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Introduction to Law

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One of the key features of a democratic government is the idea that the government is by the people and for the people. While this has taken many forms since its inception in ancient Greece over 2,000 years ago, the framers of the United States Constitution created a system in which citizens vote for elected representatives to create laws in their best interest. While it seems like citizens would jump at the opportunity to have their say in the governing of their country, modern U.S. elections are consistently marked by low voter turnout. During the 2016 presidential election, only 58.1% of all eligible voters showed up to the polls to cast their vote and participate in the democratic process (Bialik). To say nothing of those who abstain from voting due to being uninterested in the issues being proposed or unfavorable candidates, one of the biggest inhibiting factors from people going out and voting is the inconvenience of U.S. elections. Be it complicated voter registration methods, election day being a hindrance, or the feeling that voting will not make a difference, increasing voter turnout in the U.S. and engaging citizens in the democracy is going to come down to Congress to pass laws that help expand voter access.

In 1993, Congress took an important step in doing so with the passage of the National Voter Registration Act, a bill that made voter registration applications available at State Department of Motor Vehicle Offices. The simplicity and convenience of this system allowed for the registration of millions of voters across the United States. However, as previously mentioned, voter turnout is still low throughout the country. At the beginning of the 116th Congress, with

Democrats retaking control the House of Representatives, one of the top initiatives they made for themselves is to “modernize the act of voting” with proposals such as automatic voter registration, making election day a national holiday, mail-in ballots, and pre-registration for citizens under 18. Reforming voter registration and election day reforms are not just public policy solutions of getting people to vote, they present a solution to another issue in U.S. elections: young people and minority groups being disproportionately not registered and therefore not voting in elections. This creates a voting pool that is unrepresentative of the general population voting for candidates that are also unrepresentative of the body they represent. I believe that if Congress passes these bills as a part of H.R. 1 and expanding voter access, voting registrations and voter turnout will increase, thus engaging more U.S. citizens with the democratic process set out in the Constitution 243 years ago.

The process by which citizens vote in national elections has traditionally been left to state and local legislative bodies to decide. However, throughout the history of the United States, Congress has passed certain uniform election procedures to ensure all eligible citizens are given the opportunity to exercise their right to vote. One such policy was the National Voter Registration Act of 1993, colloquially known as the Motor Voter Act. This act provided that,

“each state motor vehicle driver’s license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application” (United States. Congress. House).

Additionally, the bill required other state and local offices that provide public services to provide registration opportunities and created a mail-based voter registration system. Congress provided four reasons for implementing this policy. One, to increase the number of eligible citizens registering to vote in Federal elections. Two, to enhance voter participation in the federal elections. Three, to protect the integrity of the electoral process, and four, to ensure accurate voter registration records (Eckman). This law represented the first time that Congress passed

comprehensive federal policy on voter registration, indicating Congress' priority in increasing voter participation in our democracy.

Since its implementation, the Motor Voter Act has shown to be successful in increasing voting registrations across the country, an important first step to increasing voter turnout. According to the 1995-1996 Impact of The National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, the first of a required yearly report done to assess the impact of the Motor Voter Act, 72.27% of the Voting Age Population was registered to vote after the act was passed. Of those registrations,  $\frac{2}{3}$  of them were new transactions, because of the Motor Voter Act (McGarry). This legislation has made the DMV a popular place to register to vote because anyone who drives must go to the DMV anyways. Allowing people to register to vote at the same time provides a convenient method of registration, without anyone having to go out of their way. Further, incorporating these two transactions together was also done strategically to cut the cost of registration for the government (Hoffman and Wolfinger). To this day, registrations are higher at the DMV, overall, than any other method of voter registration; over one-third of registrations in NVRA states in 2015-2016 were done at motor vehicle offices alone (Eckman). However, while critics of the bill recognize that registrations did increase as a result of Motor Voter, the actual problem of voter turnout has not been affected by its implementation. When testifying in front of the Senate Committee on Rules and Administration, John Samples, Director for the Center for Representative Government at the Cato Institute, suggests that the United States has received few of the benefits it sought from Motor Voter. Samples said,

“While registration has increased, the law has not enhanced “the participation of eligible citizens as voters in elections for Federal office.” Moreover, the basic premise of “Motor Voter” - reducing the costs of registration would increase voter turnout - now seems disproved by experience.”

He supports this assertion by discussing how participation in the 1996 presidential election was the lowest it had been since 1948. He goes on to discuss how not only was this system ineffective in increasing voter turnout, but it was effective in increasing voter fraud. According to his testimony, in 2001, about 6,000 illegal voters were cast in Florida and 450 in St. Louis (Samples). While these are not large amounts, it represents that the system is not foolproof.

The National Voting Registration Act of 1993 laid the important groundwork for improving voter access to U.S. elections, by helping to register people to vote. However, as critics point out, the bill was not perfect, and more should be done to improve voter turnout in the United States. As part of H.R. 1, the “For the People Act,” the Democratic majority in the House of Representatives has made it their priority to improve voter access across the United States, with the bill stating,

“It is the policy of the United States that (1) all eligible citizens of the United States should have access and exercise their constitutional right to vote in a free, fair, timely manner; and (2) the integrity, security, and accountability of the voting process must be vigilantly protected, maintained, and enhanced in order to protect and preserve electoral and participatory democracy in the United States” (United States. Congress. House).

This has resulted in a flood of elections process-related legislation to the House floor aimed at helping to make elections fairer, easier to access, and more representative of the population.

Three of the many proposals are H.R. 92, the Vote by Mail Act of 2019, H.R. 294, the Election Day Holiday Act of 2019, and H.R. 645, the Automatic Voter Registration Act. Alone, each of these bills have beneficial components to helping expand voter access to U.S. elections, but together, I think their various components could complement each other to create U.S. elections with higher registrations, higher voter turnout, and more diversified voter rolls.

H.R. 92, the Vote by Mail Act, would allow, “all eligible voters to vote by mail in Federal elections...” (United States. Congress. House). Essentially, how this system would work

is all registered voters would receive a ballot in the mail. They would then fill their ballot out, place it in a secrecy envelope, as to protect the confidentiality of their vote, sign an affidavit on the mailing envelope that asserts that they were the ones who filled out this ballot, and either mail their ballot back or drop the envelope off at a designated location (Lynch). This creates a voting system that is easy and convenient; no one has to leave their house to exercise their right to vote and people are not constrained to a single day in a given time frame to vote. While there is still a time constraint, generally one would have a few weeks to return their ballot, it creates a much more flexible system that would allow individuals to vote at a time that is suitable to them. This does not limit individuals to voting by mail, however. If an individual so wishes to go to a polling place in-person on election day, they are still able to do so (Lynch). Washington Post reporters Gilad Edelman and Paul Glastris commissioned a study conducted by Pantheon Analytics using Colorado, one of three states that hold elections entirely by mail, to determine if this system is effective in increasing voter turnout. The study showed that the vote at home method increased Colorado's overall voter turnout by 3.3% in the 2014 midterm election, and even more among both young and low-income voters (Edelman and Glastris). Further, while many opponents feel that this system could create fraud in U.S. elections, there has been no hint of serious fraud since this system has been in place in Oregon, Washington, and Colorado. In fact, given that it relies on pen-and-paper, it cannot be hacked, and it provides for a check against fraud because people's signatures can be checked against the signature on their voting registration paperwork. For these reasons, a vote-by-mail system would be beneficial in increasing voter turnout and diversifying the people who actually vote.

The Tuesday after the first Monday in November has always been election day in the U.S. However, throughout the country it is treated as a regular work day. Under H.R. 294, the

Election Day Holiday Act of 2019, Congress would require the Federal government “to treat the Tuesday after the first Monday in November in the same manner as any legal public holiday for purposes of Federal employment” (United States. Congress. House). By this act, the Federal government would be closed, thus allowing all Federal employees to go and vote on election day. However, section 3 of the bill also states,

“It is the sense of Congress that private employers in the United States should give their employees a day off on the Tuesday next after the first Monday in November in 2020 and each even-numbered year thereafter to enable the employees to cast votes in the elections held on that day” (United States. Congress. House).

In the current election system, Americans are forced to choose between if they want to carry out their normal responsibilities, such as going to work or taking care of children, or if they want to partake in their civic duties. For many Americans, it is impossible to take even a few hours off of work, thus they decide against voting. Gracye Cheng and Aaron Welt in “Making Election Day a Federal Holiday” argue that making election day a holiday would, “allow millions of low-income Americans, who vote in lower proportions than other social strata, to get a paid day off to vote” (Cheng and Welt). Further, this system would also be integral in reversing the many decades of minority voter disenfranchisement. Minorities in the United States have the greatest rates of poverty, with African Americans at 27.4% and Hispanics at 26.6% (Economic Policy Institute). This makes these groups more likely to be unable to miss work for even a day to vote, thus making voter turnout lower amongst these groups and disproportionately skewing the voting pool. Making election day a federal holiday would allow these people to skip work without worrying about not getting paid and actually being able to voice their political opinions. This has been shown to increase voter turnout in other countries. Countries such as France, Puerto Rico, South Korea, Norway have already instituted policies that either make election day a holiday or hold their elections on Saturdays, when people are not working anyways. These countries

experience vastly higher voter turnout than the U.S. In 2007, France had a voter turnout of 85%. In Norway, they were concerned in 2005 when their voter turnout was only at 75.1%. Puerto Rico's 2000 elections had a voter turnout of 82% when employers gave the whole day off of work to vote (Cheng and Welt). Finally, in South Korea in 2017, they experienced a voter turnout of 77.9%, the highest it had been since 1997, which they accredit to their election day being a national holiday (Niceforo). If election day is made in to a national holiday, there is no excuse not to vote due to long lines and time constraints, as people would not have to work. It creates an accessible voting system where the greatest number of people would actually be able to vote, making it effective in solving the voting access problem in the United States.

As discussed previously, American voters have the opportunity to register to vote at the Department of Motor Vehicles, if they so wish, as a part of the National Voter Registration Act of 1993. H.R. 645, the Automatic Voter Registration Act, would amend that bill to provide that "each individual who provides identifying information to the State motor vehicle authority is automatically registered to vote in elections for Federal office held in the State" (United States Congress. House). Essentially, automatic voter registration takes the opt-in system currently in place for voter registration at the DMV and makes it an opt-out system. Anyone who goes through the DMV will automatically be registered to vote, with the option to opt-out if they so choose. Fifteen states and the District of Columbia have already implemented systems of AVR and been successful in both registering more citizens to vote and increasing voter turnout. Oregon was the first state to implement AVR in 2015. The Center for American Progress analyzed Oregon's system, determining that more than 242,000 new people were added to Oregon's voter rolls after they instituted AVR. CAP determined that 42.5% of these new registrants were unlikely to have registered otherwise and 34.4% of those previously disengaged

voters turned out to vote in the 2016 elections (Griffin). Additionally, Oregon's electorate is now more representative of the state's population: younger, more rural, lower income, and more ethnically diverse. If we were to take the system implemented in Oregon and proposed in H.R. 645 and put it in place across the entire U.S., CAP estimates that would result in 22 million new registered voters in just one year (Griffin).

While alone each of the proposed systems brings something to the table, it is the combination of them that I believe would be successful in increasing registration, voter turnout, and making the electorate more representative of the general population. In 2013, the state of Colorado passed the Voter Access and Modernized Elections Act of 2013. Under this act, the state updated their election process to implement a vote-by-mail system. Then, in 2017, they instituted a system of automatic voter registration. This, combined with other acts of voting modernization, allowed Colorado to have the 2nd highest voter turnout in the country during the 2018 midterm elections, with a turnout of 62.7% of eligible voters, compared to about 48% nationally (Murray). Additionally, election costs went down by 40% per vote from 2008 to 2014, when taking in to account all they save from printing, labor, rental, postal, and other miscellaneous costs ("Colorado Voting Reforms"). This success on a state level leads me to believe that instituting similar policies, such as Automatic Voter Registration and Vote-by-Mail, would work on a national level as well. While I don't think these programs would work alone, I think they would work in combination with each other. For example, as seen with critiques of the Motor Voter Act, while registration rates will increase with AVR, this does not guarantee that these people will turn out to vote. However, if they are automatically registered to vote and then a ballot automatically shows up at their house, the voting process instantly becomes infinitely easier. The same is true of the flip side; if ballots just show up at people's houses, but not many

people are registered to vote, then the same group of people are voting regardless of if it is mail in or in person. Further, if we are giving people a paid day off work on top of these things, it gives people no excuse not to vote. The goal of a democracy is to be a government by the people, for the people. If we want to make this goal a reality, implementing systems that expand voter access and building upon the base of the Motor Voter act with policies such as Automatic Voter Registration, Mail-in-voting, and/or making election day a holiday would be successful in increasing voter turnout and bettering the democracy.

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