 (W.D. Mo. 2020) (No. 20-cv-4184).

190. *See* *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 608 (8th Cir. 2020).

191. *See Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options*, NAT'L CONF. OF STATE LEGISLATURES (July 12, 2022), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#pay>.

defects in their mail ballots, like signature matching requirements that disproportionately affect younger voters who rely on technology to communicate and may be less consistent in how they sign their names.<sup>192</sup>

Additionally, states also varied widely in absentee and mail ballot return deadlines. According to the Election Administration and Voting Survey, the top reasons for rejecting mailed ballots were non-matching signatures, no signatures, and missed deadlines.<sup>193</sup> While some extended the deadline for receipt beyond Election Day, others were only compelled following litigation.<sup>194</sup> Yet, even during a pandemic, in 2020, more than half of states still required mailed ballots to be returned on or before Election Day in order to be counted.<sup>195</sup> Ballot collection practices also varied widely, making misinformation about the limits on the number of ballots an individual could return or that person's relationship to the voter a significant barrier.<sup>196</sup> Ballot drop box locations also proved challenging in jurisdictions that placed them indoors with limited hours of operation.<sup>197</sup>

Kentucky provides a recent example of how mail ballot election reforms correlate to a reduction in rejection rates. In 2020, in addition to many other voter focused reforms, Kentucky adopted temporary changes<sup>198</sup> that the legislature codified the following year,<sup>199</sup> including a signature cure process and a voter services portal that allowed voters to track their mailed ballots.<sup>200</sup> As a result, Kentucky cut its mailed ballot rejection rate from one of the highest in the nation of 6.8% in 2018,<sup>201</sup> to 0.6% in 2020.<sup>202</sup> As is illustrated, passing voter-focused legislative

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192. *Table 15: States with Signature Cure Processes*, NAT'L CONF. OF STATE LEGISLATURES (Jan. 18, 2022), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-15-states-that-permit-voters-to-correct-signature-discrepancies.aspx> (identifying twenty-four states that require notice and an opportunity to cure signature discrepancies).

193. See EAVS 2020, *supra* note 37, at 14 tbl.2.

194. See Wendy R. Weiser et al., *Mail Voting: What Has Changed in 2020*, BRENNAN CTR. FOR JUST. (Sept. 17, 2020), <https://www.brennancenter.org/our-work/research-reports/mail-voting-what-has-changed-2020> (citing litigation in ten states).

195. See EAVS 2020, *supra* note 37, at 72.

196. See, e.g., Alexandra Popke et al., *Ballot Collection Laws and Litigation*, LAWFARE (Oct. 22, 2020, 10:46 AM), <https://www.lawfareblog.com/ballot-collection-laws-and-litigation>.

197. See Weiser et al., *supra* note 194.

198. See *Election Law Updates*, OFF. OF THE KY SEC'Y OF STATE, <https://sos.ky.gov/elections/Pages/Election-Reform.aspx> (last visited June 9, 2022).

199. Act of Apr. 7, 2021, 2021 Ky. Acts 1435, 1435–1505.

200. *Election Law Updates*, *supra* note 198 (noting the bill's voter services portal and signature cure process provisions).

201. See EAVS 2018, *supra* note 184, at 29 tbl.2.

202. See EAVS 2020, *supra* note 37, at 35 tbl.2.



reforms, such as extending ballot receipt deadlines, authorizing a signature cure process, and implementing ballot tracking, can result in a significant reduction of rejected mailed ballots.

*C. In-Person Voting (Early and Election Day)*

In-person voting operations also experienced some challenges during the 2020 election.<sup>203</sup> Protecting voters and election workers from COVID ranked high among them.<sup>204</sup> In response, more states adopted early in-person voting to avoid overcrowding and long wait lines on Election Day itself.<sup>205</sup> Even in some states with early voting, state governments extended the window for early voting,<sup>206</sup> allowing more flexibility for voters with little or no paid time off from work, students with schedules less regular than standard business hours, or conflicting responsibilities that otherwise limit voters on Election Day.

Significantly, many jurisdictions adopted the use of vote centers during the early voting period, which allowed voters from multiple precincts to vote in a central location and still use their specific ballot.<sup>207</sup> In 2020, these jurisdictions began using large venues like sports stadiums or civic centers that were accessible by public transportation and could accommodate more voters while maintaining social distance.<sup>208</sup> Vote centers also had the advantage of minimizing the use of provisional ballots, which are offered as a fail-safe voting option for voters who show up at the wrong poll site or are otherwise not included in the list of eligible voters at a specific polling location.<sup>209</sup>

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203. See *2020 General Election Preparations: Hearing Before the S. Comm. on Rules & Admin.*, 116th Cong. 13 (2020) (statement of Kristen Clarke, Pres. and Exec. Dir., Lawyers' Committee for Civil Rights Under Law) (describing primary election day issues in Wisconsin, Georgia, and Pennsylvania).

204. See *id.* at 137–39 (letter from Benjamin W. Hovland, Chair, U.S. Election Assistance Comm'n, to Roy Blunt, Chairman, S. Comm. on Rules & Admin., and Amy Klobuchar, Ranking Member, S. Comm. on Rules & Admin. (July 21, 2020) (citing U.S. Election Assistance Comm'n, *Public Hearing - EAC: Lessons Learned from the 2020 Primary*, <https://www.eac.gov/videos/public-hearing-eac-lessons-learned-2020-primary-elections> (last visited Oct. 24, 2022)).

205. See *id.*

206. See, e.g., 47 Ky. Admin. Reg. 678, 678 (October 2020) (implementing Ky. Exec. Order No. 2020-688 (Aug. 14, 2020), which expanded early in-person voting to three weeks beginning October 13, 2020).

207. See EAVS 2020, *supra* note 37, at 76 (finding twenty-one states and territories reported using vote centers, with eight of them requiring their use).

208. Kate Brumback & Larry Lage, *Arenas, Stadiums Find New Life as Safer Options for Voting*, ASSOCIATED PRESS (Oct. 22, 2020), <https://apnews.com/article/election-2020-nfl-nba-virus-outbreak-primary-elections-36560251b8fa01deca154ffd3d490c84>.

209. See Leonard Shambon & Keith Abouchar, *Trapped by Precincts? The Help America Vote Act's Provisional Ballots and the Problem of Precincts*, 10 N.Y.U. J. LEGIS. & PUB. POL'Y

## V. CREATING ENGAGED CITIZENS

As discussed, there are certainly ways to improve election administration, particularly through voter-centric policies that can facilitate the registration and voting process so more Americans cast a ballot that counts.<sup>210</sup> Nevertheless, even in states that have adopted many of these policies, a participation gap remains.<sup>211</sup> Addressing election administration challenges is only one piece in a bigger puzzle of citizen and youth engagement.<sup>212</sup> For example, many variables affect voter turnout, such as the candidates and policy issues on the ballot in any given election.<sup>213</sup>

While no simple solution can fill this gap, a solid foundation in civic education can establish lifelong engagement in local and national affairs.<sup>214</sup> This education includes non-partisan civic activities like poll working, which experienced renewed interest during the 2020 election amid the COVID pandemic and was encouraged by elected officials,<sup>215</sup> corporations,<sup>216</sup> amateur and professional sports organizations,<sup>217</sup>

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133, 183 (2006) (citing U.S. ELECTION ASSISTANCE COMM'N, *Provisional Ballots*, in FINAL REPORT OF THE 2004 ELECTION DAY SURVEY 6-2, 6-12 (2005)).

210. See *supra* Part IV.

211. See *supra* Part IV.

212. See, e.g., MCDONALD & HANMER, *supra* note 29, at 1–2.

213. See Andre Blais, *What Affects Voter Turnout?*, 9 ANN. REV. POL. SCI. 111, 119 (2006) (discussing existing literature on the relationship of electoral competitiveness and voter turnout). See generally ABBY KIESA, ET AL., CIRCLE GROWING VOTERS: BUILDING INSTITUTIONS AND COMMUNITY ECOSYSTEMS FOR EQUITABLE ELECTION PARTICIPATION (2022), [https://circle.tufts.edu/sites/default/files/2022-08/circle\\_growing\\_voters.pdf](https://circle.tufts.edu/sites/default/files/2022-08/circle_growing_voters.pdf) (discussing the inequities in youth voter turnout based on educational attainment).

214. See REBECCA WINTHROP, THE NEED FOR CIVIC EDUCATION IN 21ST-CENTURY SCHOOLS 4 (2020), [https://www.brookings.edu/wp-content/uploads/2020/04/BrookingsPolicy2020\\_BigIdeas\\_Winthrop\\_CivicEducation.pdf](https://www.brookings.edu/wp-content/uploads/2020/04/BrookingsPolicy2020_BigIdeas_Winthrop_CivicEducation.pdf) (“In a democracy, however, the values that are at the core of civic learning are different. They are foundational to helping young people develop the dispositions needed to actively engage in civic life and maintain the norms by which Americans debate and decide their differences.”).

215. See *supra* text accompanying notes 142–44; see also Elaine S. Povich, *Wanted: Poll Workers Able to Brave the Pandemic*, NAT'L CONF. OF STATE LEGISLATURES (Oct. 6, 2020), <https://www.ncsl.org/research/elections-and-campaigns/wanted-poll-workers-able-to-brave-the-pandemic-magazine2020.aspx>; *Poll Worker Shortages and Potential Solutions*, NAT'L CONF. OF STATE LEGISLATURES (June 30, 2020), <https://www.ncsl.org/research/elections-and-campaigns/the-canvass-july-2020.aspx>.

216. See *supra* note 139; Terry Nguyen, *There Might be a Shortage of Election Poll Workers. Corporate America Wants to Help.*, VOX (Sept. 10, 2020, 7:00 AM), <https://www.vox.com/the-goods/2020/9/10/21428934/companies-pay-employees-poll-workers-2020>.

217. See Brumback & Lage, *supra* note 208.

celebrities,<sup>218</sup> and the nonprofit and public interest sector.<sup>219</sup> Most states have established youth poll worker programs, where people younger than eighteen can participate as an election worker on Election Day.<sup>220</sup> According to CIRCLE, “[n]early 70% of student election judges said the experience helped them understand the voting process ‘a great deal’ and nearly 100% of those respondents who were at least 18 years old said they planned to vote in 2020.”<sup>221</sup> In addition, the study found that “the number of youth election judges at a given Minneapolis precinct was significantly correlated with estimated voter turnout among 18- to 24-year-olds, and may have been especially important in more diverse precincts.”<sup>222</sup> In these findings, educators are encouraged to incorporate student poll worker programs into broader civics education programs, including classroom curriculum, mock elections, and school visits by non-partisan election administrators.<sup>223</sup>

By comparison, increasing politicization of election administration threatens the country’s democratic foundations.<sup>224</sup> Unfortunately, the 2020 election saw an increasing amount of polarization, the most significant example being “The Big Lie” promoted by former President Trump.<sup>225</sup> This concerted effort to undermine confidence in the 2020 election results will have consequences for years to come. Tragically, this was not the only example from 2020, as senior federal government officials, including President Trump, former U.S. Attorney General Barr, and others, spread disinformation about the mail balloting process and

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218. See VanHoose, *supra* note 141.

219. See *Election Information You Need Brought to You by League of Women Voters Education Fund*, *supra* note 140.

220. See *Election Poll Workers*, NAT’L CONF. OF STATE LEGISLATURES (June 17, 2020), <https://www.ncsl.org/research/elections-and-campaigns/election-poll-workers637018267.aspx>.

221. *Understanding the Benefits of Young People Serving as Poll Workers*, CIRCLE (June 7, 2021), <https://circle.tufts.edu/latest-research/understanding-benefits-young-people-serving-poll-workers>.

222. See *id.*

223. HIBO AHMED & NICHOLAS FU, INSIGHTS FOR TEACHERS FROM HIGH SCHOOL POLL WORKERS 6 (2021), [https://circle.tufts.edu/sites/default/files/2021-06/MN\\_teachers\\_PDF\\_6.7\\_v2.pdf](https://circle.tufts.edu/sites/default/files/2021-06/MN_teachers_PDF_6.7_v2.pdf).

224. *Emerging Threats to Election Administration: Hearing Before the S. Comm. on Rules & Admin.*, 117th Cong. 6–7 (2021) (statement of Katie Hobbs, Sec’y of State, Arizona Dept. of State) (discussing the Republican state legislature’s audit of the 2020 election in Maricopa County).

225. See G.K. BUTTERFIELD, SUBCOMM. ON ELECTIONS, COMM. ON HOUSE ADMIN., 117th CONG., REP. ON VOTING IN AMERICA: ENSURING FREE AND FAIR ACCESS TO THE BALLOT 27 (Comm. Print 2021), [https://cha.house.gov/sites/democrats.cha.house.gov/files/2021\\_Voting%20in%20America\\_v5\\_web.pdf](https://cha.house.gov/sites/democrats.cha.house.gov/files/2021_Voting%20in%20America_v5_web.pdf).

made speculative claims about the potential for widespread fraud that ignored the many safeguards that are in place to prevent such efforts.<sup>226</sup>

The examples of mis-, dis-, and malinformation above are likely exacerbated by our decentralized election system.<sup>227</sup> While this variation across states provides many benefits, some of which were critical in the success of the 2020 election, this decentralization makes us more susceptible to mis-, dis-, and malinformation about voting. Because each state runs elections differently, it is difficult to keep track of the variations and more difficult to take advantage of national platforms or communication efforts with specificity.

The misinformation operations that began in 2016 and persisted beyond the 2020 elections have had real consequences on Americans' faith in our democracy.<sup>228</sup> The results of the 2021 Harvard Youth Poll underscore the consequences of this atmosphere on young voters, especially those whose right to vote was extended by the Twenty-Sixth Amendment.<sup>229</sup> It found that 52% of young Americans ages eighteen to twenty-nine believe that American democracy is "in trouble" or "failing," while only 7% described it as "healthy."<sup>230</sup> Alarming, 35% believe a second civil war will ensue during their lifetime, while another 25% believe they will witness at least one state secede.<sup>231</sup>

These survey results do not instill confidence that young Americans believe that civil discourse and the guarantees of a liberal democracy will be available to them. While some of this observation may be attributed to the restlessness or inexperience of youth, the fact that more than one third of young Americans believe a civil war awaits and that almost one fourth believe that secession will occur suggests a sense of resignation that the same promises of opportunity that previous generations of

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226. See generally RICHARD L. HASEN, *CHEAP SPEECH: HOW DISINFORMATION POISONS OUR POLITICS—AND HOW TO CURE IT* (2022) (discussing the problem of mis- and disinformation including by public officials and elected leaders).

227. See ELECTION INTEGRITY PARTNERSHIP, *THE LONG FUSE: MISINFORMATION AND THE 2020 ELECTION 1* (2021), <https://stacks.stanford.edu/file/druid:tr171zs0069/EIP-Final-Report.pdf> ("There is no centralized support to aid [the] vast number of jurisdictions [responsible for administering our elections] in identifying and responding to emerging election-related mis- and disinformation."); see also RACHEL OREY & MATT WEIL, *IMPROVING THE VOTING EXPERIENCE AFTER 2020 17* (2021), [https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2021/04/EPP-Voting-Experience\\_RV1.pdf](https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2021/04/EPP-Voting-Experience_RV1.pdf).

228. See, e.g., *In Our View: Misinformation Undermines Election System Faith*, COLUMBIAN (June 26, 2022, 6:03 AM), <https://www.columbian.com/news/2022/jun/26/in-our-view-misinformation-undermines-election-system-faith/>.

229. See *Harvard Youth Poll*, HARV. KENNEDY SCH. INST. OF POL. (Dec. 1, 2021), <https://iop.harvard.edu/youth-poll/fall-2021-harvard-youth-poll>.

230. See *id.*

231. See *id.*

Americans enjoyed no longer exist.<sup>232</sup> Coupled with tangible progress toward greater educational and economic opportunities, encouraging young Americans to engage in the country's civic traditions through voting is just one way to restore confidence in the system for young Americans.

Indeed, during the 2020 election, younger Americans felt compelled to respond to the shortage in poll workers across the country that arose from the higher threat of COVID-19 to individuals over the age of sixty, who, coincidentally, comprised the largest segment of poll workers prior to the 2020 election.<sup>233</sup>

Hopefully, those younger Americans who served as poll workers will continue to do so for years to come. Several states encouraged high school and college students to participate as poll workers.<sup>234</sup> In addition to the staffing benefits, these programs familiarize our youngest poll workers with the voting experience and can counter the claims of apprehension that some younger voters cite for not voting.<sup>235</sup> Similarly, serving as a poll worker exposes Americans to many of the safeguards that exist in our election system.<sup>236</sup> For Americans who lack confidence in the integrity of the process, seeing firsthand the chain of custody<sup>237</sup> and security procedures involved in election administration may help relieve any concerns.

Poll working is a great example of a civic activity in which we should significantly invest and promote. An innovative campaign to recruit younger poll workers helped to fill these roles while introducing a new generation to the importance of civic responsibility.<sup>238</sup> And while federal

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232. *See id.*

233. *See* U.S. ELECTION ASSISTANCE COMM'N, ELECTION ADMINISTRATION AND VOTING SURVEY: 2016 COMPREHENSIVE REPORT 14 fig.7 (2017) [hereinafter EAVS 2016], [https://www.eac.gov/sites/default/files/eac\\_assets/1/6/2016\\_EAVS\\_Comprehensive\\_Report.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/6/2016_EAVS_Comprehensive_Report.pdf) (showing that more than half of poll workers were over the age of sixty, including 24% that were aged seventy-one or older).

234. *See* EVIE FREEMAN ET AL., POLL WORKER RECRUITMENT IN THE 2020 ELECTION 11–14 (2021), [https://web.mit.edu/healthyelections/www/sites/default/files/2021-06/Poll\\_Worker\\_Recruitment.pdf](https://web.mit.edu/healthyelections/www/sites/default/files/2021-06/Poll_Worker_Recruitment.pdf) (discussing state and local government poll worker recruitment efforts).

235. *See* Kei Kawashima-Ginsberg et al., *Young Nonvoters: Lessons from 2018 and 2020*, CIRCLE (Dec. 18, 2020), <https://circle.tufts.edu/latest-research/young-nonvoters-lessons-2018-and-2020> (“Young people choose not to vote for a variety of reasons. Often it is not a choice at all, but the result of structural barriers that can especially hinder youth participation, and that may have been exacerbated this year by the COVID-19 pandemic.”).

236. *See generally* U.S. ELECTION ASSISTANCE COMM'N, BEST PRACTICES: CHAIN OF CUSTODY (2021).

237. *See generally id.*

238. *See* Press Release, U.S. Election Assistance Commission, National Poll Worker Recruitment Day on September 1st Aims to Inspire More Americans to Become Election

funding<sup>239</sup> helped to recruit and train these new recruits,<sup>240</sup> the unanticipated shortage demonstrates the need for consistent funding to guard against contingencies like the poll worker shortage.

HAVA is equipped to address these concerns.<sup>241</sup> Congress sought to address the generational gap in voting and civic engagement through the Help America Vote College Program<sup>242</sup> and the Help America Vote Foundation.<sup>243</sup> The former directs the U.S. Election Assistance Commission to establish a program for post-secondary students to serve a poll workers and election officials.<sup>244</sup> The latter creates a similar program for secondary school students.<sup>245</sup>

In every federal election from 2004 to 2010 (and during one off-year in 2009), the Help America Vote College Program funded dozens of institutes of higher education to recruit and train poll workers.<sup>246</sup> Awards ranged in size, but for relatively modest sums, these colleges and universities trained hundreds of poll workers, including students with language skills and experience with technology, and sought to provide valuable feedback about best practices.<sup>247</sup> Recently, members of Congress have expressed interest in reviving the program.<sup>248</sup>

#### CONCLUSION

Capturing new voters as they age into eligibility is critical to ensure continued engagement and to cultivate a healthy sense of civic

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Workers (Aug. 10, 2020), <https://www.eac.gov/news/2020/08/10/national-poll-worker-recruitment-day-september-1st-aims-inspire-more-americans>.

239. See Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281, 530–31 (2020) (providing \$400 million to “prevent, prepare for, and respond to [the] coronavirus, domestically or internationally, for the 2020 Federal election cycle”).

240. See generally U.S. ELECTION ASSISTANCE COMM’N, CARES ACT: QUARTERLY REPORT TO THE PANDEMIC RESPONSE ACCOUNTABILITY COMMITTEE (2021), [https://www.eac.gov/sites/default/files/paymentgrants/cares/PRAC%20Reports/15011\\_Quarterly\\_Report\\_on\\_CARES\\_Funding\\_July%202021.pdf](https://www.eac.gov/sites/default/files/paymentgrants/cares/PRAC%20Reports/15011_Quarterly_Report_on_CARES_Funding_July%202021.pdf).

241. See 52 U.S.C. § 21121.

242. See *id.*

243. See 36 U.S.C. § 90102.

244. See 52 U.S.C. § 21121.

245. See 36 U.S.C. § 90102.

246. See *Help America Vote College Program Recipients*, U.S. ELECTION ASSISTANCE COMM’N, [https://www.eac.gov/payments-and-grants/help-america-vote-college-program-recipients#college\\_recipients\\_2006](https://www.eac.gov/payments-and-grants/help-america-vote-college-program-recipients#college_recipients_2006) (last visited June 29, 2022).

247. See *id.*

248. See Press Release, Steny Hoyer, Majority Leader, House of Representatives, Hoyer Statement on President Biden Signing the Omnibus Appropriations Package (Mar. 15, 2022), <https://www.majorityleader.gov/content/hoyer-statement-president-biden-signing-omnibus-appropriations-package>.

participation in each successive generation.<sup>249</sup> But which policies can encourage newly eligible Americans to register and to consistently vote from one election to the next?

As this article suggests, potential solutions may involve automating registration and voting practices to accommodate voters and encourage consistent participation.<sup>250</sup> States throughout the country tested this hypothesis as they adjusted election administration practices in 2020.<sup>251</sup> And the record youth turnout provided some positive results.<sup>252</sup> However, 2020 also shows the distance we must go to fully engage America's youngest voters. This effort is critical to the future of our democracy. At a time when too many Americans have lost faith in the process and where there are real cracks in the foundation of our democracy, we must do more to ensure the right of all Americans to vote. Investing in the democratic infrastructure and in civic education ensures our democracy remains a beacon and inspiration to the world and enables tomorrow's voters to have the information and tools they need to participate free from unnecessary barriers that would hinder their engagement. The dividends of investing in youth voting will be apparent for years and decades to come.

Unfortunately, the courts have yet to embrace the Twenty-Sixth Amendment in a way that would truly protect the right to vote for younger Americans. Without a major paradigm shift, that is unlikely to change soon and certainly will not without undeniable evidence. Such a major paradigm shift will most likely be produced by making reforms where it is possible and by thoroughly collecting data to show the demonstrable impact of such efforts.

This shift can be done in part in a number of states with voter-centric policies that reduce the burdens on citizens who wish to register and vote.<sup>253</sup> In particular, we should focus on reforms that permanently limit barriers through failsafe mechanisms such as same day registration and those that automate processes like automatic registration and pre-registration.<sup>254</sup> These efforts ensure that each successive group of new voters can be given access to the ballot. But such reforms are not sufficient by themselves. We learned from 2020 that we can help Americans vote even in the toughest of times, but it takes collective efforts, it takes investment, and it takes voter education and outreach

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249. See generally WINTHROP, *supra* note 214 (discussing the need for a robust curriculum in civic education beginning in elementary school).

250. See *supra* Section IV.A.

251. See *supra* Section IV.A.

252. See *supra* Section IV.A.

253. See *supra* Parts III–IV.

254. See *supra* Parts III–IV.

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efforts to ensure individuals have the information they need to vote.<sup>255</sup>  
The time to take these actions is now: the future of our democracy  
depends on it.

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255. *See supra* Parts III–V.