

A Flawed Democracy

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Each year, *The Economist* publishes a Democracy Index. The 2022 edition listed 167 countries ranked on metrics of five dimensions: electoral process and pluralism, the functioning of government, political participation, democratic political culture, and civil liberties. The US ranked 26th in the world. At the top of the list were Norway, New Zealand, Finland, and Sweden. At the bottom were North Korea, Myanmar, and Afghanistan. No real surprises there, but Taiwan (8), Uruguay (13), South Korea (16), UK (18) and Costa Rica (21) all outranked the US. The US had slipped over the past six years from a full democracy to a flawed democracy.¹

All democracies have flaws. They are human creations after all. But the US has more flaws than many of its democratic peers. The insurrection of 6 January 2021 revealed a disturbing refusal by some to accept the results of democratic elections. On that day, protestors gathered at the Capital to overturn the result of the 2020 Presidential election. The insurrectionists sought to stop the ceremonial congressional confirmation of Joe Biden as the 46th President of the US. In this essay, I want to explore some of the reasons behind this democratic slippage. I focus on electoral issues, rather than the deep-seated socio-economic context of the insurrection. I will draw on some of my previous work.²

1 'A New Low For Global Democracy' (*The Economist*, 2022) <<https://www.economist.com/graphic-detail/2022/02/09/a-new-low-for-global-democracy>> accessed 17 April 2022

2 John Rennie Short, *Stress Testing The USA* (2nd edn, Springer 2022).
John Rennie Short, 'An Election In A Time Of Distrust', *U.S. Election Analysis 2020: Media, Voters and the Campaign* (1st edn, Election Analysis - United States 2022) <<https://www.electionanalysis.ws/us/>> accessed 17 April 2022.
John Rennie Short, 'After Supreme Court Decision, Gerrymandering Fix Is Up To Voters' (*The Conversation*, 2019) <<http://theconversation.com/supreme-court-says-gerrymandering-fix-up-to-voters-not-judges-117307>> accessed 17 April 2022.
John Rennie Short, 'Four reasons gerrymandering is getting worse' (*The Conversation*, 2018) <<https://theconversation.com/4-reasons-gerrymandering-is-getting-worse-105182>> accessed 17 April 2022.
John Rennie Short, 'Campaign season is moving into high gear – your vote may not count as much as you think' (*The Conversation*, 2018) <<http://theconversation.com/campaign-season-is-moving-into-high-gear-your-vote-may-not-count-as-much-as-you-think-101764>> accessed

It is important to begin with the realization that the US was founded as a republic, not as a democracy. The founders were distrustful of the raw political energy of the people. In 1787, James Madison, the 4th US President, described democracies as spectacles of turbulence and contention; incompatible with personal security or the rights of property.³ Thus, the government in the US was structured to insulate political elites from popular opinion. The Congress, the executive, and the judicial—a nine-member oligarchy of lifetime political appointees whose guiding ideology always seems half a century behind the general public—limit and blunt the expression of the popular will. The hallmarks of a healthy democracy are that each vote should be counted and each one should count equally. This is not the case in the USA, where the difference between popular will and political representation is growing. Let's look at four sources for the growing deficits of US democracy.

Follow The Money

Money plays a huge role in US politics. Members of Congress need to solicit vast amounts of money to wage their electoral campaigns. Money comes from a variety of sources. There is the modest contribution of the ordinary citizen, that can sometimes make a difference in insurgent campaigns. There are also the legal contributions from well-founded groups. Lastly, there is the 'dark money' of nonprofit organizations including unions and trade

17 April 2022.

John Rennie Short, 'Globalization and its discontents' (*The Conversation*, 2016) <<https://theconversation.com/globalization-and-its-discontents-why-theres-a-backlash-and-how-it-needs-to-change-68800>> accessed 17 April 2022.

John Rennie Short, 'The legitimization crisis in the USA: Why have Americans lost trust in government?' (*The Conversation*, 2016) <<https://theconversation.com/the-legitimation-crisis-in-the-us-why-have-americans-lost-trust-in-government-67205>> accessed 17 April 2022.

John Rennie Short, 'The Supreme Court, The Voting Rights Act And Competing National Imaginaries Of The USA' (2014) 2 *Territory, Politics, Governance* <<https://doi.org/10.1080/21622671.2013.875938>>.

3 James Madison, 'Federalist Papers No. 10 (1787) - Bill Of Rights Institute' (*Bill of Rights Institute*) <<https://billofrightsinstitute.org/primary-sources/federalist-no-10>> accessed 17 April 2022.

organizations, and political action campaigns (PACs) who do not have to disclose their donors.⁴ Individuals can contribute to these organizations' political campaigns while remaining anonymous. The Supreme Court, in a series of rulings including *Buckley v. Valeo* in 1976 and *Citizens United v. FEC* in 2010, made it easier for all types of money, including dark money to flood into the political system.⁵

Politicians look to garner support through campaign contributions. To take just one example from recent news reports: in May 2021, the FBI was investigating a case involving Susan Collins, a US senator and Republican from Maine, for receiving contributions to her 2020 re-election campaign – organized by an executive at the defense contractor firm, Navatek. It is worth noting that Senator Collins sits on a key Senate subcommittee that controls military spending. In 2019, Senator Collins lobbied for Navatek to receive an \$8 million contract at a Maine shipyard. In the 2020 election, the Navatek executive routed \$45,000 personally and \$150,000 through a PAC to support her re-election bid.⁶

Collins is not accused of any wrongdoing. It is the executive that is under FBI scrutiny, for allegedly breaking one of the few legal restrictions on campaign contributions: being a defense contractor and giving a political campaign contribution. Collins, in contrast, did nothing wrong, legally speaking. She could be said to be working for the constituencies in her state by directing work to a shipyard in Maine. There is no obvious personal venality by Collins. While individual politicians such as Collins may not be corrupt in the formal sense of gaining individually for a service or favor, the system is rotten to the core. Most political campaign contributions deemed illegal in most of the other liberal democracies around the world do not constitute corruption in the US. It is everyday politics; business as usual.

Today, policies in Washington DC are shaped more by interest groups who hone regulations to meet their needs, rather than the needs of the ordinary electorate. The political system listens to the power of money. Politicians desperately need money to stay competitive, win races, and remain in power. Those with the most money have the best access: they have the power to influence and advise. Ordinary people exercise political choice at elections but those with money exercise real political power all the time.⁷

4 Peter Geoghegan, *Democracy For Sale: Dark Money And Dirty Politics* (Head of Zeus 2020).

Heather K. Gerken, 'Boden Lecture: The Real Problem With Citizens United: Campaign Finance, Dark Money, And Shadow Parties' (2013) 97 *Marquette University Law Review* <<https://scholarship.law.marquette.edu/mulr/vol97/iss4/3/>> accessed 17 April 2022.

Jane Mayer, *Dark Money: The Hidden History Of The Billionaires Behind The Rise Of The Radical Right*. (1st edn, Anchor 2017).

5 *Buckley v. Valeo* [1976] United States Court of Appeals, District of Columbia Circuit, 519 F2d 821 (United States Court of Appeals, District of Columbia Circuit).

Citizens United v. Fed Election Commission [2008] Supreme Court of the United States, 170 L. Ed 2d 511 (Supreme Court of the United States).

6 Byron Tau and Julie Bykowitz, 'FBI Probes Defense Contractor's Contributions To Sen. Susan Collins' *Wall Street Journal* (2021) <<https://www.wsj.com/articles/fbi-probes-defense-contractors-contributions-to-sen-susan-collins-11621382437>> accessed 17 April 2022.

7 Benjamin I. Page, 'How Money Corrupts American Politics' (*Scholars Strategy Network*, 2013) <<https://scholars.org/how-money-corrupts-american-politics>> accessed 17 April 2022.

Divided Government

Under the mounting pressure of growing partisanship, the constitutional division of political responsibilities across the different levels of government is now revealed as a major flaw.

The Senate is Rigged

The rigging of the voting system for the US Senate so that some electoral votes count more than others is not new; it's a foundational reality, an integral part of the political architecture of the country. Under the US constitution, each state receives the same number of senators, despite differing population size, while the number of representatives afforded to a state is based on its population. It started at the beginning of the Republic, when each state was allocated two senators, despite differing population size. At the time of the First Congress in 1789, the population of the largest and smallest states, respectively Virginia and Delaware—and here we will only include free White males over 16 as befits the prioritization of the time—was 110,936 and 11,783. Roughly, a 9-fold differential.⁸ By the time of the 2016 presidential election, the population of the most and least populous states, respectively California and Wyoming, was 39.25 million and 585,501. The differential has increased to 67-fold, whilst the senator allocation has remained the same. Senators from small states with reliably consistent voting preferences can amass seniority that bestows enormous power beyond their demographic significance. A longtime leader of the Senate, Mitch McConnell, co-represents a state with a 2020 total population of only 4.4 million that is 89.4 percent White with only 3.5 percent foreign-born while the US average is 71.7 percent white and 12.9 percent foreign-born.⁹

Senate representation reflects the political realities of the largely rural 18th Century rather than the demographic realities of the metropolitan 21st Century. More than a quarter of the entire US population resides in just 10 metro areas across only 16 states. And 85 percent of all Americans now live in metro areas. The opinions of the metropolitan majority on such issues as gun control, abortion rights or immigration policy, are countermanded in the Senate by the preferences of voters in small, rural states.¹⁰

Political power no longer parallels demographic realities. To be sure, the US was never designed as a democracy but as a republic engineered to limit the power of the people and prevent political convulsions. The multiple sources of governmental power were to be a check on unbridled power. A majority of the Supreme Court can be appointed by Senators representing a minority of the US population.¹¹

8 U.S. Census Bureau, Public Information Office (PIO) '1790 Census' (*National Geographic Society*) <<https://www.nationalgeographic.org/media/us-census-1790/>> accessed 17 April 2022.

9 Nicholas Jones and others, '2020 Census Illuminates Racial And Ethnic Composition Of The Country' (*Census.gov*, 2021) <<https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html>> accessed 17 April 2022.

10 Kristen Bialik, 'State Of The Union 2018: Americans' Views On Key Issues Facing The Nation' (*Pew Research Center*, 2018) <<https://www.pewresearch.org/fact-tank/2018/01/29/state-of-the-union-2018-americans-views-on-key-issues-facing-the-nation/>> accessed 17 April 2022.

11 Kevin J. McMahon, 'Is The Supreme Court's Legitimacy Undermined In A Polarized Age?' (*The Conversation*, 2018) <<https://theconversation.com/is-the-supreme-courts-legitimacy-undermined-in-a-polarized-age-99473>> accessed 17 April 2022.

What About the House?

Seats in the House of Representatives are based on the population of the states.¹² Thus California with a population of almost 40 million sends 52 representatives to the House, while New Hampshire with a population of around 1.36 million sends two. Thus, the House is supposed to even out the effects of states with different populations. However, the pooling of Democratic voters into dense areas lessens their effectiveness as they tend to win big in a few districts while Republicans have a wider national spread. The current system gives the Republicans an advantage over Democrats. A mathematical model produced by *The Economist* concluded that the Democrats need to win 53.5 percent of all votes cast to have an even chance of winning a House majority.¹³

The Local Level is Stymied

Although voting also takes place at the more local level of towns and cities, there is a problem as state politicians are allowed to overturn local initiatives. Twenty-four states now have pending legislation to reverse ballot measures that were introduced at the local level.¹⁴ In Virginia, with the Republican control of state legislature, the state prohibited localities from removing memorials or replacing street names that honor southern 'heroes' of the Civil War. In this case, the democratic will of progressive districts was blocked because they were encased by the power of conservative states. On the other hand, conservative localities can be blocked by progressive states. This was evident in local resistance to more liberal states' mandates for mask wearing during the worst of the COVID pandemic.¹⁵

The Electoral College Does Not Represent the Popular Will

The Electoral College, not the voting electorate, elects the President. This system was established in the Constitution to blunt the power of raw popular opinion. It is not the total votes cast for a presidential candidate that leads to a winner, but the votes of the 538 electors of the College allocated to each state in the same numbers as their Congressional delegation.¹⁶ It tends to favor the large states since they have more population, and hence more congressional representation. Since 1888, the system worked well in that the popular vote and the Electoral College were in sync.¹⁷ However, in both 2000 and 2016 a President won without obtaining a majority

12 The total number of representatives in the House is limited to 435.

13 'America's Electoral System Gives The Republicans Advantages Over Democrats' [2018] *The Economist* <<https://www.economist.com/briefing/2018/07/12/americas-electoral-system-gives-the-republicans-advantages-over-democrats>> accessed 17 April 2022.

14 Lori Riverstone-Newell, 'The Rise Of State Preemption Laws In Response To Local Policy Innovation' (2017) 47 *Publius: The Journal of Federalism* <<https://doi.org/10.1093/publius/pjx037>> accessed 17 April 2022. pp. 403-425

15 Jeffrey Lyons and Luke Fowler, 'Is It Still A Mandate If We Don't Enforce It? The Politics Of COVID-Related Mask Mandates In Conservative States' (2021) 53 *State and Local Government Review* <<https://journals.sagepub.com/doi/full/10.1177/0160323X211035677>> accessed 17 April 2022. pp. 106-121
Dannagal G. Young and others, 'The Politics Of Mask-Wearing: Political Preferences, Reactance, And Conflict Aversion During COVID' (2022) 298 *Social Science & Medicine* <<https://pubmed.ncbi.nlm.nih.gov/35245756/>> accessed 17 April 2022.

16 John C. Fortier, *After The People Vote: A Guide To The Electoral College* (4th edn, AEI Press 2020).

17 Benjamin Forest, 'Electoral Geography: From Mapping Votes To Representing Power' (2018) 12 *Geography Compass* <<https://pubmed.ncbi.nlm.nih.gov/35245756/>> accessed 17 April 2022.

of popular votes. If presidents were elected by a simple popular vote, we would have had President Hillary Clinton and President Gore. The Electoral College does not transmit the will of the people, and is starting to undermine it.

The Electoral College system also overvalues voters in large swing states such as Florida. Because of its importance and the demographic profile of this state the interests of elderly voters, self-identified Jewish voters¹⁸ and anti-Fidel Castro voters have influenced national policies as a succession of presidential candidates sought to appease these groups to win the Presidency.¹⁹ US foreign policy toward Israel and Cuba, and domestic safeguards to Medicare are in no small part a function of the importance of Florida's Electoral College votes.

Gerrymandering

Then there is the manipulation of voting boundaries to engineer specific political outcomes.²⁰ The political party that controls state legislatures is directed by the Constitution to redraw Congressional boundaries every 10 years, after the results of the most recent Census, in order to take account of population shifts. This redistricting is often done to win seats and is known as gerrymandering. Basically, it allows politicians to select their voters, rather than citizens to choose their representatives. In 2012, Republicans won a majority of 33 seats in the House despite getting 1.4 million fewer votes than their Democratic opponents.

The term 'gerrymandering' originates with the activities of Elbridge Gerry who, in 1810 as governor of Massachusetts, signed a bill that created legislative boundaries that favored his political party. A cartoonist of the day depicted the outline of the boundaries as a salamander, attempting to convey the arbitrariness of the resulting boundaries (Figure 1).²¹ The system was so 'gerrymandered' that the Democratic-Republicans won only 49 percent of the votes but picked up 72 percent of the seats.

Gerrymandering involves what's called the 'cracking and packing' of voters by moving the boundaries of voting districts. Cracking spreads opposition voters thinly across many districts to dilute their power, whilst packing concentrates opposition voters in fewer districts to reduce the number of seats they can win. Gerrymandering has gotten worse in the last 20 years for three main reasons.

First, gerrymandering is effective in helping political parties hold power in the House. Since 1995, after 40 years of uninterrupted Democratic dominance, the House has become more competitive. It is now up for grabs and gerrymandering has helped tip the scales.

One political consultant, Thomas Hofeller, described by many as a gerrymander genius²², was particularly effective in designing

18 These are voters who identify themselves as Jewish voters, as opposed to Jewish people who vote but do not consider themselves Jewish.

19 David A Schultz and Rafael Jacob, *Presidential Swing States* (2nd edn, Rowman & Littlefield 2018).

20 John Rennie Short, '4 Reasons Gerrymandering Is Getting Worse' (*The Conversation*, 2018) <<https://theconversation.com/4-reasons-gerrymandering-is-getting-worse-105182>> accessed 17 April 2022.

21 *The Gerry-Mander* (1813), Newspaper. Available at: <https://americanhistory.si.edu/collections/search/object/nmah_509530> accessed 17 April 2022.

22 David Daley, 'The Secret Files Of The Master Of Modern Republican Gerrymandering' (2019) *The New Yorker* <<https://www.newyorker.com/news/news-desk/the-secret-files-of-the-master-of-modern-republican-gerrymandering>>



Fig 1. *The Gerry-Mander*. (Elkanah Tisdale 1812). Originally published in the *Boston Centinel*. Wikimedia Commons.
< https://commons.wikimedia.org/wiki/File:The_Gerry-Mander_Edit.png >.

redistricting strategies for Republicans between 1992 and 2017. He realized early on that redrawing boundary was one way to elect as many Republicans as possible. He worked for the Republican National Committee in drawing congressional maps after the 1992 elections in Arizona, Michigan, Minnesota and Ohio. The gerrymandered seats helped the Republican win the House in 1994. He subsequently advised Republican politicians across the country on how to redraw electoral maps to their advantage.

Second, gerrymandering has become a much more effective tool in the last 20 years due to greater insights in voters' preferences. With sophisticated computer programs and ever more detailed information on voters' location and preferences, politicians now crack and pack with surgical precision.²³ Maryland's 3rd congressional district, for example, slithers and slides across the state to pick up as many Democratic voters as possible. With pinpoint accuracy afforded by the new technologies, the Democratic-controlled state legislature was able to create a Democratic majority vote. Over a third of all votes cast in the state in the 2016 congressional races were for Republican Party candidates but Republicans won only one out of 8 districts. But across the country gerrymandering favors Republicans. The Brennan Center estimates that the tactic provides at least 16 seats in the current Congress with extreme partisan bias most obvious in Michigan, North Carolina and Pennsylvania and significant bias in Florida, Ohio, Texas and Virginia.²⁴

The third reason is that the Supreme Court has effectively sanctioned gerrymandering. In 1986, the Court in *Thornburg v. Gingles* ruled against a Democratic legislature's attempt to thinly spread, or crack, minority voters among seven new districts in

North Carolina. The ruling helped create districts where minority voters were concentrated and aided the packing of voters in future cases. Later, a more conservative court in *Vieth v. Jubelirer* ruled 5-4 not to intervene in cases of gerrymandering. Predictably, partisan gerrymandering then increased without legal challenge, especially after the 2010 redistricting round initiated by the 2010 Census results. In *Shelby v. Holder* in 2013, the Court in a 5-4 ruling overturned key elements of the 1965 Voting Rights Act that protected voters' rights in the South. The ruling gave the green light for a return to partisan gerrymandering in areas of the country previously under federal scrutiny. In 2017, and again in 2018, the Supreme Court passed up numerous opportunities to declare gerrymandering unconstitutional. The Supreme Court's 2018 decision has emboldened ever more gerrymandering.²⁵

Gerrymandering has a pernicious impact on the electoral system and on the wider democratic process. It encourages long-term incumbency and a consequent polarization of political discourses. In gerrymandered districts, politicians only need to appeal to their base rather than to a wider electorate. Gerrymandering remains an ugly fact of the U.S. electoral system that belies the claim to democracy. Gerrymandered districts produce safe seats and lock politicians into political postures that promote ideological purity and party loyalty over bipartisan negotiation. Primary voters in gerrymandered districts thus count more than the general voting public.

Suppressing The Vote

Of all the disturbing trends causing the decline of democracy in the US, voter suppression—another foundational feature of US politics—is the most insidious. Women and Black people were long denied the right to vote, and strict citizenship rules were often employed to marginalize recent immigrants. Voter suppression is a way for a White oligarchy to remain in power.

Naturally, there was resistance. Voter suppression was often met by renewed efforts at securing voting rights, which in turn stimulated new rounds of suppressions by traditional holders of power. We can briefly recount the political history of the USA as a series of attempts to suppress an extended franchise that in turn prompts resistance and in turn new forms of suppression. Let me flesh out this assertion with a more detailed exposition.

In the wake of the Civil War in the Reconstruction era, traditionally dated from around 1863 to 1877, three major constitutional amendments abolished slavery (the 13th Amendment, adopted in 1865), created citizens from former enslaved people (the 14th Amendment, adopted in 1868) and extended the right to vote to Black people and other minorities (the 15th Amendment, adopted in 1870). Together, they constitute a 'Second American Revolution'. It was a difficult struggle to ensure political equality in the old South, where racist attitudes were most strongly held. Despite the hurdles and difficulties, Black people were elected to state legislatures in a period of political emancipation. From 1869 to 1876, two Black men became US senators and 20 Black men were elected to the Congress.²⁶ However, this political flowering proved short-lived, as

gerrymandering> accessed 17 April 2022.

23 Samuel S.-H. Wang, 'Three Practical Tests For Gerrymandering: Application To Maryland And Wisconsin' (2016) 15 *Election Law Journal: Rules, Politics, and Policy*.

24 Michael Li and Laura Royden, 'Extreme Maps' (Brennan Center for Justice 2017) <<https://www.brennancenter.org/our-work/research-reports/extreme-maps>> accessed 17 April 2022.

25 Supreme Court Cases on Gerrymandering: *Thornburg v Gingles* [1986] US Supreme Court, 478 US 30 (US Supreme Court); *Vieth v Jubelirer* [2003] No. 02-1580 (US Supreme Court); *Shelby v Holder* [2012] 12-96 (US Supreme Court).

26 Black-American Members By Congress, 1870-Present | US House Of Representatives: History, Art & Archives' (*History, Art and Archives*, 2022) <<https://history.house.gov/Exhibitions-and-Publications/BAIC/>>

southern states reentering the Union were freed from outside and military control and local White political elites began working to marginalize the active political participation of Black people.

Reconstruction was dead by the end of the 19th Century. In the South, White supremacy was reincarnated and maintained by the suppression of the Black vote through poll taxes, literacy tests, and outright intimidation. In 1896, 130,334 Black people were registered to vote in Louisiana, but by 1904 there were only 1,342.²⁷ By the early 1900s, only 2 percent of Black people eligible to vote in Alabama had cast their ballot. This effective political disenfranchisement was maintained by White Democratic voting registers that excluded Black voters from voting lists and was enforced by the threat and constant practice of violence by local and state police, and paramilitary organizations such as the White League and the Klu Klux Klan. This period of 'Deconstruction' lasted for decades, until the middle of the 20th Century. It was reinforced by absolute Democratic control of the South and the entrenched power of incumbent White southern Democrats in Congress, chairing influential committees to suppress, deflect, or minimize civil rights legislation that threatened a monopoly of White political power in the South. There was no federal civil rights legislation from 1877 to the 1950s. The Supreme Court was an active participant in, what one legal historian refers to as, the process of Black people being "erased from national politics."²⁸

A new civil rights movement emerged in the 1950s. The 1957 Civil Rights Act, the first such legislation since Reconstruction, established a civil rights section in the Department of Justice (DOJ) that employed federal prosecutors to pursue voting discrimination and created a federal Civil Rights Commission. Put forward by the then Republican President, Dwight Eisenhower, the act was weakened by the southern Democrats in the Congress.²⁹ It was the last time that Republicans favored federal oversight of state voting practices and Democrats actively resisted them, as alliances were shifting. White voters in the South drifted to the Republican Party and Black people overwhelmingly moved their allegiance to the Democratic Party. Agitation and protest resulted in the Civil Rights Act of 1964 that sought to end segregation in public places and discrimination in the job market. It also inaugurated a restructuring of US spatial politics as the white South began its eventual transformation into a Republican rather than a Democratic stronghold, and as a consequence, the national Republican Party became a more overtly religious and socially conservative party.³⁰

The 1964 legislation also provided the platform for the Voting

Historical-Data/Black-American-Representatives-and-Senators-by-Congress/> accessed 17 April 2022.

27 Allie Bayne Windham Webb, 'A History of Negro Voting in Louisiana, 1877-1906' (Louisiana State University Dissertation 1962) <https://digitalcommons.lsu.edu/cgi/viewcontent.cgi?article=1747&context=gradschool_disstheses> accessed 19 April 2022.

28 James MacGregor Burns, *Packing The Court* (Penguin Books 2009), 93.

29 The Civil Rights Movement And The Second Reconstruction, 1945–1968 | US House Of Representatives: History, Art & Archives' (*History, Art and Archives*, 2022) <<https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Keeping-the-Faith/Civil-Rights-Movement/>> accessed 17 April 2022.

30 Jonathan Peter Bartho, 'Whistling Dixie: Ronald Reagan, The White South, And The Transformation Of The Republican Party' (PhD, University College London 2021).

M. V Hood, Quentin Kidd and Irwin L Morris, *The Rational Southerner* (2nd edn, Oxford University Press 2014).

Rights Acts (VRA) of 1965 that proposed stiffer legal safeguards to ensure registration and voting for Black people. The VRA has evolved over the years in a series of amendments –most noticeably in 1970, 1975, 1982 and 2006– but at its core, it prohibited discriminatory voting laws across the land and identified areas of the country subject to special conditions; they were termed covered areas (essentially the South).³¹ Section 5 spelled out these conditions: any changes in voting laws or voting procedures in these covered areas had to be precleared by the DOJ or by the US District Court of DC. The political space of the country was reimagined; across the country there was a greater federal oversight of elections that traditionally had been the sole responsibility of the states. It was a shift of the ultimate control of elections from the state to the federal level because there was a sense that at the more local levels' discriminatory practices were both possible and actual.

While much civil rights legislation had broad and general goals such as eliminating job and housing discrimination, the VRA specifically targeted the reality as well as the promise of the 15th Amendment by removing the persistent and pervasive political discrimination. The VRA is one of the most successful pieces of federal public policy. In 1964, in Alabama, Georgia, Louisiana, Mississippi and South Carolina only 6.7 percent of eligible Black voters were registered to vote compared to 60 percent of Whites. By 2010, the figure for Black people was comparable to White people. In 1960, only 4 percent of registered voters in Mississippi were Black, but by 1984 this had increased to 26 percent. With the implementation of the VRA, Black people's political participation has increased dramatically, reversing decades of exclusion from the political process. In 1964, there was only 1 Black legislature in the original covered areas, by 2010 there were over 230. Black political representation increased across the country.³²

Shelby County is an affluent county in central Alabama with a population of just over 200,000. According to the census of 2010, it had about 11.5% Black people, whereas the percentage for the state is 26.5. Only 7% live below the poverty line compared to 17% for the state. It is an affluent majority-predominantly White county in a poor state. It also reflects the recent political history of the South shifting from solidly Democratic in the 1980s to overwhelmingly Republican. By 2010, every elected partisan office in the county was held by a Republican. In 2010, Shelby County took a case to federal court arguing that sections of the VRA were unconstitutional. The county lost its case in a federal district court, a decision upheld in a court of appeals. The case went to the Supreme Court in February 2013. The majority decision released in that busy end-of-session week in June of 2013, and written by Chief Justice Roberts, ruled that Section 4 of the VRA (which identified areas subject to preclearance) was unconstitutional. Essentially, it freed local areas with a long history of pernicious racial suppression from federal oversight.³³

31 Marsha Darling, *The Voting Rights Act Of 1965: Race, Voting, And Redistricting* (1st edn, Routledge 2013).

Chandler Davidson and Bernard Grofman, *Controversies In Minority Voting* (2nd edn, Brookings Institution 2011).

John Rennie Short, 'The Supreme Court, The Voting Rights Act And Competing National Imaginaries Of The USA' (2014) 2 Territory, Politics, Governance.

32 Robert Brown, 'Race And Representation In Twenty-First Century America' (2020) 8 Journal of Global Postcolonial Studies. David T Canon, *Race, Redistricting, And Representation: The Unintended Consequences Of Black Majority Districts* (University Chicago Press 2020).

33 John Rennie Short, 'The Supreme Court, The Voting Rights Act And Competing National Imaginaries Of The USA' (2014) 2 Territory,

In the seemingly ever-repeating cycle of voter suppression leading to resistance that in turn ushers in new forms of voter suppression, we are at the 'third stage' of renewed voter suppression. Stung by former President Trump's defeat in the 2020 Presidential elections, Republican state legislatures tried to suppress the popular vote with more new forms of voter identification and registration designed to penalize the less wealthy. Now, freed from federal oversight, states and municipalities across the nation have introduced discriminatory practices fueled by exaggerated and false accounts of voter fraud especially in partisan media accounts. In actuality, voter fraud is negligible.³⁴

Voter suppression is masquerading as ensuring voting integrity. It is nothing more than a brazen attempt to suppress Democratic leaning voters, with restrictive practices such as restrictive ID requirements that favor the affluent, not allowing freed prisoners to vote, and the restriction of early voting and absentee voting. There is also the more indirect voter suppression such as the inequities on voting facilities.³⁵ Poorer districts with majority people of color tend to have to wait in line for much longer than those in affluent, majority-White districts as there are fewer places to cast a ballot. These are all attempts at voter suppression. In 2020, the Texas legislature worked to pass a bill that would not allow voting on a Sunday before 1 pm. Its one and only aim was to suppress Black churchgoers from going to the polls directly from Sunday morning services. Many of the faithful in this state lack private transport, so Black churches often provide group transportation to the polls. The same bill also sought to restrict people driving non-relatives to the polls. It is aimed directly at elderly poor black voters who do not have their own cars.³⁶

Voter suppression in various forms is not about combating voter fraud; it is a way for Republicans to remain in power, even as the electorate drifts away from supporting them.³⁷

Fully-functioning democracies allow voters a sense of participation in a shared experience. Flawed democracies, in contrast, feed resentments about fairness and create fertile conditions for conspiracy narratives. There is no simple explanatory step from noting these mounting democratic deficits to explaining the insurrection of 6 January 2021. However, the flaws in US democracy are significant background factors in creating narratives of resentment and anger. Insurrections happen in the context of declining political legitimacy

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34 Brennan Center for Justice, 'The Myth Of Voter Fraud' (Brennan Center for Justice 2021) <<https://www.brennancenter.org/issues/ensure-every-american-can-vote/vote-suppression/myth-voter-fraud>> accessed 17 April 2022.

35 Lisa Marshall Manheim and Elizabeth G. Porter, 'The Elephant In The Room: Intentional Voter Suppression' (2019) 2018 (1) *The Supreme Court Review*.

36 Patrick Svitek, 'Republicans Say They'll Tweak Part Of Texas Elections Bill Criticized For Impact On Black Churchgoers' *The Texas Tribune* (2021) <<https://www.texastribune.org/2021/06/01/texas-voting-bill-sunday-republicans/>> accessed 17 April 2022. Brad Brooks, 'Vote On Texas Bill To Make Voting Tougher Blocked By No Quorum' (*Reuters*, 2021) <<https://www.reuters.com/world/us/texas-legislature-close-approving-measure-make-voting-more-difficult-2021-05-30/>> accessed 17 April 2022. Nick Corasiniti, 'Texas Senate Passes One Of The Nation's Strictest Voting Bills' *New York Times* (2021) <<https://www.nytimes.com/2021/05/29/us/politics/texas-voting-bill.html>> accessed 17 April 2022.

37 Lisa Marshall Manheim and Elizabeth G. Porter (n 35). Bertrall L. Ross II, 'Passive Voter Suppression: Campaign Mobilization and the Effective Disfranchisement of the Poor.' (2019). *114 Nw. UL Rev.*

and growing discontent. While all voters get to exercise political choice, only some get to exercise real political power. As the undemocratic trends strengthen, we are likely to see more crises of political legitimacy and more expressions of raw political anger.³⁸

38 John Rennie Short, 'The 'Legitimation' Crisis In The US: Why Have Americans Lost Trust In Government?' (*The Conversation*, 2016) <<https://theconversation.com/the-legitimation-crisis-in-the-us-why-have-americans-lost-trust-in-government-67205>> accessed 17 April 2022.