## 1NC

### 1NC – OFF

#### 1] Interpretation: The affirmative must defend an unconditional right to strike. This means that the Affirmative must defend that anyone regardless of job or occupation has a fundamental right to strike.

Merriam Webster ND, <https://www.merriam-webster.com/dictionary/unconditional> //sid

not conditional or limited : [ABSOLUTE](https://www.merriam-webster.com/dictionary/absolute), [UNQUALIFIED](https://www.merriam-webster.com/dictionary/unqualified)

#### 2] Violation – They only grant the Right to Strike to prison workers That by definition is a condition since they condition the right to strike on a particular occupation.

Jensen ’18 (Eric; co-director of the Stanford Rule of Law Program, in collaboration with USAID, The Asia Foundation, and Stanford Law School; April 2018; “Introduction to the Laws of Timor-Leste”; Stanford Law School; <https://law.stanford.edu/wp-content/uploads/2018/04/Timor-Leste-Constitutional-Rights.pdf>; Accessed: 10-30-2021; AU)

If individuals want to defend their rights at work, the Constitution gives them the right form trade unions and to strike. Individuals are free to join and participate in professional associations that are peaceful. This includes trade unions. Individuals in trade unions have a right to organize their unions independent of the government or their employers. Trade unions should be free and independent, and individuals have the right to set the unions’ internal structure freely. Independent trade unions are important to allow individuals to organize with other workers to collectively defend their interests and their rights. It is important that they are independent so that they reflect the individuals’ interests and not the employer’s or the government’s interests. Individuals have the right to strike. If they feel that their employer is not respecting their rights or interests, employees can refuse to work in protest. The Constitution creates a duty that during a strike, the employer still has to maintain equipment and provide for safety. Individuals’ right to strike is **limited by the law**. The Constitution states that the right to strike is **conditional** on the strike being **compliant** with legal regulations that the government creates. This means that the **government can pass laws** that limit **when and how** individuals can exercise their right to strike. The right to strike is important to give individuals the power to defend their labor rights.

“Unconditional” necessitates the absence of narrowing restrictions.

US Legal ‘ND (US Legal; dictionary of legal terms of art; US Legal; “Unconditional Law and Legal Definition”; https://definitions.uslegal.com/u/unconditional/; Accessed: 10-30-2021; AU)

Unconditional means **without conditions**; **without restrictions**; or **absolute**. For instance, unconditional promise is a promise that is unqualified in nature. A party who makes an unconditional promise must perform that promise even though the other party has not performed according to the bargain.

#### 3] Standards –

#### a] Limits – there are endless conditions the aff can place on the right to strike – i.e based on occupation, national holidays, location of strike, etc. That makes the topic untenable since the Aff can just infinitely specify any condition or permutation of conditions which makes predictable preparation and in-depth clash impossible.

#### b] Neg Ground – specifying scenarios lets affs spike out of core, reduction-based disads like Bizcon and Small Businesses. Links are already non-existent on this topic – letting affs impose restrictions on RTS makes it even narrower.

#### 4] TVA – establish a right to strike and read Teacher Unions as an Advantage.

#### 5] Paradigm Issues –

#### a] Topicality is Drop the Debater – it’s a fundamental baseline for debate-ability.

#### b] Use Competing Interps – 1] Topicality is a yes/no question, you can’t be reasonably topical and 2] Reasonability invites arbitrary judge intervention and a race to the bottom of questionable argumentation.

#### c] No RVI’s - 1] Forces the 1NC to go all-in on Theory which kills substance education, 2] Encourages Baiting since the 1AC will purposely be abusive, and 3] Illogical – you shouldn’t win for not being abusive.

### 1NC – OFF

#### Voting Reform passes now – unified Democrat Support and support for Filibuster Reform/Republican Support but it’s razor thin.

Benen 10-14 Steve Benen 10-14-2021 "As Schumer readies vote, does the Freedom to Vote Act have a chance?" <https://www.msnbc.com/rachel-maddow-show/schumer-readies-vote-does-freedom-vote-act-have-chance-n1281546> (American political writer and blogger, an MSNBC contributor)//Elmer

Two months ago, as senators prepared to depart Capitol Hill for their August break, Senate Majority Leader Chuck **Schumer** **made** a **commitment on voting rights legislation**. As we've discussed, the **F**or **t**he **P**eople Act couldn't muster enough support, but the New York Democrat said a group of senators was **negotiating** the terms of a new, narrowly focused **compromise measure**, which the chamber would consider upon senators' return. Two months later, as NBC News reported this morning, Schumer is effectively calling the question. The Senate will **hold** a **procedural vote** next week on voting legislation, Senate Majority Leader Chuck Schumer has announced. In a letter to his caucus Thursday, the New York Democrat said that he plans to set up the procedural vote on the Freedom to Vote Act for next Wednesday. In his written letter, the majority leader emphasized that the legislation has the **backing of every member of the Senate Democratic conference**, before adding that West Virginia Sen. Joe **Manchin** "has been **engaged in conversations with** our **Republicans** colleagues **in hopes of advancing solutions** on a bipartisan basis to ensure all Americans have their voice heard in our democracy." Schumer added, "We cannot allow conservative-controlled states to double down on their regressive and subversive voting bills. The Freedom to Vote Act is the **legislation that will** **right** the ship of our **democracy** and establish common sense national standards to give fair access to our democracy to all Americans." In terms of the merits, the **legislation** **has a lot going for it**. Circling back to our earlier coverage, the Freedom to Vote Act has three parts. The first focuses on voter access and election administration, and it includes provisions that would create automatic voter registration at a national level, make Election Day a national holiday, and establish floors states could not fall below on early voting, same-day registration, mail voting and drop boxes. This section also sets a national standard for voter-ID laws, intended to address Republican demands. The second part focuses on election integrity, and it includes provisions to insulate election officials from partisan interference, establishes cybersecurity standards, and with the 2016 race in mind, "creates a reporting requirement for federal campaigns to disclose certain foreign contacts." The final part focuses on civic participation and, among other things, aims to end partisan gerrymandering. But as is often the case on Capitol Hill, the question isn't whether the bill is good, it's whether the bill can pass. Republican leaders have already rejected the compromise offer, but Manchin has spent weeks trying to get GOP support for the measure anyway. Asked last month what his plan is to get the bill passed, the conservative Democrat replied, "It's to get 10 Republicans." Or put another way, the future of our democracy may very well hinge on whether Manchin voluntarily gives Republican opponents of voting rights veto power over voting rights legislation. What could possibly go wrong? Democratic Sen. Raphael Warnock of Georgia, who's been directly involved with the legislative talks, told Talking Points Memo yesterday that a **handful of GOP senators** have been **willing to engage in discussions** about the bill. Warnock added that he considers the Republicans' ideas "inadequate," but he's prepared to have the policy discussion anyway. Democratic Sen. Jon Tester added that there are "about **five or six**" Republicans **who've expressed** at least some **interest** in being constructive on the issue, and the Montanan wants to bring some of their proposals to the floor in the hopes of moving the process forward. But the math remains stubborn: Even if five or six GOP senators considered the possibility of backing a compromise bill — a far-fetched scenario, to be sure — the legislation would still die at the hands of a Republican filibuster. All of which brings us to a familiar point. The authors of the Freedom to Vote Act invested months of work into the bill, well aware of the legislative arithmetic. Would they spend all of this time and energy on an important bill that was doomed from the outset? If — or more realistically, when — 60 votes fail to materialize, attention will turn to **an obvious solution**: Voting rights advocates, on Capitol Hill and off, want **Senate Democrats** to **create** an **exception to** the **institution's filibuster rules**, allowing members to rescue democracy by simply passing a worthwhile bill by majority rule. In July, Virginia's Mark Warner, a moderate Senate Democrat, publicly endorsed just such a carve-out, saying Americans' voting rights are so fundamentally important to our system of government, this is "the only area" in which he'd support an exception to the chamber's existing filibuster rules. Will Democratic senators such as Manchin and Arizona's Kyrsten Sinema agree? Norm Eisen, a senior fellow at the Brookings Institution, and Norm Ornstein, an emeritus scholar at the American Enterprise Institute, recently made the case in a Washington Post opinion piece that the stakes are so high that every Democratic senator will ultimately do the responsible thing. Proponents of democracy have reason to hope they're right. We'll find out next week.

#### Yes Filibuster Reform for Voting Reform – cracks are opening but aggressive and un-wavering Biden pressure is key.

Kroll 10-20 Andry Kroll 10-20-2021 "McConnell Just BLocked a Voting-Rights Bill. It's All Part of Democrat's Plan" <https://archive.md/pDGm0#selection-1501.1-1507.245> (Washington, D.C., bureau chief for Rolling Stone.)//Elmer

WASHINGTON — It’s not often the leader of the United States Senate holds a vote knowing it will fail. It’s even less often that the Senate leader calls a doomed vote for one of the most important bills in his party’s legislative agenda. Majority Leader Chuck **Schumer** (D-N.Y.) is about to do just that. The Senate will **vote** Wednesday **on** the **F**reedom to **V**ote **A**ct, a once-in-a-generation bill to safeguard the right to vote, disclose dark money, and stop the partisan operatives who tried to steal the last election from stealing the next one. The vote is almost certainly **going to fail**. Democrats hold 50 seats, they need 60 votes to beat a Republican filibuster, and there’s no indication that even one GOP senator, let alone 10, plans to break ranks and support the bill. But for the Democratic lawmakers and outside activists pushing the bill, failure on Wednesday’s vote isn’t just expected — it’s **part of the plan**. They say it’s one of the final steps in a years-long, carefully choreographed strategy, one more proof point that Republicans won’t support even the most popular voting-rights and clean-government reforms. And if not a single Republican will vote for those reforms, then Democrats have no choice but to **negotiate** a **change to** the **filibuster rules** that will allow them to pass the Freedom to Vote Act and try to shore up America’s battered democratic system in time for the 2022 elections. Even with years of planning, the odds are long they pull it off. They have to win over centrist Sen. Joe Manchin (D-W.Va.) and rogue Sen. Kyrsten Sinema (D-Ariz.), not to mention half a dozen other senators who’ve privately expressed doubts about changing the filibuster. But those close to the action, the **congressional aides** and activists **on the inside**, **believe this is their moment**. A Tidal Wave of Lies The timing of tomorrow’s vote — and the even more critical fight to follow — couldn’t be more urgent. From January to September, 19 states have passed 33 new laws that will make it harder to vote and easier to sabotage elections, according to the Brennan Center for Justice at New York University. Some of these laws seek to reduce the number of polling places available to voters and limit the number of hours for early voting. Some of these laws reduce the window of time available to apply for a mail-in ballot and minimize the number, location, and availability of dropboxes in which you can safely submit your mail-in ballot. Some of these laws increase criminal penalties for local election workers who try to assist citizens in exercising their right to vote, whether it’s giving out water or snacks to voters waiting in line, helping voters with disabilities turn in their ballots, or encouraging voters to request mail-in ballots. Those are the only bills that have become law. According to the Brennan Center, more than 425 bills that include measures to restrict voting access have been introduced in 49 states this year. To be sure, there are state lawmakers pushing to improve voting rights at the state level, with at least 25 states passing 62 laws in 2021 that would help expand voting access. But Daniel Weiner, a voting-rights expert at the Brennan Center, says the wave of voter-suppression laws this year is an unprecedented assault on access to the ballot box, driven, in large part, by Republican legislatures acting on former President Donald Trump’s baseless claims about a stolen election. “A lot of it has been driven by falsehoods about the 2020 election, particularly around things like vote-by-mail,” Weiner says. Soon after winning control of the House, Senate, and White House earlier this year, the Democrats came out with the For the People Act, their answer to the growing assault on voting and democracy by Trump-inspired GOP lawmakers. The For the People Act was like the pot roast of progressive politics: A doorstop of a bill, Democrats had grabbed every reform idea they had in the cupboard and tossed it in the bill — combat gerrymandering, drag dark money into the daylight, protect the franchise, crack down on big-money super PACs. The bill passed easily out of the House. But it died on arrival in the Senate. Not only would no Republican support it; Sen. Manchin, a key moderate member of the Democratic caucus, announced his opposition to the bill, saying it was a partisan piece of legislation affecting an issue that required bipartisanship. “Congressional action on federal voting-rights legislation must be the result of both Democrats and Republicans coming together to find a pathway forward,” Manchin said at the time, “or we risk further dividing and destroying the republic we swore to protect and defend as elected officials.” In the same statement, Manchin also declared his opposition to weakening the filibuster. Democrats quickly offered up a revised version of the bill, one that Manchin was generally more supportive of, but it died in the face of a Republican filibuster. And with that, it seemed, the For the People Act was well and truly dead. Manchin in the Middle But the small group of **Democratic lawmakers** and the dozens of activist groups pushing for the bill **took hope from** another **statement of Manchin’s**. In a tweet in May about the need to reauthorize the landmark Voting Rights Act, **Manchin said** that “**inaction is not an option**.” The rest of the tweet talked about the need to act in a bipartisan way to reauthorize the VRA, but it was those initial five words — “Inaction is not an option” — that Senate Democrats and their allies seized upon. Speaking on the Senate floor last month, Sen. Schumer said: “As Senator Manchin said earlier this year regarding congressional action on voting rights, inaction is not an option. I agree with Senator Manchin in that regard.” After the defeat of the For the People Act in June, Manchin released a list of requests for what he wanted to see in a retooled voting-rights bill. Democrats spent the rest of the summer **incorporating** **Manchin’s demands** into a new compromise bill called the Freedom to Vote Act. The new bill, which was announced in late September, contains much of what was found in the For the People Act — provisions to increase disclosure of dark money, make Election Day a federal holiday, enact automatic voter registration at DMV offices, and pass nationalized standards for expanded access to early and same-day voting. While the bill pares back reforms to the Federal Election Commission, redistricting reform, and the use of voter-ID policies, it includes a raft of new protections against efforts to subvert or sabotage the vote-counting and certification process along the lines of what happened after the 2020 election. Despite the changes to parts of the bill, reformers say it would still make huge improvements to everything from voting and campaign funding to shoring up American democracy against the next onslaught of “stop the steal” skullduggery. “Following the 2020 elections, in which more Americans voted than ever before, we have seen unprecedented attacks on our democracy,” Sen. Amy Klobuchar (D-Minn.), a leader on voting rights in the Senate, tells Rolling Stone. “We must take action. The Freedom to Vote Act will protect the right to vote by setting basic national standards to ensure all Americans can cast their ballots in the way that works best for them, regardless of what ZIP code they live in.” Democrats not only crafted the Freedom to Vote Act **to address Manchin’s concerns**, they also gave him several weeks this fall to try to find 10 Republican senators who would support the new bill. From June onward, Democrats have adopted a Manchin-centric strategy, according to multiple congressional aides who have worked behind the scenes on the bill. Recent reporting indicates Manchin has not found GOP votes for the new bill, even though it contains policies that are popular with Democrats, Republicans, and independents, according to recent polling. “It’s lawmakers on the Republican side of the aisle in Washington standing against this reform; it’s not Republican voters,” says Rep. John Sarbanes (D-Md.). Filibuster Reform — or Bust Which brings us to Wednesday’s vote. The vote is not about whether to pass the Freedom to Vote Act — it’s a procedural vote on whether to begin debating the bill. If Republicans filibuster that vote, as they’re expected to do, then the final phase of Senate Democrats’ strategy begins. **To pass** the Freedom to Vote Act, **Democrats will need to change** **the** filibuster. Beltway media outlets use scary language to describe this process — “going nuclear” or using the “nuclear option” is the typical formulation — but in truth, the **Senate changes** the **rules** of how it does business **all the time**. Between 1969 and 2014, the Senate made **161 such changes**, according to research by the Brookings Institution. The Senate **changed** the **filibuster** during Barack Obama’s presidency to confirm lower-court judges **by** a simple **50-vote majority**; it did so again during Donald Trump’s presidency to confirm Supreme Court justices and cabinet secretaries. The bigger hurdles to filibuster reform are Manchin and Sinema. **Manchin** himself **called for filibuster reform in 2011**, but has since come out strongly against it, saying the existing rules of the Senate protect small, rural states like his. “We will not solve our nation’s problems in one Congress if we seek only partisan solutions. Instead of fixating on eliminating the filibuster or shortcutting the legislative process through budget reconciliation, it is time we do our jobs,” he wrote in April. Sinema, for her part, takes the opposite position of her more liberal counterparts: She argues that a strong filibuster is good for the Senate and for democracy. “The filibuster compels moderation and helps protect the country from wild swings between opposing policy poles,” she wrote in a June op-ed. The filibuster, she rightly points out, has been used to stop policies that Democrats deem dangerous or hateful — indeed, Democrats used the filibuster hundreds of times during Donald Trump’s four years in office. **If anyone can convince Manchin and Sinema** — and that’s a big if — **it’s President Biden**. Publicly, Biden has signaled his support for bringing back the talking filibuster, which would require physically holding the Senate floor and speaking continuously for however long you intended to block a vote. Privately, as Rolling Stone first reported, **Biden** has **told** Schumer **he’s ready to pressure** Manchin, Sinema, and other **resistant** Senate **Democrats to vote** in favor of filibuster reform of some kind. **This is the endgame**, Democrats and activists say. It will play out over the next few weeks, this pressure campaign to get all 50 Senate Democrats to approve filibuster changes in order to pass the Freedom to Vote Act along party lines. If Democrats can’t find the votes to so much as tweak the filibuster, then their once-in-a-generation voting-rights bill is dead. All year long, Democratic leaders have invoked Manchin’s line that “inaction is not an option.” Senate Democratic leader Schumer, likes to go one step further. “Failure,” he says, “is not an option.” That vow will now face its toughest test yet.

#### Right to Strike Policies cause mass Partisan Fights.

Kreighbaum et Al 21 Andrew Kreighbaum et Al 3-9-2021 "Landmark Labor Law Overhaul Passes House but Senate Fate Unclear" <https://news.bloomberglaw.com/daily-labor-report/landmark-labor-law-overhaul-passes-house-but-senate-fate-unclear> (Reporter at Bloomberg Law)//Elmer

The House of Representatives passed the most significant overhaul of federal labor law in decades on Tuesday. The **P**rotecting the **R**ight to **O**rganize **Act** (H.R. 842) is the **top** legislative **priority for** **organized labor groups** and has the backing of President Joe Biden, **but** the **business lobby** is **seeking to block** the bill. Supporters also face a steep challenge overcoming a filibuster in the Senate. The bill cleared the House on a 225-206 vote. The chamber previously passed the PRO Act last year **along** mostly **party lines**. Advocates say the bill is even more critical after the coronavirus pandemic exposed the challenges for many workers seeking safe conditions. It cleared the House as workers at an Amazon plant in Alabama vote on whether to form a union, a campaign that has attracted national attention and a shoutout from Biden. Boosting workers’ right to unionize would “help combat the acceleration of economic inequality that undermines the middle class, that has only grown worse over the past year,” House Speaker Nancy Pelosi (D-Calif.) said on Tuesday ahead of the bill’s passage. Business **lobby groups** like the U.S. Chamber of Commerce have said the bill would kill jobs, and **promised to oppose** it in the Senate. Worker Protections **The PRO Act** would amend the National Labor Relations Act, a federal law that guarantees private-sector employees the right to unionize, engage in collective bargaining, and take collective action such as strikes. Among other changes, it **would** bar employers from retaliating against unionization efforts, **protect workers’ right to strike**, and override state “right to work” laws that allow employees to opt out of paying dues in unionized workplaces. Companies would be banned under the bill, for example, from holding “captive audience” meetings, in which workers are compelled to listen to anti-union messages from their employer. The legislation also would give the National Labor Relations Board power to levy fines against companies that engage in unfair labor practices, and require arbitration when unionized workers can’t reach agreement on a contract with employers. BGOV Bill Summary: H.R. 842, Private Sector Union Rights The bill would allow employees to hold union elections off of company premises and use mail or electronic ballots, a provision that supporters say is essential during the pandemic. Electronic ballots are currently banned. The PRO Act addresses the status of independent contractors—such as gig workers at ride-hailing and food delivery companies—by lowering the bar for contractors to prove they are employees under federal labor law. That would allow gig workers to organize unions and protest retaliation under the NLRA—rights currently guaranteed only to employees, not contractors. The legislation would adopt the same rigid test to determine workers’ employment status as a California law known as A.B. 5. Workers for app-based services were recently carved out of the state law by a ballot initiative, Proposition 22, bankrolled by gig companies. The California law also applies to employment rules governing overtime and minimum wage. The PRO Act, however, only addresses workers’ status under the National Labor Relations Act. Senate Opposition Rep. Virginia Foxx (R-N.C.), the ranking member on the Education and Labor Committee, said the legislation would hurt entrepreneurs and individual workers by “making unions bigger and the individual freedom smaller.” **Republicans** in the Senate, including Sen. Tim Scott (R-S.C.), have already **gone on record opposing** the PRO Act. Union leaders pledged to carry on the fight in the Senate. The legislation faces slim chances there without changes to filibuster rules, which require 60 votes to end debate on a bill and bring it to a vote. The vocal **support from** the **Biden** administration **is significant** for the future of the legislation, said Celine McNicholas, director of government affairs and labor counsel at the left-leaning Economic Policy Institute. “We just don’t know **what labor law reform** is **possible** **with** an **administration** **willing to expend critical p**olitical **c**apital,” McNicholas said.

#### Republicans love private prison labor – expanding protections sparks Congressional backlash.

Jan ’18 (Tracy; writer for the Washington Post; 3-16-2018; “These **GOP lawmakers** say it’s **okay** for imprisoned immigrants to work for a $1 a day”; The Washington Post; https://www.washingtonpost.com/news/wonk/wp/2018/03/16/republican-congressmen-defend-1-a-day-wage-for-immigrant-detainees-who-work-in-private-prisons/; Accessed: 11-7-2021; AU)

A **group** of 18 **Republican congressmen** is urging the Trump administration to defend private prisons against lawsuits alleging immigrant detainees are forced to work for a wage of $1 a day. The members say that Congress in 1978 had **explicitly** set the **daily reimbursement** rate for voluntary work by detainees in U.S. Immigration and Customs Enforcement facilities, and that the same rate should apply in government-contracted private prisons. “Alien detainees should not be able to use immigration detention as a means of obtaining stable employment that will encourage them to pursue frivolous claims to remain in the country and in detention for as long as possible,” the lawmakers wrote in a letter to Attorney General Jeff Sessions, Labor Secretary Alexander Acosta, and acting ICE director Thomas Homan. In the March 7 letter, first reported by the Daily Beast, the **congressmen argue** that the detainees are **not employees** of private prisons, so they should not be able to file lawsuits seeking to be paid for their work. “It is our expectation that you will soon get involved in this litigation and take the position that these lawsuits lack legal merit and should be dismissed,” they said. A spokeswoman for the Department of Justice said Friday it has not yet confirmed that Sessions received the letter, and declined to respond to a Post request for comment. The letter was filed with a U.S. District Court in California by the GEO Group this week as part of a lawsuit against the company.

#### Voting Reform through the FTPA solves democracy - laundry list of warrants.

Weiser et al. 21 (, D., Weiser, W. and Erney, D., 2021. Congress Must Pass the ‘For the People Act’. [online] Brennan Center for Justice. Available at: <https://www.brennancenter.org/our-work/policy-solutions/congress-must-pass-people-act> [Accessed 6 November 2021] Daniel I. Weiner serves as deputy director of the Brennan Center’s Election Reform Program, where he helps to lead the Center’s work on money in politics, election security, government ethics, and other democracy and rule of law issues. He is the author or co-author of several nationally recognized reports, and also writes and comments regularly for media outlets such as the New York Times, the Washington Post, Slate, MSNBC, and NPR. He has provided policy advice and drafting assistance to lawmakers in Washington and across the country, and delivered testimony and briefings to Congress, state legislatures, and federal and state agencies. Wendy Weiser directs the Democracy Program at the Brennan Center for Justice at NYU School of Law, a nonpartisan think tank and public interest law center that works to revitalize, reform, and defend systems of democracy and justice. Her program focuses on voting rights and elections, money in politics and ethics, redistricting and representation, government dysfunction, rule of law, and fair courts. She founded and directed the program’s Voting Rights and Elections Project, directing litigation, research, and advocacy efforts to enhance political participation and prevent voter disenfranchisement across the country.)-rahulpenu

Introduction American **democracy** urgently **needs** **repair**. We now have a historic opportunity to bring about transformative change. In both houses of Congress, the For the People Act — H.R. 1 in the House and S. 1 in the Senate — was designated as the first bill, a top priority this session. This historic legislation responds to twin crises facing our country: the ongoing attack on democracy — reflected in the assault on the Capitol on January 6 and the subsequent flood of vote suppression bills across the country — and the urgent demand for racial justice. It is based on the key insight that the best way to defend democracy is to strengthen democracy. If enacted, it would be the **most** **significant** voting rights and **democracy** **reform** **in** more than **half** **a century**. The 2020 election, like the 2018 midterms, featured historic levels of voter turnout — the highest in over a century, even in the face of a deadly pandemic. But there were also unprecedented efforts to thwart the electoral process and disenfranchise voters, primarily in Black and brown communities, based on lies about “voter fraud.” Those efforts continue through restrictive voting bills in states across the country. Extreme partisan gerrymandering continued to distort far too many races for the House — a plot that is poised to be repeated in the upcoming redistricting cycle unless Congress steps in to prevent it. And despite increased engagement by small campaign donors last year, the most expensive campaigns in American history were still largely bankrolled by a small coterie of individual megadonors and entrenched interests, many of whom were able to keep their identities secret from voters. These problems were more extreme this cycle, but they are certainly not new. For decades, citizens’ voices have been silenced through voter suppression, gerrymandering, and deceptive tactics. Wealthy campaign donors maintain outsized sway over policy. And the guardrails against discrimination, corruption, and manipulation of the system for personal gain have all been cast aside or eroded. The virulent coronavirus, whose worst effects in terms of both health and the economy have fallen disproportionately on communities of color, underscores the urgent need for a functioning democracy that serves all the people. The current assault on voting rights across the country underscores the urgency of reform. Even though our democratic institutions survived an attempt to overturn the result of the 2020 election, unscrupulous state legislators have seized on the disinformation that fueled this attempt to introduce an alarming number of regressive bills aimed at restricting access to the ballot, including by sharply restricting access to mail ballots, cutting back on early voting, and slashing voter registration opportunities. To date, more than 360 bills to restrict voting access have been proposed in 47 states. These measures target and will disproportionately harm voters of color, young voters, and voters with disabilities. In Georgia, for instance, a recent Brennan Center analysis found that proposed bills to cut Sunday early voting and mail-voting access would burden Black voters most.footnote1\_2jnfpgj1 But here is the good news: we know what we need to do to address these problems and strengthen American democracy. It starts with passing the For the People Act. The Act incorporates key measures that are urgently needed, including automatic voter registration and other steps to modernize our elections; a national guarantee of free and fair elections without voter suppression, coupled with a commitment to restore the full protections of the Voting Rights Act; small donor public financing to empower ordinary Americans instead of big donors (at no cost to taxpayers) and other critical campaign finance reforms; an end to partisan gerrymandering; and a much-needed overhaul of federal ethics rules. Critically, the Act would thwart virtually every vote suppression bill currently pending in the states. These reforms respond directly to Americans’ desire for real solutions that ensure that each of us can have a voice in the decisions that govern our lives, as evidenced by their passage in many states, often by lopsided bipartisan margins. They are especially critical for communities of color. Racial justice cannot be fully achieved without a system in which all Americans have the means to advocate for themselves and exercise political power. As President Biden remarked in his inaugural address: democracy is precious, but democracy is also fragile. The 2020 election revealed a passionate commitment to democracy on the part of tens of millions of Americans who braved a deadly pandemic, voter suppression, and a concerted campaign of presidential lies to make their voices heard. On March 3, the House of Representatives honored that commitment by passing the Act in its entirety. Now, the Senate and the president must also fulfill their promise to secure representative democracy in America now and for future generations. Voting Rights The **right** **to** **vote** is at the heart of effective self-government. In the Federalist Papers, Alexander Hamilton and James Madison laid down a **standard** **for** our **democracy**: “Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States.” footnote1\_xtq3o5m2 For over two centuries, we have worked to live up to that ideal, but have consistently fallen short. Many have struggled, and continue to struggle, for the franchise. The For the People Act would expand and protect this most fundamental right and bring voting into the 21st century. Modernize Voter Registration Automatic Voter Registration Same-Day and Online Registration Protect Against Flawed Purges Restore the Voting Rights Act Restore Voting Rights to People with Prior Convictions Strengthen Mail Voting Systems Institute Nationwide Early Voting Preventing Unreasonable Wait Times at the Polls Protect Against Deceptive Practices Modernize Voter Registration One in five eligible Americans is not registered to vote, due in many cases to out-of-date and ramshackle voter registration systems. footnote2\_qt5ur323 We must modernize these systems. The United States is the only major democracy in the world that requires individual citizens to shoulder the onus of registering to vote (and reregistering when they move). footnote3\_cn495nz4 In much of the country, voter registration still relies on error-prone pen and paper. Paper forms make mistakes and omissions more likely, and they increase the risk of inaccurate entry of information into databases by election officials. A 2012 report by the Pew Center on the States estimated that roughly one in eight registrations in America is invalid or significantly inaccurate. footnote4\_rz4sjub5 These problems decrease turnout. Each Election Day, millions of Americans go to the polls only to have trouble voting because of registration flaws. Some find their names wrongly deleted from the rolls. Others fall out of the system when they move. footnote5\_kdw18ht6 Outdated registration systems also undermine election integrity. Incomplete and error-laden voter lists create opportunities for malefactors to disenfranchise eligible citizens. Officials with partisan motives can remove voters from the rolls because of minor discrepancies, such as spelling mistakes, incomplete addresses, or other missing information. These systems are also far more expensive to maintain than more modern systems. In Arizona’s Maricopa County, for example, processing a paper registration costs $0.83, compared to $0.03 for applications processed electronically. footnote6\_l1d2c4k7 The Covid-19 pandemic put outdated registration systems under even greater stress. Quarantines, illnesses, and social distancing reduced access to government offices, voter registration drives were curbed, and the post office was disrupted in the lead up to the election. The result was a dramatic reduction in voter registration rates in many state.footnote7\_erawq7h8 Back to top of section Automatic Voter Registration Automatic voter registration, a key component of the For the People Act, would transform and modernize our current registration systems. This bold, paradigm-shifting approach would add tens of millions of voters to the rolls, cost less, and bolster security and accuracy. It is now the law in nineteen states and the District of Columbia. footnote8\_78blcx09 It should be the law for the entire country. Under automatic voter registration (AVR), every eligible citizen who interacts with designated government agencies, such as the Department of Motor Vehicles ("DMV"), a public university, or a social service agency, is automatically registered to vote, unless they decline registration. It shifts registration from an “opt-in” to an “opt-out” process, aligning with people’s natural propensity to choose the default option presented to them. If fully adopted nationwide, AVR could add as many as 50 million new eligible voters to the rolls – the largest enfranchisement since the 19th Amendment was ratified. footnote9\_4chpp0x10 The policy also requires that voter registration information be electronically transferred to election officials as opposed to an antiquated infrastructure of paper forms and snail mail. This significantly increases the accuracy of the rolls and reduces the costs of maintaining them. footnote10\_639xmq011 California and Oregon became the first states to adopt AVR in 2015. Since then, 17 more states and the District of Columbia followed—many with strong bipartisan support. In Illinois, for example, the state legislature passed AVR unanimously, and a Republican governor signed it into law. footnote11\_tcs368f12 The new system has proven extraordinarily successful, increasing registration rates in nearly every state where it has been implemented. In Vermont, for example, registrations went up by 60 percent after it adopted AVR. In Georgia, they increased 94 percent. In eight jurisdictions that implemented AVR for the 2018 election, 2.2 million people were registered to vote through AVR, and up to 6 million people had their registration information updated. footnote12\_7apmn5713 There is strong reason to believe that this **reform** also **boosts** **turnout**. When voters are automatically registered, they are relieved of an obstacle to voting, thus increasing the likelihood they will show up to the polls. Automatic registration also exposes more voters to direct outreach from election officials and others. footnote13\_kb70srf14 Indeed, Oregon saw the nation’s largest turnout increase after it adopted AVR. It had no competitive statewide races, yet the state’s turnout increased by 4 percent in 2016 — 2.5 percentage points higher than the national average. footnote14\_l74k8oy15 In the eight jurisdictions analyzed, AVR resulted in hundreds of thousands of new voters at the polls. Other reforms that make it easier to register have also increased turnout, such as permitting registrants who move anywhere within a state to transfer their registration and vote on election day at their new polling place. footnote15\_jmpryan16 These measures send a strong message that all eligible citizens are welcome and encouraged to participate in our democracy. Many election officials support AVR because it improves administration and saves money. Virtually every state that has implemented electronic transfer of registration records from agencies such as the DMV to election officials has reported substantial savings due to reduced staff hours processing paper, and lower printing and mailing expenses. Eliminating paper forms improves accuracy, reduces voter complaints about registration problems, and reduces the need for the use of provisional ballots. footnote16\_4aa4ja017 Voters strongly support AVR. According to recent polling, 65 percent of Americans favor it. Michigan and Nevada adopted AVR this past election by popular referendum, with overwhelming support from voters across the political spectrum. Alaska voters passed AVR in 2016 with nearly 64 percent of the vote. footnote17\_bma163z18 The For the People Act sensibly makes AVR a national standard, building on past federal reforms to the voter registration system. footnote18\_66w2qop19 Critically, the Act requires states to put AVR in place at a wide variety of government agencies beyond the DMV, including those that administer Social Security or provide social services, as well as higher education institutions. It requires a one-time “look back” at agency records to register eligible individuals who have previously interacted with government agencies. It protects voters’ sensitive information from public disclosure. Critically, AVR also includes multiple safeguards to ensure that ineligible voters are not registered and to prevent people from being punished for innocent mistakes. The government agencies designated for AVR regularly collect information about individuals’ citizenship status and age, and they are already required to obtain an affirmation of U.S. citizenship during the registration transaction. Before anyone is registered, agencies must inform individuals of eligibility, the penalties for illegal registration, and offer an opportunity to opt out of registrations. Election officials, too, are required to send individuals a follow-up notice by mail. Indeed, election officials report that AVR enhances the accuracy of the rolls. footnote19\_sub7gnu20 Back to top of section Same-Day and Online Registration The For the People Act would boost voter participation further by establishing same-day and online registration. This would eliminate cumbersome paperwork and waiting periods. With a few clicks or a trip to the polls with proper documentation, eligible voters would be able to cast a ballot. Same-day registration (SDR) complements AVR, allowing eligible citizens to register and vote on the same day. It is particularly useful to people who have not interacted with government agencies or whose information has changed since they last did so. And because it allows eligible Americans to vote even if their names are not on the voter rolls, SDR safeguards against improper purges, registration system errors, and cybersecurity attacks. SDR has been used successfully in several states since the 1970s. Today, 21 states and the District of Columbia have passed some form of same day registration, either on election day, during early voting, or both. footnote20\_h900hwz21 SDR has been shown to boost voter turnout by 5 to 7 percent. footnote21\_mm1p85c22 More than 60 percent of Americans support it. footnote22\_1s2p82t23 The For the People Act also requires states to offer secure and accessible online registration. At a time when many Americans do everything from banking to reviewing medical records online, voters want this convenient method of registration. The online registration provisions in the For the People Act would let all voters register, update registration information, and check registrations online. This option has been especially critical during the Covid-19 pandemic, when voters were prevented from registering by other means. The act would also ensure that these benefits are available to citizens who do not have drivers licenses. Online registration is especially critical as a response to the Covid-19 pandemic, which may keep some voters from registering by other means. In addition to convenience and safety, online registration saves money and improves voter roll accuracy. Processing electronic applications is a fraction of the cost of processing paper applications, and election officials report that letting voters enter their own information significantly reduces the likelihood of incomplete applications and mistakes. It is not surprising, therefore, that online registration is incredibly popular and has spread rapidly. In 2010, only six states offered online voter registration. Now, 39 states and the District of Columbia do. footnote23\_olwjw3k24 Taken together, AVR, SDR, and online registration would ensure that no eligible voter is left out of our democratic process. It is time to bring these reforms to the whole country. Back to top of section Protect Against Flawed Purges Modernizing our voter registration system means not only registering all eligible voters, but also making sure those eligible voters stay on the voter rolls. Voter purges — the large-scale deletion of voters’ names from the rolls often using flawed data — are on the rise. In 2018, they were a key form of vote suppression used by election officials around the country. footnote24\_n9q92d825 We should address this growing threat by curbing improper efforts to remove eligible voters. Purge activity has increased at a substantially greater rate in states that were subject to federal oversight under the Voting Rights Act of 1965 (VRA) prior to the Supreme Court’s decision in Shelby County v. Holder. The Brennan Center has calculated that more than 17 million voters were purged from the polls nationwide between 2016 and 2018. Over the same period, the median purge rate in jurisdictions previously covered by the VRA was 40 percent higher than the purge rate in jurisdictions that were not covered. Georgia, for example, purged twice as many voters— 1.5 million— between the 2012 and 2016 elections as it did between 2008 and 2012. The state also saw most of its counties purge more than 10 percent of their voters within the past two years alone. Texas purged 363,000 more voters between 2012 and 2014 than it did between 2008 and 2010. We ultimately found that 2 million fewer voters would have been purged between 2012 and 2016, and 1.1 million fewer between 2016 and 2018, if jurisdictions previously subject to preclearance had purged at the same rate as other jurisdictions. footnote25\_x8g3wkd26 Incorrect purges disenfranchise legitimate voters and cause confusion and delay at the polls. And purge practices can be applied in a discriminatory manner that disproportionately affects minority voters. In particular, matching voter lists with other government databases to ferret out ineligible voters can generate racially discriminatory results if the matching is done without adequate safeguards. Black, Asian American, and Latino voters are much more likely than white voters to have one of the most common 100 last names in the United States, resulting in a higher rate of false positives. footnote26\_9wufqrx27 The For the People Act creates strong protections against improper purges. It puts new guardrails on the use of interstate databases (such as the now-defunct and much-maligned Crosscheck system) that purport to identify voters that have reregistered in a new state, but that have been proven to produce deeply flawed data.footnote27\_qbsdjzg28 It prohibits election officials from relying on a citizen’s failure to vote in an election as reason to remove them from the rolls. And it requires election officials to provide timely notice to removed voters, as well as an opportunity to remedy their registration before an election. Back to top of section Restore the Voting Rights Act The For the People Act contains an express commitment to restore the full protections of the Voting Rights Act, which the U.S. Supreme Court crippled with its ruling in Shelby County v. Holder in 2013. footnote28\_wiuh4su29 VRA restoration is accomplished through separate legislation, the Voting Rights Advancement Act of 2019, or H.R. 4, which passed the House of Representatives on December 6, 2019. footnote29\_02o53cx30 As recent experience makes clear, restoration of the VRA—the engine of voting equality in our country—is critical. The VRA is widely regarded as the single most effective piece of civil rights legislation in our nation’s history. footnote30\_rbly8fe31 As recently as 2006 it won reauthorization with overwhelming bipartisan support. footnote31\_fipxywn32 But in the absence of a full-force VRA, the 2018 midterm elections were marred by the most brazen voter suppression seen in decades. footnote32\_fms2u5733 Election officials executed large-scale voter purges and closed polling places and early voting sites, especially in minority neighborhoods. footnote33\_x2g2qel34 Burdensome voter ID requirements targeted minority citizens. footnote34\_o7olpri35 Unnecessarily strict registration rules, like Georgia’s “exact match” policy, put 53,000 voter registrations on hold, the overwhelming majority of whom were Black people, Latino, and Asian American voters. footnote35\_gfph2yb36 And many absentee ballots were suspiciously rejected. footnote36\_f5ugfps37 A fully functional VRA would have prevented many of these abuses. We must commit to restoring the Act to ensure that all Americans have a voice in our democracy. For nearly five decades, the linchpin of the VRA’s success was the Section 5 preclearance provision. It required certain states with a history of discriminatory voting practices to obtain approval from the federal government before implementing any voting rules changes. Section 5 deterred and prevented discriminatory changes to voting rules right up until the time the Supreme Court halted its operation. Between 1998 and 2013 alone, Section 5 blocked 86 discriminatory changes (13 in the final eighteen months before the Shelby County ruling), caused hundreds more to be withdrawn after a Justice Department inquiry, and prevented still more from being advanced because policymakers knew they would not pass muster. footnote37\_13cqtog38 Shelby County eviscerated Section 5 by striking down the “coverage formula” that determined which states were subject to preclearance. That resulted in a predictable flood of discriminatory voting rules, contributing to a now decade-long trend of states adopting new restrictions, which the Brennan Center has documented extensively. Within hours of the Court’s decision, Texas announced that it would implement what was then the nation’s strictest voter identification law — a law that had previously been denied preclearance because of its discriminatory impact. Shortly afterward, Alabama, Arizona, Florida, Mississippi, North Carolina, and Virginia also moved ahead with restrictive voting laws or practices that previously would have been subject to preclearance. footnote38\_kewdfy139 In the years since, federal courts have repeatedly found that new laws passed after Shelby County made it harder for minorities to vote, some intentionally so. footnote39\_s004pep40 Section 2 of the VRA — which prohibits discriminatory voting practices nationwide and permits private parties and the Justice Department to challenge those practices in court — remains an important bulwark against discrimination. But Section 2 lawsuits are not a substitute for pre-clearance. They are far more lengthy and expensive, and often do not yield remedies for impacted voters until after an election (or several) is over. footnote40\_l9wwu8q41 H.R. 4 updates the VRA’s coverage formula to restore the Act’s full force. It is backed by a thorough legislative record documenting the recent history of voter suppression in U.S. elections. While H.R. 4 passed in the House of Representatives, it has yet to be taken up by the Senate. This crucial legislation must become law in order to fortify the right to vote and the integrity of our elections. The For the People Act commits us to this goal. Back to top of section Restore Voting Rights to People with Prior Convictions Nationally, state laws deny 4.5 million citizens the right to vote because of a criminal conviction — 3.2 million of whom are no longer incarcerated. The laws that disenfranchise them originate primarily from the Jim Crow era, shutting people who work, pay taxes, and raise families out of our political system. footnote41\_6aoyuit42 We should restore voting rights to Americans living in the community. This would strengthen our communities, offer a second chance to those who have served their time, and remove the stain of a policy born out of Jim Crow. Disenfranchisement laws vary dramatically from state to state. In states like Vermont and Maine, people currently in prison are allowed to vote. Some states distinguish between different types of felonies, states that treat repeat offenders differently. Jurisdictions also have varying rules on what parts of a sentence must be completed before rights are restored, such as paying off debt or other legal financing obligations. footnote42\_1m7m6hl43 Navigating this patchwork of state laws causes confusion for everyone — including election officials and prospective voters — about who is eligible to vote. The real-world result is large-scale disenfranchisement not only of ineligible persons but also of potential voters who are eligible to register but wrongly believe they are barred from doing so by a prior conviction. footnote43\_fjntr7x44 Regardless of their particular terms, criminal disenfranchisement laws are rooted in discriminatory practices that disproportionately impact Black voters. In 2016, 1 in 13 voting-age Black citizens could not vote, a disenfranchisement rate more than four times that of all other Americans. footnote44\_50jq0oj45 This unequal impact is no accident—many states’ criminal disenfranchisement laws are rooted in 19th-century attempts to evade the Fifteenth Amendment’s mandate that Black men be given the right to vote. footnote45\_8hi95xg46 This disproportionate impact on people of color means that all too often, **communities** are **shut** **out** **of** **our** **democracy**. Disenfranchisement laws have a negative ripple effect beyond those people within their direct reach. Research suggests that these laws may affect turnout in neighborhoods with high incarceration rates, even among citizens who are eligible to vote. footnote46\_es1xdrl47 This is not surprising; Children learn civic engagement habits from their parents. Neighbors encourage each other’s political participation. And when a significant portion of a community is disenfranchised, it sends a damaging message to others about the legitimacy of democracy and the respect given to their voices. The For the People Act adopts a simple and fair rule: if you are out of prison and living in the community, you get to vote in federal elections. It also requires states to provide written notice to individuals with criminal convictions when their voting rights are restored. These changes would have a profoundly positive impact on affected citizens and society. We all benefit from the successful reentry of formerly incarcerated citizens into our communities. Restoring their voting rights makes clear that they are entitled to the respect, dignity, and responsibility of full citizenship. Voting rights restoration also benefits the electoral process by reducing confusion and easing the burdens on elections officials to determine who is eligible to vote. If every citizen living in the community can vote, officials have a bright line rule to apply. This clear rule also eliminates one of the principal bases for erroneous purges of eligible citizens from the voting rolls. footnote47\_ooor9hx48 In past elections, states have botched attempts to remove Americans with past criminal convictions from the rolls, improperly removing many eligible citizens. For example, in 2016 thousands of Arkansans were purged because of supposed felony convictions— but the lists used were highly inaccurate, and included many who had never committed a felony, or who had had their voting rights restored. footnote48\_ls9u4xb49 For these reasons, rights restoration is immensely popular regardless of political views. In November 2018, 65 percent of Florida voters passed a ballot initiative restoring voting rights to 1.4 million of their fellow residents, with a massive groundswell of bipartisan support. Unfortunately, the state legislature significantly undercut the will of the people by conditioning rights restoration on the payment of criminal justice fees and fines, a move that was later upheld by a federal court of appeals. Louisiana, through bipartisan legislation, restored voting rights to nearly 36,000 people convicted of felonies. In December of 2019, newly-elected Governor Andy Beshear signed an executive order restoring the vote to some 140,000 Kentuckians. Shortly after, the New Jersey legislature restored voting rights to 80,000 people on parole or probation. Governor Kim Reynolds, Republican of Iowa, recently signed an executive order that restores voting rights to Iowans who have completed their sentences. And over the past two decades, 18 states have restored voting rights to segments of the population. footnote49\_lfcsg1a50 Congress has the authority to act. Many state criminal disenfranchisement laws were enacted with a racially discriminatory intent and have a racially discriminatory impact, violating the Fourteenth and Fifteenth Amendments, which vest Congress with broad power to enforce their protections. Congress can also act under its Article I power to set the rules for federal elections. The Supreme Court has previously upheld the use of this power in analogous circumstances, such as when Congress lowered the voting age to 18 in federal elections. footnote50\_msg791d51 It is time to finally put one of the most troubling legacies of the Jim Crow era behind us. Back to top of section Strengthen Mail Voting Systems The For the People Act would also create a baseline standard for access to mail voting in federal elections. The 2020 election season, which took place during a global pandemic, made clear that Americans need different options for how to vote, including the option to vote by mail, in order to accommodate the needs of a diverse electorate. What’s more: mail voting is increasingly popular with voters. Even before the pandemic, roughly one-quarter of American voters cast mail ballots in the 2014, 2016, and 2018 presidential elections.footnote51\_tr2pbji52 That percentage shot up this past November, as more than 65 million Americans successfully and securely voted by mail.footnote52\_58oeaeo53 Increased mail voting undoubtedly contributed to the surge in participation in the 2020 elections, which reached 66.7 percent of the voting-eligible population (over 159 million people), the highest rate in over a century.footnote53\_tmifzip54 This surge in mail voting was enabled by significant expansions of access to mail voting in many states. These reforms included broadening the scope of who could vote by mail; automatically mailing ballot applications or ballots to eligible voters; implementing better processes for voters to receive notice of and cure defective mail ballots; and extending ballot return deadlines, among other critical reforms.footnote54\_8p9r1e755 Unfortunately, although the 2020 election demonstrated the value of mail voting, it also exposed the deficiencies and inequities of mail voting systems in many states. First, many of the changes that increased access to mail voting were made through temporary legislation or timebound executive orders that expired after the 2020 general election. Second, even in the face of the pandemic, a number of states continued to place unreasonable restrictions on the ability to vote by mail. For example, five states continued to require voters to provide an excuse for not voting in person. That was down from 17 states the previous election cycle, but only 1 of the states that eliminated excuse requirements passed legislation to do so permanently.footnote55\_b9gyk1h56 In addition, eight states still required voters to obtain a witness signature or notary to cast a mail ballot. And in 28 states, ballots could still be rejected for technical defects unrelated to voter eligibility, without any notice or opportunity to correct the issue after Election Day.footnote56\_4s939en57 Three closely contested states — Iowa, Ohio, and Texas — also limited the use of secure ballot drop boxes for voters to submit their absentee ballots. Similarly, Pennsylvania tossed thousands of votes from eligible voters who did not place their absentee ballots in a so-called “privacy sleeve” (an extra envelope that encases a ballot within a mailing envelope).footnote57\_rlbst6z58 Barriers to mail voting had a disproportionately negative impact on Black and brown voters.footnote58\_92ndxgf59 And they would have likely disenfranchised far more people had voter mobilization not been so high. In the face of ongoing efforts to unreasonably limit mail voting options, the For the People Act would make concrete improvements to guarantee all voters reasonable, secure access to this method for casting a ballot. To start, the act requires states to give every voter the option to vote by mail. It also removes a key barrier to accessing mail voting by requiring prepaid postage for all election materials, including registration forms and ballot applications. In addition to making it easier to request a mail ballot, the act simplifies the process of returning the ballot by requiring states to provide drop boxes for federal races, as well as by clarifying that all voted mail ballots should be carried free of postage. In states where most or all voters vote by mail, easy access to drop boxes is considered a best practice, as drop boxes are secure and convenient, enabling a speedier ballot delivery than the postal service. In 2016, a majority of voters in Colorado (73 percent), Oregon (59 percent), and Washington (65 percent), — all “vote at home” states — chose to return their ballots to a physical location rather than send them via mail.footnote59\_aa7ihad60 The act would also require states to provide voters with a way to track their mail ballot and confirm its receipt. The ability to track a ballot is important for election security, as election officials can locate lost ballots. Likewise, it ensures that every valid vote is counted by empowering voters to confirm the arrival of their ballot. footnote60\_097iciw61 The For the People Act allows states to access funds allocated in the Help America Vote Act to develop such a program. Many election officials support the expansion of mail voting.footnote61\_8bzl4ws62 In addition to easing access to the ballot, increased mail voting lightens the administrative burden on our in-person voting systems. If more people can vote early by mail, that means fewer voters have to wait in line at the polls. Election officials and experts agree that mail voting is highly secure. All mail ballots are marked by hand, which means there is a paper trail to enable effective post-election audits.footnote62\_114asqh63 Enhanced mail voting can lead to a smoother election experience for voters and officials alike. Back to top of section Institute Nationwide Early Voting Every year, Americans across the country struggle to get to the polls on Election Day. Full-time jobs, childcare needs, disabilities, and other factors prevent them from traveling to their polling place to cast a ballot. Sometimes, even after making the time and the journey, long lines cause them to turn away. We should alleviate this problem by guaranteeing a minimum two-week period for early voting in federal elections. Holding elections on a single workday in mid-November is a relic of the 19th century. It was done for the convenience of farmers who had to ride a horse and buggy to the county seat in order to cast a ballot. footnote63\_y253nr164 This no longer works for millions across the country. Early voting helps to modernize the electoral process to make it easier for hardworking Americans to get to the polls. It also helps to minimize crowding at polling places. Forty-five states and the District of Columbia offered some opportunity to vote in person before Election Day in 2020. More than a dozen of those states offer early voting for a period comparable to or greater than the two-week period leading to Election Day required by the For the People Act. footnote64\_oceuzcq65 But the absence of a national standard means that some states have few or inconsistent early voting hours. Other states have engaged in politicized cutbacks to early voting. Over the past decade, multiple states have reduced early voting days and/or sites used disproportionately by Black voters, such as by eliminating early voting on the Sunday before Election Day. Federal courts have struck down these kinds of early voting cutbacks in North Carolina and Wisconsin because they were intentionally discriminatory. footnote65\_9dy0ybr66 The For the People Act will make voting more manageable by requiring that states provide two weeks of early voting and equitable geographic distribution of early voting sites. A guaranteed early voting period will reduce long lines at the polls and ease the pressure on election officials and poll workers on Election Day. It will also make it easier for election officials to spot and solve problems like registration errors or voting machine glitches before they impact most voters. For these reasons, election officials report high satisfaction with early voting. Early voting is popular with voters too, with study after study showing a significant positive effective on voter satisfaction. footnote66\_2znu4g367 Early voting is a critical element of a convenient and modern voting system. A national standard is long overdue. Back to top of section Preventing Unreasonable Wait Times at the Polls The For the People Act will require states to make voting more accessible by cutting down on long wait times at the polls. Far too often, voters arrive at their precincts only to find out that they must wait in unreasonably long lines to cast a ballot. In the 2020 midterms, for example, voters in metropolitan areas across the country — from Atlanta to Philadelphia to Milwaukee — were forced to wait in hours-long lines at the polls.footnote67\_17c23qf68 A study of the 2018 midterm elections estimated that 3 million voters waited longer than half an hour to vote (and many waited much longer).footnote68\_159t36a69 The unconscionably (but all-too-familiar) long lines in the 2012 election prompted President Obama to institute a bipartisan commission to develop recommendations to reduce wait times.footnote69\_ksy4eaa70 Long lines are inconvenient for all voters, but they are an especially heavy burden for voters with disabilities, those who may be missing work to vote, and those with caregiving responsibilities. For too many, a long line can mean a lost vote. Long lines do not affect all voters equally; a growing body of research shows that they disproportionately plague Black and Latino voters.footnote70\_iqnh91i71 A Brennan Center study of the 2018 election found that Black and Latino voters waited on average 45 and 46 percent longer than white voters respectively.footnote71\_bkzeuhr72 These racial disparities persisted in the 2020 primary elections, in which the longest wait times were seen in jurisdictions with the largest concentrations of nonwhite voters.footnote72\_uob3jd373 Excessive wait times are an avoidable problem. The For the People Act sets a legal standard that no individual shall be required to wait longer than 30 minutes to cast a ballot. (This was the standard recommended by the bipartisan Presidential Commission on Election Administration in 2013.) Additionally, it directs states to equitably allocate voting systems, poll workers, and other election resources to ensure fair and equitable wait times for all voters. And it directs the Election Assistance Commission and the comptroller general to study the places that have struggled the most with long lines to ensure that the most effective practices can be put in place. Back to top of section Protect Against Deceptive Practices Attempts to suppress voting through deception and intimidation remain all too widespread. Every election cycle, these tactics are documented by journalists and nonpartisan Election Protection volunteers. footnote73\_zss3lfg74 This is not a new problem, but social media platforms make the mass dissemination of misleading information easy and allow for perpetrators to target particular audiences with disturbing precision. In 2016, they were especially prevalent, and not just on the part of domestic actors. Russian operatives also engaged in a concerted disinformation and propaganda campaign over the internet that aimed, in part, to suppress voter turnout, especially among Black voters. footnote74\_0alh56u75 We should increase protections against such efforts. While federal law already prohibits voter intimidation, fraud, and intentional efforts to deprive others of their right to vote, existing laws have not been strong enough to deter misconduct. Moreover, no law specifically targets deceptive practices, nor is there any authority charged with investigating such practices and providing voters with corrected information. The For the People Act protects voters from deception and intimidation in three ways. First, it increases criminal penalties for false or misleading statements, as well as intimidation, aimed at impeding or preventing a person from voting or registering to vote. Second, it empowers citizens to go to court to stop voter deception. Third, it blunts the effect of deceptive information by requiring designated government officials to disseminate accurate, corrective information to voters. These provisions will give federal law enforcement agencies and private citizens the opportunity to stop bad actors from undermining our elections. Back to top of section Campaign Finance We also need to overhaul the role of money in politics. Thanks in part to Citizens United v. FEC and other harmful court decisions, a small class of wealthy donors has achieved unprecedented clout in American elections. footnote1\_ti8nb1s76 That distorts our democracy and undermines the will of American voters. We should pass reforms to counteract the worst effects of Citizens United and amplify the voices of everyday Americans in our campaigns. Small Donor Public Financing Shoring Up Other Critical Campaign Finance Rules Overhaul the FEC Small Donor Public Financing To truly counteract the worst effects of Citizens United, we need to create a small-donor public financing system for federal elections. This reform will give candidates a viable option to fund their campaigns without relying on wealthy campaign donors and enable working Americans to increase the financial support they can provide to candidates who champion their policy preferences. America’s system of privately financed campaigns gives a small minority of wealthy donors and special interests unparalleled sway. Super PACs — political committees that can raise and spend unlimited funds thanks to Citizens United — have raised more than $8 billion to spend on influencing elections. footnote2\_oz2wz7u77 As of 2018, roughly $1 billion had come from just 11 people footnote3\_0nk76kz78 Dark money groups that keep their donors secret, but which we know are funded by many of the same donors who back super PACs, have spent well over $1 billion more. footnote4\_6coyckp79 Overall, in the decade since Citizens United, donors who give more than $100,000 have come to dominate federal campaign fundraising. Even during the supposed small donor boom of the 2018 midterms, the roughly 3,500 donors who contributed at least $100,000 easily outspent all individual small donors (of $200 or less), who numbered at least 7 million. footnote5\_jcdwgiu80 In fact, while the number of small individual donors has increased in recent years in absolute terms, their total share of federal campaign spending has remained flat, accounting for about 20 percent of total donations. footnote6\_kpzcsty81 In the two most recent midterm elections, the top 100 super PAC donors gave almost as much as all the millions of small donors combined. footnote7\_i5gct9182 The outsized role of large campaign donors forces candidates to spend an inordinate amount of time focused on their concerns. One party fundraising presentation from several years ago suggested that new representatives spend four hours a day soliciting large contributions. footnote8\_unogdtd83 As Senator Chris Murphy of Connecticut noted of the hours he spent calling donors, “I talked a lot more about carried interest inside of that call room than I did at the supermarket. [Wealthy donors] have fundamentally different problems than other people . . . And so you’re hearing a lot about problems that bankers have and not a lot of problems that people who work in the mill in Thomaston, Conn., have.” footnote9\_l8tisu884 Unsurprisingly given this dynamic, researchers find that government policy is much more responsive to the preferences of the wealthy and business interest groups than those of average citizens. In 2017, for example, Congress passed a $1.5 trillion corporate tax overhaul, an avowedly donor-driven initiative that enjoyed tepid public support at best. footnote10\_p96b0tg85 The tax bill made it over the finish line in part because of explicit warnings that “financial contributions will stop” if it failed to pass. footnote11\_iop6rpq86 There are many other examples of government policy aligning more with the preferences of the donor class than with those of most other Americans, especially with respect to issues related to wealth inequality, like wages, housing, and financial regulation. footnote12\_6gdpfqq87 The clout that donors wield in our political system has contributed to a sense of powerlessness on the part of millions of everyday Americans. Overwhelming majorities tell pollsters that corruption is widespread in the federal government, that they believe people who give a lot of money to elected officials have more influence than others, that money has too much influence in political campaigns, and that they blame money in politics and wealthy donors for dysfunction is the U.S. political system. footnote13\_3r0j3um88 The central role of wealthy private donors poses special challenges for communities of color. At the highest contribution levels, the donor class has long been overwhelmingly white (and disproportionately male). footnote14\_1sh450k89 One consequence is that policies that would disproportionally benefit people of color, such as raising the minimum wage, tend to be much more popular with ordinary people than with influential political donors. footnote15\_fs8bhq890 The cost of campaigns is also a barrier to people of color running for office, especially women. footnote16\_q6et06q91 In 2018, Black women running for Congress raised only a third of what other female candidates received from large donors. footnote17\_0hapnx392 Facing these structural barriers, potential candidates often decline to run at all — as one operative notes, “[e]specially for black women, raising money is oftentimes a major deterrent to why they don’t get into politics or run for election.” footnote18\_2qtsl7s93 The For the People Act addresses these problems head-on by amplifying the voices of the everyday voters, primarily through small donor matching. Small donor matching is a pathbreaking solution to the problem of big money in politics. While its potential may be profound, the basics of this system are simple. Candidates opt into the system by raising enough small start-up donations to qualify and accepting certain conditions such as lower contribution limits. Donors who give to participating candidates in small amounts will then see their contributions matched by public money. The For the People Act would match donations to participating House and Senate candidates of $1-$200 at a six-to-one ratio, the same ratio used until recently in New York City’s highly successful program. footnote19\_jdj7s5894 Small donor matching has a long and successful history in American elections. It was first proposed more than a century ago by President Theodore Roosevelt. Congress incorporated a one-to-one small donor match for primaries into the presidential public financing system enacted in 1971. The vast majority of major party presidential candidates from 1976 to 2008 used matching funds in their primary campaigns. Thanks to the presidential public financing system, Ronald Reagan was reelected by a landslide in 1984 without holding a single fundraiser. Two years later, the bipartisan Commission on National Elections concluded that “public financing of presidential elections has clearly proved its worth in opening up the process, reducing the influence of individuals and groups, and virtually ending corruption in presidential election finance.” footnote20\_lcukyny95 Small donor matching has also found success at the state level, where it has been adopted in a wide variety of jurisdictions — including most recently in New York State.footnote21\_yg5hahr96 The system that has been studied the most is New York City’s, which has existed since the 1980s and currently matches donations of up to $175. footnote22\_sot656e97 The vast majority of city candidates participate. footnote23\_1ntndl698 Studies of the 2009 and 2013 city elections found that participating candidates took in more than 60 percent of their funds from small donors and the public match. footnote24\_86oeqgj99 These donors are far more representative of the real makeup of New York than big donors in terms of race, income, education level, and geographic location. footnote25\_q55g47d100 Candidates who participate in the small donor matching program also raise significantly more money from donors in their own districts than other candidates running in the same areas. footnote26\_x9x2j4j101 Along with expanding the donor pool, the city’s small door matching system has also helped more diverse candidates run. These include the city’s first Black mayor and New York State’s first female and first Black elected attorney general, who began her career on the city council. footnote27\_0tft4k0102 The For the People Act’s small donor matching provisions would transform campaign fundraising in federal elections. They would allow every candidate to power their campaign with small donations; recent Brennan Center studies of congressional fundraising found that almost all congressional candidates would be able to raise as much as or more than they do under the current system, and that the greatest benefits would go to female candidates of color. footnote28\_7fuq71u103 The For the People Act accomplishes this transformation at no cost to taxpayers; the public match is instead funded primarily by a small surcharge on criminal and civil penalties assessed against corporate wrongdoers. And even if this were not the case, the price tag is exceedingly modest — roughly 0.01 percent of the overall federal budget over ten years. footnote29\_f5slx9j104 The reality is that campaigns cost money, which must come from somewhere. When wealthy donors and special interests fund our campaigns, they expect something in return. Taxpayers are too often the ones left to pay the real bill. footnote30\_g7z0z51105 We need a system that will create greater incentives to enact policies that benefit all Americans. The For the People Act’s matching program represents the best hope for bringing such a change about. In addition to small donor matching, The For the People Act also creates a pilot program to provide eligible donors with $25 in “My Voice Vouchers” to give to congressional candidates of their choice in increments of $5. While less common, vouchers are another promising type of small donor public financing, one that is especially beneficial for Americans who cannot afford to make even small donations. Voters in the city of Seattle overwhelmingly passed a voucher program in 2015, which has brought thousands of new donors into the political process, most of whom are women, people of color, and/or younger and less affluent than the city’s overall donor pool. footnote31\_o7dbcnc106 Finally, The For the People Act revamps the presidential public financing system, which currently provides matching funds to primary candidates and block grants to general election nominees. Despite its initial success, that system ultimately failed because it did not afford candidates sufficient funds to compete in light of the dramatic growth in campaign costs. footnote32\_zjnz1h1107 The For the People Act addresses this problem by increasing the primary match to a six-to-one ratio, providing matching funds to party nominees in the general election, and repealing burdensome limits on how much participating candidates can spend. Back to top of section Shoring Up Other Critical Campaign Finance Rules We must also fortify other critical campaign finance rules to curb dark money, counter foreign interference in U.S. elections, and make it harder to sidestep campaign contribution limits. These are some of the biggest challenges for our campaign finance system. As recently as 2006, almost all federal campaign spending was raised in accordance with federal contribution limits and fully transparent. But Citizens United made it possible for new types of entities to spend limitless funds on electoral advocacy — including super PACs and dark money groups that are not required to publicize their sources of funding. footnote33\_0ua2zdk108 As noted, such groups have spent billions on federal elections, much of it coming from a handful of billionaire megadonors. All of this spending tends to be concentrated in the closest races. One Brennan Center study of the 2014 midterms showed that more than 90 percent of dark money spent on Senate races that year was concentrated in the eleven most competitive contests. footnote34\_rn65n41109 Dark money is an especially troubling phenomenon. The lack of donor disclosure deprives voters of critical information about who is trying to influence them and what those spenders want from the government. It is donor disclosure, as the Citizens United court itself pointed out, that allows voters to determine whether elected leaders “are in the pocket of so-called ‘moneyed interests.’” footnote35\_9q5sugp110 More recently, it has come to light that this lack of transparency provides multiple avenues for foreign governments and nationals to meddle in the American political system. Dark money is one such avenue. For instance, as of 2020, there was an ongoing investigation into ties between the Russian government and the National Rifle Association, a 501(c)(4) organization that spent tens of millions of dollars in dark money on the 2016 presidential race. footnote36\_sudkg5g111 Russian operatives in the 2016 election also took advantage of weak disclosure rules for paid internet ads. Overall, political advertisers spent $1.4 billion online in the 2016 election, almost eight times what they spent in 2012; one projection estimates that their spending increased to $1.8 billion in the 2020 cycle. footnote37\_w6saeep112 Online ads are cheap to produce and disseminate instantly to vast potential audiences across great distances without regard for political boundaries. The Russian government’s efforts — documented, among other places, in the Mueller Report — focused on stoking and amplifying social discord in the U.S. electorate, lowering turnout (especially among Black voters), and, once Donald Trump became the Republican nominee, helping him defeat Hillary Clinton. footnote38\_z8bm6xs113 Moscow’s efforts in 2016 may serve as a blueprint for other malefactors. As former Homeland Security Secretary Jeh Johnson put it, “The Russians will be back, and possibly other state actors, and possibly other bad cyber actors.” footnote39\_on6jzn8114 Indeed, disinformation campaigns sponsored by the Russian, Chinese, and other foreign governments appear to have been widespread in 2020 and will likely be a feature of our elections for the foreseeable future. footnote40\_i6hg1wb115 Beyond questions of transparency, there is also the problem of candidates working closely with outside spenders, including both super PACs and dark money groups, to circumvent contribution limits. The Citizens United Court wrongly assumed this would not happen. It was the very “absence of prearrangement and coordination” that the Court thought would make outside spending not particularly valuable to candidates, and thus not a significant corruption risk. That is why, unlike direct contributions to candidates, outside spending cannot be limited. But even if one accepts the Court’s flawed reasoning, the reality is that a great deal of outside spending is anything but independent. In 2016, for example, most presidential candidates had personal super PACs run by top aides or other close associates, whose only purpose was to get the candidate elected and for which the candidate often personally raised funds or even appeared in ads. These entities are also becoming increasingly common in Senate and House races; the trend continued in 2020. footnote41\_1edc50t116 All of these factors have rendered campaign contribution limits virtually meaningless. The For the People Act takes several key steps to deal with these problems. First, it closes legal loopholes that have allowed dark money to proliferate by requiring all groups that spend significant sums on campaigns to disclose the donors who pay for that spending. Second, it expands transparency requirements to apply to online campaign ads on the same terms as those run on more traditional media. It also strengthens the “paid for” disclaimers that are required to be included in such ads. And it requires the largest online platforms, with over 50 million unique visitors per month, to establish a public file of requests to purchase political ads akin to the file broadcasters have long been required to maintain. footnote42\_b3xomlm117 Finally, it tightens restrictions on coordination between candidates and all outside groups that can raise unlimited funds. These are valuable reforms that, like small donor public financing, will help blunt the worst effects of Citizens United and bring greater accountability to our campaigns. Back to top of section Overhaul the FEC A third important priority is to overhaul the dysfunctional Federal Election Commission (“FEC”), which has failed to meaningfully enforce existing rules and would almost certainly struggle to implement other ambitious reforms. The FEC’s structure dates back to the 1970s and was designed to prevent the agency from taking any decisive action without bipartisan agreement among its commissioners. No more than three of its six members can be affiliated with any one party, and at least 4 votes are required to enact regulations, issue guidance, or even investigate alleged violations of the law. By longstanding tradition, each of the two major parties takes half the FEC’s seats. footnote43\_sm8u555118 For much of 2019 and 2020, the Commission did not even have a quorum of commissioners, because only 3 of its 6 seats were occupied. footnote44\_ko4lrwh119 The FEC’s design dates back to a time when disagreements over the government’s role in regulating money in politics did not necessarily trackwith partisan affiliation. Ordinary Americans of all political stripes still overwhelmingly support strong campaign finance laws, but party elites are now sharply divided, which has left the commission mired in gridlock. footnote45\_ddg5o9l120 Even before it lost its quorum, the commission routinely deadlocked along party lines over whether to pursue significant campaign finance violations — often after sitting on allegations for years without even investigating them. Its process for issuing new regulations had also virtually ground to a halt. Commissioners were increasingly unable to agree even on how to answer requests for interim guidance received through the commission’s advisory opinion process, leaving candidates, parties, and others to decipher the law for themselves without assistance. footnote46\_hem62kg121 FEC dysfunction has played a critical role in the creation of many of our political system’s worst problems, including dark money, rampant collaboration between candidates and supposedly independent outside groups, and many of the gaps in the law that increase our vulnerability to foreign interference in our campaigns. footnote47\_fssypb2122 As a bipartisan group of lawmakers wrote President Trump in 2018, a dysfunctional FEC “hurts honest candidates who are trying to follow the letter of the law and robs the American people of an electoral process with integrity.” footnote48\_jjr8afe123 If not addressed, the commission’s problems could stymie implementation of the other ambitious reforms in the For the People Act. Moreover, the agency’s inability to enforce campaign finance laws contributes to a broader culture of impunity at a time of eroding respect for the rule of law and democratic values more generally. footnote49\_mx0o7mt124 The For the People Act addresses the main flaws of the FEC through several targeted changes. It curtails gridlock by reducing the number of commissioners from six to five, with no more than two affiliated with any party — effectively requiring one commissioner to be a tie-breaking independent. It also provides the Commission with a real, presidentially-appointed chairperson footnote50\_mxoeyti125 to serve as its chief administrative officer. And it ends the practice of allowing commissioners to remain in office indefinitely past the expiration of their terms, which has given Congress and the president an excuse to avoid appointing new members, likely contributing to the agency’s recent loss of its quorum. footnote51\_s7k24rc126 Finally, the For the People Act streamlines the commission’s enforcement process by giving its nonpartisan staff authority to investigate alleged campaign finance violations and dismiss frivolous complaints. footnote52\_z00ijk5127 All of these changes are designed to bring the FEC’s structure more in line with that of other important federal regulators. Critically, however, the For the People Act also contains strong safeguards to protect a revitalized FEC from becoming a tool for partisan overreach. For instance, the For the People Act seeks to ensure partisan balance on the new FEC by providing that nominees to seats on the commission are considered to be affiliated with a party if they have had any connection to the party — including as a registered voter, employee, consultant, or attorney within the previous five years. That will minimize the risk of the Senate confirming a “wolf in sheep’s clothing” — i.e. someone trying to disguise their true partisan leanings. footnote53\_ygc5cu3128 It also creates a new, bipartisan vetting process for nominees. And it provides for more robust judicial oversight of the enforcement process. Ending the ability of commissioners to remain indefinitely past the expiration of their terms will also be a safeguard against excessive partisanship, since holdover commissioners are more subject to pressure from the president and Congress, who have the power to replace them at any time. footnote54\_o1pr4u8129 These measures provide significantly more formal protection than exists under current law. They are part of an overall package of sensible reforms that would help ensure that the campaign finance laws we have on the books will be fairly and effectively enforced. Back to top of section Redistricting Reform Extreme partisan gerrymandering is another threat to our democracy’s long-term health. Congress should outlaw partisan gerrymandering and establish clear, uniform rules for drawing lines. It should also make the redistricting process more transparent and participatory. The need for redistricting reform is urgent. Extreme gerrymandering has reached levels unseen in the last 50 years. footnote1\_k51kfhq130 As a result, shifts in political currents have had virtually no electoral impact in the most heavily gerrymandered states. For example, in 2018, for example, a political tsunami year for Democrats — no districts changed parties in Ohio and North Carolina, two states with extremely biased maps. Despite the fact that Democrats earned nearly half the vote in both states, they won only a quarter of the seats. The overwhelming majority of the seats that did change parties in 2018 — 72 percent — were drawn by commissions and courts instead of partisan legislatures. footnote2\_kmk1zca131 A Democratic gerrymander in Maryland was proven to be just as unbreakable. footnote3\_rh08gko132 Redistricting abuse is a bipartisan problem — both parties will draw districts that serve their partisan ends if given the opportunity. The upcoming cycle of redistricting looks even more ominous. Though the landscape has improved since 2011 in some states, single-party control remains the reality for the upcoming cycle of redistricting for most of the country.footnote4\_68bf8ng133 And the Supreme Court’s 2019 ruling that partisan gerrymandering does not violate the Constitution means that would-be gerrymanderers now have license to use new mapping technology and powerful analytics about voters to create even more durable and pernicious gerrymanders. Too often, communities of color bear the brunt of these efforts. When Republican-drawn maps in North Carolina, Texas, and Virginia were successfully challenged on the grounds that they discriminated against minority voters, Republicans defended the maps by arguing that politics, rather than race, had been the driving force behind their maps. Likewise, Democrats in Maryland rejected a congressional map that would have given Black people additional electoral opportunities because that would have created an additional Republican seat. footnote5\_50d0s6o134 Without a rule that makes disadvantaging voters of color for partisan gain illegal, this type of discrimination will continue and grow. The For the People Act offers bold and comprehensive solutions to the problem of gerrymandering. It expressly outlaws partisan gerrymandering and imposes a uniform set of rules for how districts should be drawn, including requiring states to prioritize protections for communities of color and keeping geographically concentrated communities with shared interests (often referred to as “communities of interest”) together. It also requires states to use independent redistricting commissions to draw congressional maps.footnote6\_uqe4fyq135 Depending on when the For the People Act is passed these reforms could be phased in, with the ban on partisan gerrymandering and requirement for uniform map-drawing rules becoming effective immediately. In this case, the independent commission requirement would take effect later if there is not enough time to set commissions up for the next round of redistricting ahead of the 2022 mid-term elections. The experience of states like Arizona and California shows that reforms work. California went from having a congressional map that was one of the least responsive to shifts in voter opinion to one of the most. And California’s maps did not just improve political fairness — they also kept communities of interest together, increased representation for communities of color, and expanded opportunities for competition. footnote7\_m027q8z136 It is little wonder that these reforms are popular among voters. In 2018, a record-high number of states passed redistricting reform for congressional and/or legislative districts. In Ohio, one proposal carried every single congressional district in the state by a supermajority. Reforms in Colorado and Michigan also passed overwhelmingly, with more than 60 percent of the vote statewide. footnote8\_ie8gf25137 In 2020, two-thirds of Virginia voters passed a redistricting reform initiative to create a bipartisan commission composed of lawmakers and citizens.footnote9\_w9y655z138 The For the People Act builds on what has been proven to work. Commissions would contain equal numbers of Republican, Democratic, and unaffiliated and third party commissioners, with voting rules that ensure that no one group would be able to dominate or hijack the redistricting process. Additionally, all potential commissioners would be subject to a thorough vetting process to ensure that they have the requisite qualifications and community knowledge and are free from conflicts of interest to ensure that they do not have a personal stake in the outcome. The Act’s establishment of a clear set of map-drawing rules, listed in the order in which they are to be applied, is another important and groundbreaking change.footnote10\_qncq9hb139 Federal law currently has next to no rules governing how districts should be drawn. footnote11\_otpsuiu140 Likewise, most states (with a handful of exceptions) have few guidelines governing congressional redistricting. This has allowed abuses to run rampant. The Act’s ban on partisan gerrymandering and enhanced protections for communities of color and communities of interest directly address the most egregious of these abuses of the past decade, like the intentional dilution of political power of communities of color mentioned earlier. Finally, the For the People Act transforms what has historically been an opaque process into one that is transparent and participatory. The business of mapdrawing would be conducted in open public meetings and subject to oversight. Data would be made available and all official communications would be subject to disclosure. Community groups and everyday citizens would get a say a chance to review and comment on proposed maps and submit their own alternatives. States would be required to show their work and issue a detailed report before taking a final vote on a plan. In short, redistricting would no longer be done through backroom deals. Congress has the authority to fix congressional redistricting. footnote12\_oqyt3gy141 As the Supreme Court recognized in 2019, “The Framers provided a remedy [in the Constitution for redistricting abuses through the] power bestowed on Congress to regulate elections, and . . . to restrain the practice of political gerrymandering.” footnote13\_xmfsd69142 Over the years, Congress has repeatedly exercised its power under Article I, Section 4 to do just that. footnote14\_4uobfao143 The changes in the For the People Act will dramatically improve congressional representation for all Americans, combining best practices to ensure fair, effective, and accountable representation. Congress plainly has the power to enact these changes and should do so without delay. Election Security We must also take critical steps to improve the security and reliability of our election infrastructure. The 2016 election put a spotlight on election infrastructure security, after foreign adversaries and cybercriminals successfully breached state voter registration systems and election night results reporting websites.footnote1\_8n582bz144 While there do not appear to have been similar attacks against our election infrastructure in 2020, foreign adversaries continue to demonstrate an interest in election interference, and recent hacks into software used throughout the federal government show that such attacks are growing increasingly sophisticated.footnote2\_4570l4x145 Despite these clear threats, six states continue to use voting machines that have no paper backup; security experts have consistently argued that paper ballots are is a minimum defense necessary to detect and recover from cyberattacks and technical failures in voting machines.footnote3\_4ttsbhi146 Of the states that do use paper ballots, too few conduct sufficient reviews of their paper backups to audit their election results; private voting system vendors are not required to report security breaches, which often leaves our election administrators and the public in the dark; and election officials across the country say they lack the resources to implement critical election security measures.footnote4\_35lxylj147 Unfortunately, our election security is only as strong as our weakest link. The For the People Act significantly bolsters the security and resilience of our nation’s election administration infrastructure. Among the most critical reforms, it requires states to replace unsecure paperless voting systems, promotes robust audits of electronic election results, and imposes new requirements for private election system vendors. Replacing Paperless Voting Systems Promoting Robust Audits of Election Results Election System Vendors Oversights Replacing Paperless Voting Systems First and foremost, the For the People Act mandates the replacement of all paperless electronic voting machines with machines that require an individual paper record of each vote. Top security experts—from the National Academies of Sciences, Engineering and Medicine, the national intelligence community, academia and industry—agree that replacing paperless voting systems is a top priority. This step is critical to improving election security because, as the National Academies put it, “Paper ballots form a body of evidence that is not subject to manipulation by faulty software or hardware and…can be used to audit and verify the results of an election.” footnote5\_f02k966148 Without that record and check, software manipulation or a bug could change an election result without detection. Further, as Virginia showed in 2017 when it was forced to replace paperless systems just months before a high-profile gubernatorial election after learning of serious security vulnerabilities in its systems, this transition can easily be accomplished in the timeframe provided in this Act. footnote6\_ashu8c1149 Back to top of section Promoting Robust Audits of Election Results The For the People Act also provides funds for states to implement robust audits of election results using statistical models to ensure that a sufficient number of paper ballots are checked to corroborate the electronic vote tallies (known as “risk-limiting audits”). footnote7\_gafypie150 While paper records will not prevent programming errors, software bugs, or the insertion of corrupt software into voting systems, risk-limiting audits use these paper records to detect and correct any election outcomes impacted by such abnormalities. These audits are quickly growing in popularity. Twelve states now require risk-limiting audits or piloted the use of these audits in the 2020 election, and election officials in over a dozen jurisdictions across the country have either piloted them in the last year or will do so in 2019. footnote8\_sjzm34o151 Back to top of section Regulating Election System Vendors The For the People Act provides for greater federal oversight of the private vendors who design and maintain the election systems that store our personal information, tabulate our votes, and communicate important election information to the public. The Brennan Center has documented numerous instances of voting system failures that could have been prevented had vendors notified their clients of previous failures in other jurisdictions using the same voting equipment. footnote9\_p1324d3152 Among other things, any vendors who receive grants under the Act would be required to (1) certify that the infrastructure they sell to local election jurisdictions is developed and maintained in accordance with cybersecurity best practices; (2) verify that their own information technology is maintained in accordance with cybersecurity best practices; and (3) promptly report any suspected cybersecurity incident directed against the goods and services they provide under these grants. Back to top of section Ethics Finally, we must establish stronger ethics rules for all three branches of government. These provisions would be an essential first step towards shoring up eroding constraints on self-dealing at the highest levels of government. footnote1\_9y96s9b153 The For the People Act addresses this challenge. Among the most important changes, it: requires the president and vice president to adhere to the same broad ethical standards as the millions of government employees who work under them, consistent with voluntary practices to which every president going back to the 1960s adhered until President Trump took office; requires the president, vice president, and candidates for those offices to disclose their tax returns, also consistent with longstanding voluntary norms; strengthens the Office of Government Ethics, which oversees ethical compliance in the executive branch; strengthens congressional safeguards against congressional conflicts of interest; strengthens constraints on the “revolving door” between government and industry that prevent former officials from unduly profiting off their time in public service; and requires a code of ethics for the United States Supreme Court. The **For** **the** **People** **Act** is a comprehensive and appropriately **aggressive** set of **reforms** that would **revitalize** and improve our **democracy**. Americans expect a system that works for everyone. Congress must answer that call by passing this groundbreaking legislation.

#### Democratic governance solves Existential Threats – climate change, economic crises, and nuclear war are all exacerbated in an autocratic world.

Kolodziej ’17 [Edward; May 19; Emeritus Research Professor of Political Science at the University of Illinois at Urbana-Champaign; EUC Paper Series, “Challenges to the Democratic Project for Governing Globalization,” https://www.ideals.illinois.edu/bitstream/handle/2142/96620/Kolodziej Introduction 5.19.17.pdf?sequence=2&isAllowed=y]

The Rise of a Global Society Let me first sketch the global democratic project for global governance as a point of reference. We must first recognize that globalization has given rise to a global society for the first time in the evolution of the human species. We are now stuck with each other; seven and half billion people today — nine to ten by 2050: all super connected and interdependent. In greater or lesser measure, humans are mutually dependent on each other in the pursuit of their most salient values, interests, needs, and preferences — concerns about personal, community, and national security, sustainable economic growth, protection of the environment, the equitable distribution of the globe’s material wealth, human rights, and even the validation of their personal and social identities by others. Global warming is a metaphor of this morphological social change in the human condition. All humans are implicated in this looming Anthropogenic-induced disaster — the exhausts of billions of automobiles, the methane released in fracking for natural gas, outdated U.S. coal-fired power plants and newly constructed ones in China. Even the poor farmer burning charcoal to warm his dinner is complicit. Since interdependence surrounds, ensnares, and binds us as a human society, the dilemma confronting the world’s diverse and divided populations is evident: the expanding scope as well as the deepening, accumulating, and thickening interdependencies of globalization urge global government. But the Kantian ideal of universal governance is beyond the reach of the world’s disparate peoples. They are profoundly divided by religion, culture, language, tribal, ethnic and national loyalties as well as by class, social status, race, gender, and sexual orientation. How have the democracies responded to this dilemma? How have they attempted to reconcile the growing interdependence of the world’s disputing peoples and need for global governance? What do we mean by the governance of a human society? A working, legitimate government of a human society requires simultaneous responses to three competing imperatives: Order, Welfare, and Legitimacy. While the forms of these OWL imperatives have differed radically over the course of human societal evolution, these constraints remain predicable of all human societies if they are to replicate themselves and flourish over time. The OWL imperatives are no less applicable to a global society. 1. Order refers to a society’s investment of awesome material power in an individual or body to arbitrate and resolve value, interest, and preference conflicts, which cannot be otherwise resolved by non-violent means — the Hobbesian problematic. 2. The Welfare imperative refers to the necessity of humans to eat, drink, clothe, and shelter themselves and to pursue the full-range of their seemingly limitless acquisitive appetites. Responses to the Welfare imperative, like that of Order, constitute a distinct form of governing power and authority with its own decisional processes and actors principally associated either with the Welfare or the Order imperative. Hence we have the Marxian-Adam Smith problematic. 3. Legitimacy is no less a form of governing power and authority, independent of the Order and Welfare imperatives. Either by choice, socialization, or coerced acquiescence, populations acknowledge a regime’s governing authority and their obligation to submit to its rule. Here arises the Rousseaunian problematic. The government of a human society emerges then as an evolving, precarious balance and compromise of the ceaseless struggle of these competing OWL power domains for ascendancy of one of these imperatives over the others. It is against the backdrop of these OWL imperatives — Order, Welfare, and Legitimacy — that we are brought to the democratic project for global governance. The Democratic Project For Order, open societies constructed the global democratic state and, in alliance, the democratic global-state system. Collectively these initiatives led to the creation of the United Nations, the World Bank, the International Monetary Fund, the World Trade Organization, and the European Union to implement the democratic project’s system of global governance. The democratic global state assumed all of the functions of the Hobbesian Westphalian security state — but a lot more. The global state became a Trading, Banking, Market, and Entrepreneurial state. To these functions were added those of the Science, Technology and the Economic Growth state. How else would we be able to enjoy the Internet, cell phones and iPhones, or miracle cures? These are the products of the iron triangle of the global democratic state, academic and non-profit research centers, and corporations. It is a myth that the Market System did all this alone. Fueled by increasing material wealth, the democratic global state was afforded the means to become the Safety Net state, providing education, health, social security, leisure and recreation for its population. And as the global state’s power expanded across this broad and enlarging spectrum of functions and roles, the global state was also constrained by the social compacts of the democracies to be bound by popular rule. The ironic result of the expansion of the global state’s power and social functions and its obligation to accede to popular will was a Security state and global state-system that vastly outperformed its principal authoritarian rivals in the Cold War. So much briefly is the democratic project’s response to the Order imperative. Now let’s look at the democratic project’s response to the Welfare imperative. The democracies institutionalized Adam Smith’s vision of a global Market System. The Market System trucks and barters, Smith’s understanding of what it means to be human. But it does a lot more. The Market System facilitates and fosters the free movement of people, goods and services, capital, ideas, values, scientific discoveries, and best technological practices. Created is a vibrant global civil society oblivious to state boundaries. What we now experience is De Tocqueville’s Democracy in America on global steroids. As for the imperative of Legitimacy, the social compacts of the democracies affirmed Rousseau’s conjecture that all humans are free and therefore equal. Applied to elections each citizen has one vote. Democratic regimes are also obliged to submit to the rule of law, to conduct free and fair elections, to honor majority rule while protecting minority rights, and to promote human rights at home and abroad. The Authoritarian Threat to the Democratic Project The democratic project for global governance is now at risk. Let’s start with the challenges posed by authoritarian regimes, with Russia and China in the lead. Both Russia and China would rest global governance on Big Power spheres of influence. Both would assume hegemonic status in their respective regions, asserting their versions of the Monroe Doctrine. Their regional hegemony would then leverage their claim to be global Big Powers. Moscow and Beijing would then have an equal say with the United States and the West in sharing and shaping global governance. The Russo-Chinese global system of Order would ascribe to Russia and China governing privileges not accorded to the states both aspire to dominate. Moscow and Beijing would enjoy unconditional recognition of their state sovereignty, territorial integrity, and non-interference in their domestic affairs, but they would reserve to themselves the right to intervene in the domestic and foreign affairs of the states and peoples under their tutelage in pursuit of their hegemonic interests. President Putin has announced that Russia’s imperialism encompasses the millions of Russians living in the former republics of the Soviet Union. Russia contends that Ukraine and Belarus also fall under Moscow’s purported claim to historical sovereignty over these states. Forceful re-absorption of Crimea and control over eastern Ukraine are viewed by President Putin as Russia’s historical inheritances. Self-determination is not extended to these states or to other states and peoples of the former Soviet Union. Moscow rejects their right to freely align, say, with the European Union or, god forbid, with NATO. In contrast to the democratic project, universal in its reach, the Russo-Chinese conception of a stable global order rests on more tenuous and conflict-prone ethno-national foundations. Russia’s proclaimed enemies are the United States and the European Union. Any means that undermines the unity of these entities is viewed by Moscow as a gain. The endgame is a poly-anarchical interstate system, potentially as war-prone as the Eurocentric system before and after World War I, but now populated by states with nuclear weapons.

### 1NC – OFF

#### [A just government ought to] request the International Court of Justice issue an advisory opinion over whether they ought to [establish an unconditional right to strike]. [A just government] ought to abide by the outcome of the advisory opinion.

#### Solves – the ICJ will rule in favor of an unconditional right to strike.

Seifert ’18 (Achim; Professor of Law at the University of Jena, and adjunct professor at the University of Luxembourg; December 2018; “The protection of the right to strike in the ILO: some introductory remarks”; CIELO Laboral; http://www.cielolaboral.com/wp-content/uploads/2018/12/seifert\_noticias\_cielo\_n11\_2018.pdf; Accessed: 11-3-2021; AU)

The **recognition of a right to strike** in the legal order of the **International Labour Organization** (ILO) is probably one of the most controversial questions in international labor law. Since the foundation of the ILO in the aftermath of World War I, the recognition of the right to strike as a **core element** of the principle of freedom of association has been discussed in the International Labour Conference (ILC) as well as in the Governing Body and the International Labour Office. As is well known, the ILO, in its long history spanning almost one century, has not explicitly recognized a right to strike: neither Article 427 of the Peace Treaty of Versailles (1919), the Constitution of the ILO, including the Declaration of Philadelphia (1944), nor the Conventions and Recommendations in the field of freedom of association - namely Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948) - have explicitly enshrined this right. However, the Committee on Freedom of Association (CFA), established in 1951 by the Governing Body, recognized in 1952 that Convention No. 87 guarantees also the **right to strike** as an **essential element of trade** union rights enabling workers to collectively defend their economic and social interests1. It is worthwhile to note that it was a complaint of the World Federation of Trade Unions (WFTU), at that time the Communist Union Federation on international level and front organization of the Soviet Union2, against the United Kingdom for having dissolved a strike in Jamaica by a police operation; since that time the controversy on the right to strike in the legal order of the ILO was also embedded in the wider context of the Cold War. In the complaint procedure initiated by the WFTU, the CFA **recognized** a **right to strike** under Convention No. 87 but considered that the police operation in question was lawful. In the more than six following decades, the CFA has elaborated a **very detailed case law** on the right to strike dealing with many concrete questions of this right and its limits (e.g. in essential services) and manifesting an even more complex structure than the national rules on industrial action in many a Member State. This case law of the CFA has been compiled in the “Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO”3. In 1959, i.e. seven years after case No. 28 of the CFA, the Committee of Experts for the Application of Conventions and Recommendations (CEACR) also recognized the right to strike as **a core element of freedom** of association under Article 3 of Convention No. 874. Since then, the CEACR has **reconfirmed** its view on many occasions. Both CFA and CEACR coordinate their interpretation of Article 3 of Convention No. 875. Hence there is one single corpus of rules on the right to strike developed by both supervisory Committees of the Governing Body. Moreover, the ILC also has made clear in various Resolutions adopted since the 1950s that it considers the **right to strike** as an **essential element of freedom of association6**. On the whole, the recognition of the right to strike resulted therefore from the interpretative work of CFA and CEACR as well as of the understanding of the principle of freedom of association the ILC has expressed on various occasions. It should not be underestimated the wider political context of the Cold War had in this constant recognition of a right to strike under ILO Law. Although the very first recognition of the right to strike -as mentioned above- went back to a complaint procedure before the CFA, initiated by the Communist dominated WFTU, it was the Western world that particularly emphasized on the right to strike in order to blame the Communist Regimes of the Warsaw Pact that did not explicitly recognize a right to strike in their national law or, if they legally recognized it, made its exercise factually impossible; to this end, unions, employers’ associations but also Governments of the Western World built up an alliance in the bodies of the ILO7. In accomplishing their functions, CFA and CEACR necessarily have to interpret the Conventions and Recommendations of the ILO whose application in the Member States they shall control. In so doing, they need to concretize the principle of freedom of association that is only in general terms guaranteed by the ILO Conventions and Recommendations on freedom of association. But as supervisory bodies, which the Governing Body has established and which are not foreseen in the ILO Constitution, both probably do not have the power to interpret ILO law with binding effect8. This is also the opinion that the CEACR expresses itself in its yearly reports to the ILC when explaining that, “its opinions and recommendations are non-binding”9. As a matter of fact, the Governing Body, when establishing both Committees, could not delegate to them a power that it has never possessed itself: nemo plus iuris ad alium transferre potest quam ipse haberet10. According to Article 37(1) of the ILO Constitution, it is within the **competence of the International Court of Justice** to decide upon “any question or dispute relating to the **interpretation of this Constitution** or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution.” Furthermore, the ILC has not established yet under Article 37(2) of the ILO Constitution an ILO Tribunal, competent for an authentic interpretation of Conventions11. However, it **cannot be denied** that this constant interpretative work of CFA and CEACR possesses an **authoritative character** given the high esteem the twenty members of the CEACR -they are all internationally renowned experts in the field of labor law and social security law- and the nine members of the CFA with their specific expertise have. As the CEACR reiterates in its Reports, “[the opinions and recommendations of the Committee] derive their persuasive value from the legitimacy and rationality of the Committee’s work based on its impartiality, experience and expertise”12. Already this interpretative authority of both Committees justifies that **national legislators or courts take into consideration** the views of these supervisory bodies of the ILO when implementing ILO law. Furthermore, the long-standing and uncontradicted interpretation of the principle of freedom of association by CFA and CEACR as well as its recognition by the Member States may be considered as a **subsequent practice** in the application of the ILO Constitution under Article 31(3)(b) of the Vienna Convention on the Law of Treaties (1968): such subsequent practices shall be taken into account when interpreting the Agreement. Their constant supervisory practice probably reflects a volonté ultérieure, since other bodies of the ILO also have **recognized a right to strike** as the two above-mentioned Resolutions of the ILC of 1957 and 1970 as well as the constant practice of the Conference Committee on the Application of Standards to examine **cases of violation** of the right to strike as **examples for breaches of the principle of freedom of association** demonstrate. As this constant practice of the organs of the ILO has not been contradicted by Member States, there is a **strong presumption** for recognition of a right to strike as a subsequent practice of the ILO under Article 31(3)(b) of the **Vienna Convention** on the Law of Treaties.

#### ICJ legitimacy is key to global multilateralism and crisis stability – it’s declining now.

Kornelios Korneliou 18 [Permanent Representative of Cyprus and Vice-President of the 73rd Session of the UN General assembly, "Report of the International Court of Justice," United Nations, 10-25-2018 <https://www.un.org/pga/73/2018/10/25/report-of-the-international-court-of-justice/>] Recut Justin

In the face of the headwinds against the multilateral system and global institutions, including direct attacks on their legitimacy, the International Court of Justice stands as testament to the principles of peace and justice in a multilateral world. Today’s debate builds on fifty years of exchange between the Court and the General Assembly, allowing Member States the opportunity to debate the work of the Court. This historic exchange is particularly pertinent to the 73rd Session of the General Assembly, which aims to ‘make the UN relevant to all’. The court system serves as a bulwark against arbitrariness and provides the mechanism for peaceful settlement of disputes, guaranteeing the stability so necessary for international cooperation. For the peoples of the world, the court may be far away but its impact is real. Excellencies, I am encouraged by the continued and enhanced confidence in the International Court of Justice. Not only has the Court’s workload increased over the last 20-years but this trend has continued into the period under review, demonstrating unequivocally that there remains a need and desire for a multilateral mechanism to address legal challenges of international concern. The variety of cases addressed by the court, and the fact that these cases stem from four continents, is also testament to the universality of the Court. In fact, as of today a total of 73 Member States have accepted, as compulsory, the jurisdiction of the Court. In addition to the Court’s role in advancing multilateralism, its judgements and advisory opinion directly influence the development and strengthening of the rule of law in countries the world over. As stated by the report: “everything the court does is aimed at promoting and reinforcing the rule of law, through its judgement and advisory opinions, it contributes to developing and clarifying international law.” Finally, at a time when human rights abuses and conflict devastate the lives of millions, and when tensions simmer in regions throughout the world, the adjudication of disputes between states remains an essential role of the Court in preserving peace and security. We welcome the continued readiness by the Court to intervene when other diplomatic or political means have proven unsuccessful. For Member States, respect for the decisions, judgements, advice, and orders of the Court remains critical for the efficacy and longevity of the international Justice System. The General Assembly has thus called upon States that have not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute. In closing, allow me to reiterate: if we are to preserve the international multilateral system, then adherence and respect for international law remains key.

#### Multilateralism solves a laundry list of impacts – even a tiny net benefit is enough to o/w the AFF

Esther Brimmer 14 [Assistant Secretary for the Bureau of International Organization Affairs at the United States Department of State from April 2009 to June 2013, “Smart Power” and Multilateral Diplomacy, June, <http://transatlantic.sais-jhu.edu/publications/books/Smarter%20Power/Chapter%204%20brimmer.pdf>] Recut Justin

Over the subsequent decade, the variable definitions of Smart Power have evolved to reflect a rapidly changing foreign affairs landscape – a landscape shaped increasingly by transnational issues and what can only be described as truly global challenges. Nations of the world must now calibrate their foreign policy investments to try to leverage new opportunities while protecting their interests from emerging vulnerabilities. Smart Power is no longer an alternative path; it is a four-lane imperative. ¶ The world in 2014 is fundamentally different from previous periods, growing vastly more interconnected, interdependent, networked, and complex. National economies are in many cases inextricably intertwined, with cross-border imports and exports increasing nearly tenfold over the past forty years, and more than doubling over just the past decade. At the same time, we are all connected – and connected immediately – to news and events that in past generations would have been restricted to their local vicinities.¶ Consider, for example, the 2011 tsunami that devastated parts of Japan. Not only did we know in real time of the earthquake that triggered the tsunami, we had live coverage of some of the tsunami’s most devastating impacts and then round-the-clock coverage of the Fukushima nuclear power plant crisis. Communications technology brings such events to us without delay and in high definition. This communications revolution, headlined by the explosion of social media, carries with it the almost unlimited potential to inform and educate. It also provides people and communities with new ability to influence and advance their causes – both benevolent and otherwise, as the dramatic events of recent years in North Africa and the Middle East have made clear. ¶ At the same time, global power is more diffuse today than in centuries. Although predictions of the nation-state’s demise have gone unrealized, non-state actors – including NGOs, corporations, and international organizations - are more influential today than perhaps at any point in human history. The same might be said for transnational criminal networks and other harmful actors. Concurrently, we are witnessing the rise of new centers of influence – the so-called “emerging” nations – that are seeking and gaining positions of global leadership. These emerging powers bring unique histories and new perspectives to the discussion of current challenges and the future of global governance. Several of these countries are democracies and share many of the core values of the United States; others have sharply different political systems and perspectives. All are gauging how to be more active in the global arena. ¶ It is this new, more diffused global system that must now find means of addressing today’s pressing global challenges – challenges that in many cases demand Smart Power ingenuity. From terrorism to nuclear proliferation, climate change to pandemic disease, transnational crime to cyber attacks, violations of fundamental human rights to natural disasters, today’s most urgent security challenges pay no heed to state borders. ¶ So, just as global power is more diffuse, so too are the opposing threats and challenges, and it is in this new reality that the United States must define and employ its Smart Power resources. That reality demands a definition that must now far exceed the origin parameters of hard and soft. Many of these challenges would be unresponsive to traditional Hard tools (coercion, economic sanctions, military force), while the application of Soft tools (norm advancement, cultural influence, public diplomacy) in customary channels is likely to provide unsatisfactory impact. ¶ Ultimately, the other component necessary in today’s Smart Power alchemy is robust, focused, and sustained international cooperation. In effect, in an increasing number of instances, Smart Power must now feature shared power, and in that context foreign policy choices must follow two related but distinct axes. ¶ First, those policy choices must strengthen a state’s overall stature and influence (rather than diminish it), leaving the state undertaking the action in a position of equal or greater global standing. This is easier said than done. The proliferation in challenges facing all states has created a need for multiple, simultaneous diplomatic transactions among a broadening cast of actors. Given the nature of today’s threats facing states both large and small, those transactions have never been more frequent and at times overlapping – a reality that requires new agility and synchronization within foreign policy hierarchies. States that are less capable of responding to this new reality may experience diminished political capital and international standing by acting on contemporary threats in isolation or without a full appreciation of the reigning international sentiment. Many observers have highlighted U.S. decision-making in advance of the 2003 Iraq invasion as indicative of just this phenomenon. ¶ Alternatively, states applying a new Smart Power approach to their foreign policy recognize the overlapping need to maintain global standing and stature while seeking resolution of individual policy challenges. We see considerable effort on the part of emerging powers to find just that balance, and I would argue that the United States has also made great strides in that regard since 2009. ¶ Second, Smart Power policy choices must contribute to the strength and resilience of the international system. As noted above, the globalization of contemporary challenges and security threats has augmented the need for effective cooperation among states and other international actors, and placed even greater demands on the global network of international institutions, conferences, frameworks, and groupings in which these challenges are more and more frequently addressed. Given this heightened need for structures to facilitate international collaboration, states are more rarely undertaking foreign policy courses of action that entirely lack a multilateral component, or that feature no interaction with or demands upon the international architecture. As recent American history shows, even states with unilateral tendencies have found themselves returning to the multilateral fold to address aspects of a threat or challenge that simply cannot be addressed effectively alone.

### 1NC – OFF

#### Settler colonialism is a constant state of incarceration for Indigeneity. The affirmatives reform to the criminal justice system is a veil of neutrality that enables more insidious forms of settler elimination.

Anthony, 20—Senior Lecturer in Law at the University of Technology, Sydney (Thalia, “Settler-Colonial Governmentality: The Carceral Webs Woven by Law and Politics,” *Questioning Indigenous-Settler Relations*, Chapter 2, pp 33-53, SpringerLink, dml)

In invoking the concept of ‘settler colonial governmentality’, I rely on the works of settler colonial scholars such as Wolfe (2006), and critical Indigenous scholars such as Coulthard (2014). Through centering settler colonial relations, both approaches demonstrate that policy change is contingent on the logic and structures of colonisation—colonising land, affecting primitive accumulation and eliminating the native. Accordingly, policy change driven by the state inadequately materialises Indigenous rights and can often set them back, including where touted as progressive such as gestures towards reconciliation and native title. State reforms remain built on a ‘logic of elimination’ that shapes the settler colonial response to cultures, languages, Country and sovereignty (Wolfe, 2006, p. 387).

Settler colonial theory is concerned with how colonialism lives and breathes in the present. The continuity of colonial legacies produces discursive and non-discursive strategies, according to Coulthard (2014, p. 7), to facilitate the ‘ongoing dispossession of Indigenous peoples of their lands and self-determining authority’. The relegation of historical colonial wrongs to a ‘dark chapter’ in history disconnects them from ‘continued child removals, mass incarceration and ongoing land dispossession’ (Woolford & Hounslow, 2018, p. 205). Equally, designating contemporary forms of systemic discrimination as exceptional, annuls the entrenched and intergenerational impact of colonisation on Indigenous peoples. Contemporary injustices—whether that is Indigenous deaths in custody in Australia, the removal of Māori babies in Aotearoa or the construction of pipelines across North America—deepen existing scars rather than create new wounds.

Situating the various guises of state policy and legality within this historical and continuing trajectory enlivens a relational analysis of state containment and control of Indigenous people. This approach shows that incarceration and maltreatment are not one state policy or directive alone, but in fact are a longstanding feature of the settler colonial-Indigenous relationship. In addition, however, examining the lived experience of settler colonial policies demonstrates another form of relationality. It brings to the fore Indigenous peoples experience as one of subordination, resilience and resistance. In undertaking a review of the formal statements in the NT Royal Commission, this chapter exposes the ideologies of the state officials as well as the perspective of the Indigenous young people who were detained in the criminal justice system and removed from their families, as well as the standpoints of Indigenous Elders, respected persons and leaders. Through this analysis, it is evident that Indigenous peoples’ resilient cultural and family ties offset the settler state’s logic of elimination. Indigenous identity extends beyond their relationality to the non-Indigenous settler state and remains attached to their living culture, notwithstanding the hugely traumatic impact of state violence on Indigenous people in the NT.

3.4 Colonial Carceralism and Its Multiple Guises

While mass incarceration has become synonymous with contemporary penal policy, for Indigenous people, incarceration is not an exceptional state of being. The penal phase of mass incarceration is yet another iteration in Indigenous people’s long experience of the settler state’s impetus to segregate and contain Indigenous people, whether that be for Christian, civilising, protectionist, welfare or penal purposes (see Chartrand, 2019). Loïc Wacquant coined the term ‘hyperincarceration’ to describe the phenomenon of over-representation in the criminal justice system and the broader role of the penal system as an ‘instrument for managing dispossessed and dishonoured groups’ (Wacquant, 2001, p. 95). For Indigenous people, management through mass detention featured long before the war on drugs or neo-liberal class warfare. Declaration of jurisdiction over Indigenous people by the first settler colonial courts in eastern Australia (New South Wales) were made in response to Indigenous peoples’ challenges to the capacity of the colonial administration to imprison them (see R v Bonjon, 1841; R v Murrell, 1836). Since then, Indigenous people have been incarcerated by settler colonial authorities for administrative and penal ends.

Nonetheless, analogies can be drawn with Wacquant’s description of the ‘never-ending circulus’ between prison and the ghetto for African Americans (Wacquant, 2001, p. 97). It can be likened to the symbiosis between Indigenous incarceration and a network of institutions designed to further Indigenous extinguishment. This racialised strategy of institutionalisation has barely shifted since early colonisation; it has simply been veiled by the state’s claims to neutrality. Concealing bias has become more insidious by enabling the state, as demonstrated above, to blame the Indigenous person for being more criminal while exculpating any bias on the part of law enforcers. For example, former Chief Minister Giles (2017, p. 3310) told the NT Royal Commission that his government was not acting in a discriminatory manner towards Indigenous children when they were segregated in isolation cells, gassed and tortured, it was simply dealing with a problem with children. Simply following the law enables all types of wrongs to be rationalised, and was relied on by detention staff to justify all manner of torture against Indigenous children. The law removes the need for overt politics because law is conceived by the settler state as a neutral instrument, while it operates as a coercive tool to disproportionately regulate Indigenous people.

#### Vote negative to endorse a cartography of refusal

Day 15 Iyko, Associate Professor of English. Chair, Critical Social Thought. “Being or Nothingness: Indigeneity, Antiblackness, and Settler Colonial Critique.” Source: Critical Ethnic Studies, Vol. 1, No. 2 (Fall 2015), pp. 102-121 //Elmer

And so the potential relations that Wilderson sets up through a critique of sovereignty are at best irrelevant or at worse false in Sexton’s absolute claim that slavery stands alone as the “threshold of the political world.”45 I suggest that this wavering relation/nonrelation of antiblackness and Indigeneity exhibited in Wilderson’s and Sexton’s work reveal the problem in any totalizing approach to the heterogeneous constitution of racial difference in settler colonies. Beyond this inconsistency, the liberal multiculturalist agenda that Wilderson and Sexton project into Indigenous sovereignty willfully evacuates any Indigenous refusal of a colonial politics of recognition. Among other broad strokes, Sexton states, “as a rule, Native Studies reproduces the dominant liberal political narrative of emancipation and enfranchisement.”46 This provides a basis for Wilderson’s assertion that Indigenous sovereignty engages in a liberal politics of state legitimation through recognition because “treaties are forms of articulation” that buttress “the interlocutory life of America as a coherent (albeit genocidal) idea.”47 But such a depoliticized liberal project is frankly incompatible with Indigenous activism and scholarship that emerges from Native studies in North America. The main argument in Glen Sean Coulthard’s book Red Skin, White Masks is to categorically reject “the liberal recognition-based approach to Indigenous selfdetermination.”48 **This is not** a politics of **legitimizing** Indigenous nations **through state recognition** **but** rather **one of refusal**, a refusal to be **recognized and** thus **interpellated by the settler colonial nation-state**. Drawing on Fanon, Coulthard describes the “necessity on the part of the oppressed to ‘turn away’ from their other-oriented master-dependency, and to instead struggle for freedom on their own terms and in accordance with their own values.”49 It is also difficult to reconcile the depoliticized narrative of “resurgence and recovery” that Wilderson and Sexton attribute to Indigenous sovereignty in the face of **Idle No More**, the anticapitalist Indigenous sovereignty movement in Canada whose national railway and **highway** **blockades** have seriously **destabilized** the **expropriation of natural resources** for the global market. These are examples that Coulthard describes as “**direct action**” rather tjhan negotiation—in other words, antagonism, not conflict resolution: The [blockades] are a crucial act of negation insofar as they seek to impede or block the flow of resources currently being transported to international markets from oil and gas fields, refineries, lumber mills, mining operations, and hydroelectric facilities located on the dispossessed lands of Indigenous nations. These modes of direct action . . . seek to have **a negative impact on** the economic **infrastructure** that is **core to** the **colonial accumulation of capital in settler-political economies** like Canada’s.50 **These tactics are** part of what Audra Simpson calls a “**cartography of refusal” that “negates the authority of the other’s gaze**.”51 It is **impossible to frame** the **blockade movement**, which has become the greatest threat to Canada’s resource agenda,52 **as a struggle for “enfranchisement**.” **Idle No More is** not in “conflict” with the Canadian nation-state; it is in **a struggle against the very premise of settler colonial capitalism** that requires the elimination of Indigenous peoples. As Coulthard states unambiguously, “For Indigenous nations to live, capitalism must die.”

## Case

### 1NC – AT: Framing

#### Extinction is the only coherent and egalitarian framework – prefer it

Khan 18 (Risalat, activist and entrepreneur from Bangladesh passionate about addressing climate change, biodiversity loss, and other existential challenges. He was featured by The Guardian as one of the “young climate campaigners to watch” (2015). As a campaigner with the global civic movement Avaaz (2014-17), Risalat was part of a small core team that spearheaded the largest climate marches in history with a turnout of over 800,000 across 2,000 cities. After fighting for the Paris Agreement, Risalat led a campaign joined by over a million people to stop the Rampal coal plant in Bangladesh to protect the Sundarbans World Heritage forest, and elicited criticism of the plant from Crédit Agricolé through targeted advocacy. Currently, Risalat is pursuing an MPA in Environmental Science and Policy at Columbia University as a SIPA Environmental Fellow, “5 reasons why we need to start talking about existential risks,” https://www.weforum.org/agenda/2018/01/5-reasons-start-talking-existential-risks-extinction-moriori/)

Infinite future possibilities I find the story of the Moriori profound. It teaches me two lessons. Firstly, that human culture is far from immutable. That we can struggle against our baser instincts. That we can master them and rise to unprecedented challenges. Secondly, that even this does not make us masters of our own destiny. We can make visionary choices, but the future can still surprise us. This is a humbling realization. Because faced with an uncertain future, the only wise thing we can do is prepare for possibilities. Standing at the launch pad of the Fourth Industrial Revolution, the possibilities seem endless. They range from an era of abundance to the end of humanity, and everything in between. How do we navigate such a wide and divergent spectrum? I am an optimist. From my bubble of privilege, life feels like a rollercoaster ride full of ever more impressive wonders, even as I try to fight the many social injustices that still blight us. However, the accelerating pace of change amid uncertainty elicits one fundamental observation. Among the infinite future possibilities, only one outcome is truly irreversible: extinction. Concerns about extinction are often dismissed as apocalyptic alarmism. Sometimes, they are. But repeating that mankind is still here after 70 years of existential warning about nuclear warfare is a straw man argument. The fact that a 1000-year flood has not happened does not negate its possibility. And there have been far too many nuclear near-misses to rest easy. As the World Economic Forum’s Annual Meeting in Davos discusses how to create a shared future in a fractured world, here are five reasons why the possibility of existential risks should raise the stakes of conversation: 1. Extinction is the rule, not the exception More than 99.9% of all the species that ever existed are gone. Deep time is unfathomable to the human brain. But if one cares to take a tour of the billions of years of life’s history, we find a litany of forgotten species. And we have only discovered a mere fraction of the extinct species that once roamed the planet. In the speck of time since the first humans evolved, more than 99.9% of all the distinct human cultures that have ever existed are extinct. Each hunter-gatherer tribe had its own mythologies, traditions and norms. They wiped each other out, or coalesced into larger formations following the agricultural revolution. However, as major civilizations emerged, even those that reached incredible heights, such as the Egyptians and the Romans, eventually collapsed. It is only in the very recent past that we became a truly global civilization. Our interconnectedness continues to grow rapidly. “Stand or fall, we are the last civilization”, as Ricken Patel, the founder of the global civic movement Avaaz, put it. 2. Environmental pressures can drive extinction More than 15,000 scientists just issued a ‘warning to humanity’. They called on us to reduce our impact on the biosphere, 25 years after their first such appeal. The warning notes that we are far outstripping the capacity of our planet in all but one measure of ozone depletion, including emissions, biodiversity, freshwater availability and more. The scientists, not a crowd known to overstate facts, conclude: “soon it will be too late to shift course away from our failing trajectory, and time is running out”. In his 2005 book Collapse, Jared Diamond charts the history of past societies. He makes the case that overpopulation and resource use beyond the carrying capacity have often been important, if not the only, drivers of collapse. Even though we are making important incremental progress in battles such as climate change, we must still achieve tremendous step changes in our response to several major environmental crises. We must do this even while the world’s population continues to grow. These pressures are bound to exert great stress on our global civilization. 3. Superintelligence: unplanned obsolescence? Imagine a monkey society that foresaw the ascendance of humans. Fearing a loss of status and power, it decided to kill the proverbial Adam and Eve. It crafted the most ingenious plan it could: starve the humans by taking away all their bananas. Foolproof plan, right? This story describes the fundamental difficulty with superintelligence. A superintelligent being may always do something entirely different from what we, with our mere mortal intelligence, can foresee. In his 2014 book Superintelligence, Swedish philosopher Nick Bostrom presents the challenge in thought-provoking detail, and advises caution. Bostrom cites a survey of industry experts that projected a 50% chance of the development of artificial superintelligence by 2050, and a 90% chance by 2075. The latter date is within the life expectancy of many alive today. Visionaries like Stephen Hawking and Elon Musk have warned of the existential risks from artificial superintelligence. Their opposite camp includes Larry Page and Mark Zuckerberg. But on an issue that concerns the future of humanity, is it really wise to ignore the guy who explained the nature of space to us and another guy who just put a reusable rocket in it? 4. Technology: known knowns and unknown unknowns Many fundamentally disruptive technologies are coming of age, from bioengineering to quantum computing, 3-D printing, robotics, nanotechnology and more. Lord Martin Rees describes potential existential challenges from some of these technologies, such as a bioengineered pandemic, in his book Our Final Century. Imagine if North Korea, feeling secure in its isolation, could release a virulent strain of Ebola, engineered to be airborne. Would it do it? Would ISIS? Projecting decades forward, we will likely develop capabilities that are unthinkable even now. The unknown unknowns of our technological path are profoundly humbling. 5. 'The Trump Factor' Despite our scientific ingenuity, we are still a confused and confusing species. Think back to two years ago, and how you thought the world worked then. Has that not been upended by the election of Donald Trump as US President, and everything that has happened since? The mix of billions of messy humans will forever be unpredictable. When the combustible forces described above are added to this melee, we find ourselves on a tightrope. What choices must we now make now to create a shared future, in which we are not at perpetual risk of destroying ourselves? Common enemy to common cause Throughout history, we have rallied against the ‘other’. Tribes have overpowered tribes, empires have conquered rivals. Even today, our fiercest displays of unity typically happen at wartime. We give our lives for our motherland and defend nationalistic pride like a wounded lion. But like the early Morioris, we 21st-century citizens find ourselves on an increasingly unstable island. We may have a violent past, but we have no more dangerous enemy than ourselves. Our task is to find our own Nunuku’s Law. Our own shared contract, based on equity, would help us navigate safely. It would ensure a future that unleashes the full potential of our still-budding human civilization, in all its diversity. We cannot do this unless we are humbly grounded in the possibility of our own destruction. Survival is life’s primal instinct. In the absence of a common enemy, we must find common cause in survival. Our future may depend on whether we realize this.

#### 1 – Forecloses future improvement – we can never improve society because our impact is irreversible which proves moral uncertainty

#### 2 – Turns suffering – mass death causes suffering because people can’t get access to resources and basic necessities

#### AT: Ansell – 1] Assumes there is a tradeoff between solving for existential threats and structural violence – governments are able to do multiple things and your evidence doesn’t justify a tradeoff 2] Links back to them – they inevitably have to choose between different conflicts of racism or inequality that will cause the exclusion of certain impacts

### 1NC – AT: Underview

AT: Purdy 1) alt is an example of those good methods if we win a link then the aff isn’t 2) critique comes first or else serial policy failure cause you’re not interrogating your assumptions of what causes certain policies to fail in the first place

AT: Delgado this is 1 step forward 2 steps back logic - links prove that there are tradeoffs w small reforms meant to sap social energy from revolution

Don’t arbitrarily lower the risk of our das it causes judge intervention where the judge has to determine how true he thinks our arguments over instead of actual debating

The a point is an empirical claim without a warrant

The b point assumes that you are first winning a reason that our link chain is flawed

The c point is solved by magnitude times probability plus it links back to you i.e how do we know that lack of prison reform causes inequality it could be because of a million different causal events that led to that which also applies to the d point

The e point assumes you are winning defense and applies to you since you would prioritize a .1% chance of structural violence over a 99% risk of extinction

### 1NC – AT: Advantage

#### Framing issue and circumvention---the right to strike for prisoners is protected under the 1st , 14th amendment---their Harvard law ev concedes it---the issue of justifying the strikes are nonsensically and are rarely needed---BUT its current not followed because of internal violations of law in prisons---the plan gets circumvented. We read blue

1AC Harvard Law Review 19 - ("Striking the Right Balance: Toward a Better Understanding of Prison Strikes," Harvard Law Review 03/8/2019, accessed 10-28-2021, <https://harvardlawreview.org/2019/03/striking-the-right-balance-toward-a-better-understanding-of-prison-strikes/)//ML> --- recut rahulpenu

II. LEGAL FRAMEWORK GOVERNING PRISON STRIKES: STATE LAW AND FEDERAL STATUTES¶ A. Statutes and Regulations¶ As a threshold matter, state and federal statutory law provides no recourse for protecting prison strikes. Incarcerated individuals are not included as protected “employees” in the text of federal labor laws like the Fair Labor Standards Act78 and the National Labor Relations Act,79 and courts have refused to extend the protections that these statutes offer to those confined within prison walls.80 Further, this Note is aware of no state labor laws, or for that matter any state constitutional provisions, that have been interpreted to allow prisoners to strike. ¶Not only are prison strikes not protected by statutory law — they also are often explicitly prohibited. State statutes and prison regulations pose the most immediate barrier to prison strike activity, as states across the union appear to categorically bar prison strikes and other forms of inmate collective organizing. For instance, Alaska’s administrative code lists “participation in an organized work stoppage” and “encouraging others to engage in a food strike” as “[h]igh-moderate infractions.”81 The same is true at the federal level, as the Bureau of Prisons has made “[e]ngaging in or encouraging a group demonstration” and “[e]ncouraging others to refuse to work, or to participate in a work stoppage” prohibited acts.82 ¶ Further research is certainly necessary to develop a fuller, more nuanced treatment of the various state and federal statutory schemes that impact prison strikes.83 But even this brief overview drives home a clear bottom line: that state and federal laws, in their current forms, likely offer no viable protection for prison strikes and indeed often prohibit them outright. ¶B. Constitutional Law ¶ The Supreme Court has not spoken directly on the question of whether peaceful prison protests merit constitutional protection. However, two areas of constitutional analysis — prisoners’ rights broadly and prisoners’ First Amendment rights specifically — suggest that under current law, the answer to this question is likely also a resounding no.¶ 1. Prisoners’ Constitutional Rights Generally. — Section 1 of the Thirteenth Amendment states: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”84 By its express terms, the amendment creates an explicit exception for persons serving a sentence pursuant to conviction of a crime, and it therefore offers prisoners no basis to refuse to work or to engage in other forms of peaceful strikes.85 ¶ Despite the Thirteenth Amendment’s clear textual carve-out, courts have not, in modern times, read the wording of the amendment literally to allow the State to treat inmates like slaves.86 According to the Court, “[t]here is no iron curtain drawn between the Constitution and the prisons of this country.”87 Instead, as neither slaves nor free people,88 inmates retain some (but not all) of their constitutional rights when they cross into the prison.89 The Supreme Court has time and again asserted that “[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights.”90 This is the case not only because of the inherently “deprivat[ory]” nature of imprisonment,91 but also because prison administrators must be accorded wide latitude in the complex and difficult task of operating a penal institution.92 This deference, however, “yield[s] to the strictures of the Constitution.”93 Indeed, courts recognize that inmates, despite being incarcerated, retain particular constitutional rights “that the courts must be alert to protect.”94 Such rights that an inmate retains are those “that are not inconsistent with his status as a prisoner or with the legitimate penological objective of the corrections system.”95 ¶ However, as the Court explained in Turner v. Safley, 96 a prison regulation may infringe on a prisoner’s retained constitutional rights as long as “it is reasonably related to legitimate penological interests.”97 Turner identified four relevant factors in determining the reasonableness of a prison regulation: (1) whether there is “a ‘valid, rational connection’ between the regulation and the legitimate governmental interest [advanced] to justify it”;98 (2) whether alternative means for exercising the asserted right remain available;99 (3) whether accommodation of the asserted right will adversely affect “guards[,] other inmates, and . . . the allocation of prison resources generally”;100 and (4) whether there is a “ready alternative[]”101 to the regulation “that fully accommodates the prisoner’s right at de minimis cost to valid penological interests.”102 ¶ So, under the general legal framework for prisoners’ rights, finding constitutional protection for peaceful collective actions like the 2018 prison strike will likely face an uphill battle. Such a right to strike not only must fit within the confines of a “retained right,” which appears to be narrowly defined; it also must go up against Turner and its progeny, which mandate rational basis review for any prison regulation — providing prison officials with broad deference to curtail any rights that a prisoner might retain.103 Turning to prisoner First Amendment jurisprudence specifically, it becomes even clearer that a right to strike likely cannot navigate either difficulty successfully.¶ 2. Prisoners’ First Amendment Rights. — The First Amendment of the Constitution includes within its guarantees political rights to communicate, associate, and present grievances to the government.104 These rights go to the very heart of our political system — one that, as a democracy, values the participation of its citizens.105 Outside of prison walls, the Supreme Court has recognized that individuals may, in many situations, exercise their First Amendment associational rights by peacefully engaging in a work strike.106 Inside prison walls, however, the right to strike is a legal gray area. The Court has analyzed a number of First Amendment rights, including those implicating concerted political activity and association, in the prison context — asking whether (1) the First Amendment right in question is inconsistent with an inmate’s status as a prisoner and (2) prison officials’ interference with such a right reasonably relates to a legitimate penological interest.¶ 107 However, the Court has yet to perform such an analysis for prison strikes specifically. But one seminal Supreme Court case — Jones v. North Carolina Prisoners’ Labor Union, Inc.108 — casts serious doubt on prisoners’ collective right to strike. In Jones, a prisoners’ labor union109 brought an action under 42 U.S.C. § 1983, claiming that the North Carolina Department of Corrections violated its First Amendment rights110 by promulgating a prison rule that prohibited, among other things, union meetings among inmates.111 The three-judge district court agreed, granting substantial injunctive relief to the union.112 The Supreme Court reversed, however, doing so on two main grounds. Writing for the majority, then-Justice Rehnquist first invoked the familiar notion that “[t]he fact of confinement and the needs of the penal institution impose limitations on constitutional rights,” especially First Amendment associational rights.113 Then, without engaging with the specific nature of the potentially retained associational interest in question (that is, that of organizing as a union), Justice Rehnquist concluded that the challenged regulation did not unduly abridge inmates’ First Amendment rights.114 He did so by adopting a rational basis test — emphasizing the critical importance of “wide-ranging [judicial] deference” to prison officials and their informed discretion in carrying out penological goals.115 In particular, Justice Rehnquist argued that “[r]esponsible prison officials must be permitted to take reasonable steps to forestall” the “everpresent potential for violent confrontation” within prisons.116 And as he highlighted, North Carolina prison administrators had testified that the presence of, and potentially even the very objectives of, a prisoners’ union did potentially pose a danger117 — likely resulting in increased friction between inmates themselves or between inmates and prison personnel, as well as in “easily foreseeable” outcomes like “[w]ork stoppages.”118 ¶ In light of Jones, it is unlikely that the Supreme Court would, if the question came before it, recognize inmates’ First Amendment right to strike. Although the case concerned the specific issue of prison unions, the Jones Court’s holding was, in its methodology and reasoning, farreaching — (1) providing prison administrators with wide latitude to curtail any inmate collective activity that, in their “reasonable” judgment, threatened institutional order and security119 and, as a result, (2) appearing to severely curtail inmates’ First Amendment rights.120 The Court’s broad deference and narrow First Amendment view should therefore naturally be expected to extend to prison strikes and other forms of collective protest, about which prison officials have consistently offered similar safety concerns and which they have uniformly sought to ban,121 and which Jones specifically acknowledged as a possible unwelcome outcome of allowing prisoners to unionize. ¶ That Jones likely prevents any constitutional protection for prison strikes — and therefore liberally protects prison regulations banning strike activities — is reinforced by how the Supreme Court has applied the case over the past forty years. In Turner, for example, the Court rejected efforts to cabin Jones to barring only “‘presumptively dangerous’ inmate activities.”122 The Court specifically discussed Jones as part of a line of “prisoners’ rights” cases permitting “reasonable” prison regulations to impinge on inmates’ constitutional rights123 and ultimately relied in part on Jones to fashion its general four-part framework for assessing “reasonableness” across prison regulations.124 And in Overton v. Bazzetta, 125 the Supreme Court again invoked Jones to emphasize that “freedom of association is among the rights least compatible with incarceration”126 — though it declined to draw any precise boundaries that would be helpful for determining what, if any, associational rights inmates retain within prison walls, and whether those include strikes.127 ¶Lower courts have not been as wary to draw such boundaries. Under Jones, lower federal courts have uniformly held that prisoners have no constitutionally protected right under the First Amendment to strike. One district court interpreted Jones to hold that prison officials may act to prevent such strikes whenever they have a “good faith” belief that such strikes “threaten the security of the institutions they manage.”128 Lower courts have rejected a right to strike by simply citing to or briefly discussing Jones and contending that it naturally compels such a result,129 or by drawing an explicit connection between the prohibited prison unions at issue in Jones and prison strikes, dubbing strikes to be “a species of ‘organized union activity.’”130 They have also done so by delving into the specifics of why strikes purportedly pose safety and security risks within prisons and why prison regulations barring strikes are therefore rationally related to legitimate penological goals.131 ¶ Lower courts also have justified upholding prison regulations barring strikes by explicitly or implicitly turning to the general Turner framework that Jones helped create — including by arguing that there are ready alternatives to prison strikes,132 or that such regulations are generally permissible exercises of penal authority.133 And finally, it is worth noting that lower federal courts have, in deferring to prison offi- cials’ judgments regarding security, also permitted all manner of regulations designed to punish strikers134 and aid officials in preventing strikes from occurring.135 In short, there exists little, if any, room under current constitutional case law for protecting prison strikes.

\*their card ends here\*

III. CONSIDERING A RIGHT TO PRISON STRIKES

Many have critiqued the legal framework governing prisoners’ rights. For example, a number of scholars compellingly argue that employment and labor laws should cover inmates working in prisons — placing them within “the scope of protections and support gathered around the honored figure of the worker.”

136. Patrice A. Fulcher, Emancipate the FLSA: Transform the Harsh Economic Reality of Working Inmates, 27 J.C.R. & ECON. DEV. 679, 682 (2015); see also, e.g., Zatz, supra note 80, at 956.

Show More

Scholars have also critiqued courts’ stringent interpretation of the Thirteenth Amendment as allowing for forced labor within prisons.

137. See, e.g., Andrea C. Armstrong, Slavery Revisited in Penal Plantation Labor, 35 SEATTLE U. L. REV. 869, 872–91 (2012); Raja Raghunath, A Promise the Nation Cannot Keep: What Prevents the Application of the Thirteenth Amendment in Prison?, 18 WM. & MARY BILL RTS. J. 395 (2009).

Show More

And many scholars have roundly criticized the Jones decision, and Turner’s framework more broadly, for granting far too much deference to prison administrators and paying only lip service to prisoners’ constitutional rights. Prison law scholar Professor Sharon Dolovich, for instance, critiques both Jones and Turner for prescribing such strong deference to prison officials, who are consequently able to violate inmates’ constitutional rights simply by asserting unsupported security concerns.

138. As she articulates, such “mandated deference is more than an acknowledgment that people with expertise in running the prisons are likely to have a deeper understanding of the matter” — it “tilt[s] the scales of judicial deliberation strongly toward prison officials at the outset,” Dolovich, supra note 120, at 247, and does so in a seemingly unprincipled manner, id. at 253. See also Armstrong, supra note 81, at 257–61 (critiquing Jones and Turner).

Show More

Despite these critical appraisals of prisoners’ rights more broadly, no similar concerns have been raised regarding the constitutionality of barring prison strikes. Indeed, commentators (and even many prisoners’ rights activists), while arguing that courts should afford less deference to prison administrators and protect inmates’ right to form and join unions, have stopped well short of arguing for protecting prison strikes.

139. See, e.g., James J. Misrahi, Note, Factories with Fences: An Analysis of the Prison Industry Enhancement Certification Program in Historical Perspective, 33 AM. CRIM. L. REV. 411, 428 (1996) (“Some commentators have suggested that inmates should be allowed to join unions provided that bargaining issues are limited to work related matters. Even these commentators, however, admit that prisoners should not be able to strike or engage in other forms of protest.” (footnotes omitted)); see also ABA STANDARDS FOR CRIMINAL JUSTICE: TREATMENT OF PRISONERS § 23-7.4 cmt. (3d ed. 2011), https://www.americanbar.org/content/dam/aba/publications/criminal\_justice\_standards/Treatment\_of\_Prisoners.authcheckdam.pdf [https://perma.cc/KA4X-EBRR].

Show More

For that matter, the subject has received little, if any, attention; no First Amendment or prison law scholars or advocates have questioned whether lower courts should apply Jones and Turner in such a rote fashion to broadly defer to prison officials in barring prison strikes, and to do so with little consideration of the potential value of these strikes.

Perhaps this is because the security- and safety-based arguments in favor of barring prison strikes are relatively straightforward and admittedly have some intuitive appeal. Prisons, in order to “function optimally,” require “heavy rule orientation” — as chaotic institutions, they depend on rules governing “every aspect of prison life,” and on the ability of prison officials to enforce these rules.

140. Donald F. Tibbs, Peeking Behind the Iron Curtain: How Law “Works” Behind Prison Walls, 16 S. CAL. INTERDISC. L.J. 137, 137 (2006); see id. at 137–40.

Show More

A prison strike — whether it involves inmates not showing up to work or refusing to eat — flouts these rules

141. See Jocelyn Simonson, Democratizing Criminal Justice Through Contestation and Resistance, 111 NW. U. L. REV. 1609, 1619–20 (2017).

Show More

and therefore inherently calls into question officials’ authority and ability to run prisons. More specifically, strikes pose a nontrivial threat of causing violence within prisons. This is the case for many of the same reasons identified by the Jones Court in its evaluation of prisoners’ unions. Prison strikes occur within already tense environments, where the threat of violence, from both prison administrators and other incarcerated individuals, is ever present; they occur in a dramatically different context than strikes outside of prisons, where each side is able to make comparable demands and concessions; and, as a result of these factors, they potentially exacerbate the friction and adversarial relationships between inmates and administrators.

142. See Misrahi, supra note 139, at 428–29 (discussing the tension between the adversarial nature of prisoners’ labor unions and administrative needs in operating a prison). A number of prominent examples of strikes devolving into violence — the clearest being the Attica work strikes in 1971, which sparked a violent riot — support these conclusions. In light of these considerations, there is certainly a credible argument to be made that courts should, per the reasoning in cases like Jones and Turner, rely on prison administrators and their “expert judgment” on the issue of prison strikes. As Chief Justice Burger pointed out in his Jones concurrence, “federal courts . . . are not equipped by experience or otherwise to ‘second guess’ the decisions of state legislatures and administrators in this sensitive area except in the most extraordinary circumstances.” Jones v. N.C. Prisoners’ Labor Union, Inc., 433 U.S. 119, 137 (1977) (Burger, C.J., concurring).

Show More

But in order to ensure that the Constitution truly does not stop at the prison walls, courts cannot simply accept prison administrators’ fears regarding strikes at face value and instead should rigorously test their credibility and basis in fact.

143. Doing so likely reveals three considerations. First, it is not necessarily true that strikes challenge prison authority to such an extent that they significantly override prison administrators’ authority. After all, prison strikes, unlike unions, do not require the prison to legitimate and empower an actual “government” within prisons; they simply require prison administrators to tolerate peaceful, respectful protest. Second, prison administrators’ fears regarding violence may be overstated. While it is certainly true that prison strikes can result in violence, many, including the nationwide strikes in 2016 and 2018, have not. And third, and most compelling, accepting that prison officials have institutional competency to maintain order and security in prisons does not, in and of itself, compel the need for total deference. Why should courts unconditionally accept prison administrators’ judgment that all strikes must be banned, when it seems apparent that administrators could regulate strikes by less drastic means? Cf. Montoya & Coggins, supra note 120, at 805 (“If prison officials objected to interference with the daily routine, they could regulate the time and place of [union] meetings. If they feared that meetings might become unruly, the officials could post a correctional officer at the meetings. If one of the purposes of a union was found to be illegal, a regulation could be phrased to specifically enjoin that purpose.” (footnotes omitted)).

Show More

And more importantly, by over-deferring and failing to engage in any analysis of the merits of prison strikes, courts miss an important opportunity. As this Note has argued, prison strikes represent an underappreciated aspect of prison life — the means by which prisoners have, throughout the course of American history, surfaced pressing problems of our carceral state and initiated important transformations in our prison system. Therefore, it is imperative to meaningfully consider why and how such strikes merit legal protection — even if such protection appears to fly in the face of the current state of the law and to defy conventional wisdom. To that end, this Part first explores the First Amendment as one potential avenue for considering the merits of prison strikes, by presenting three critical First Amendment values contained within prison strikes,

144. The First Amendment offers a viable pathway to consider a right to strike in prison not only because Jones and its progeny are First Amendment cases (that themselves failed to consider the merits), but also because the protection of dissent against state power embodies a core First Amendment guarantee. Simonson, supra note 141, at 1613 (“[O]ur Constitution enshrines the value of protecting and even promoting resistance to state power. The First Amendment’s protections for dissent, assembly, and publicity all underscore the idea that ‘elections, political parties, and voting, while critical to democracy, are not the whole deal.’” (quoting Tabatha Abu El-Jah, Changing the People: Legal Regulation and American Democracy, 86 N.Y.U. L. REV. 1, 1 (2011))); see also Texas v. Johnson, 491 U.S. 397, 408–09, 414 (1989); STEVEN H. SHIFFRIN, THE FIRST AMENDMENT, DEMOCRACY, AND ROMANCE 91–109 (1990). More broadly, the First Amendment presents a viable pathway because of two general considerations: first, the preeminence of the First Amendment’s guarantees in the constitutional scheme, see, e.g., FEC v. Mass. Citizens for Life, Inc., 479 U.S. 238, 264 (1986) (“Freedom of speech plays a fundamental role in a democracy; as this Court has said, freedom of thought and speech ‘is the matrix, the indispensable condition, of nearly every other form of freedom.’” (quoting Palko v. Connecticut, 302 U.S. 319, 327 (1937))), and second, the “astonishingly broad reach of [the] weaponized First Amendment” in recent years, Amy Kapczynski, The Lochnerized First Amendment and the FDA: Toward a More Democratic Political Economy, 118 COLUM. L. REV. ONLINE 179, 181 (2018).

Show More

and it then briefly discusses other potential legal avenues for courts and scholars to consider.

A. CONSIDERING THE FIRST AMENDMENT VALUES OF PRISON STRIKES

The right to strike within prisons may be conceptually viewed as a composite of three separate fundamental First Amendment freedoms: the freedom to peacefully associate, the freedom of speech, and the freedom to assemble and petition for redress of grievances.

145. See U.S. CONST. amend. I; see also NAACP v. Button, 371 U.S. 415, 444–45 (1963).

Show More

Each is considered in turn.

1. Association. — The right to peaceful association is one that captures the right of individuals to commune with others for the expression of ideas and for effective advocacy.

146. Although “association” does not appear in the text of the First Amendment, the Court has long recognized the right as both implicit in and derived from the First Amendment’s other express guarantees (namely speech and assembly), and as a separate substantive due process right. See, e.g., NAACP v. Alabama, 357 U.S. 449, 460 (1958) (“Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. . . . [F]reedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.”); see also Button, 371 U.S. at 430–31. For an overview of the right of association, see generally Ashutosh Bhagwat, Associational Speech, 120 YALE L.J. 978, 982–1002 (2011).

Show More

Strikes, like prison unions, represent an important means of association for prisoners — allowing them to “lay claim to a social identity as ‘workers’ . . . and in doing so generate claims to respect and solidarity.”

147. Zatz, supra note 80, at 924 n.308 (citing Chad Alan Goldberg, Contesting the Status of Relief Workers During the New Deal: The Workers Alliance of America and the Works Progress Administration, 1935–1941, 29 SOC. SCI. HIST. 337, 355 (2005)); see also id. at 923–24. This identity could give incarcerated individuals an alternative to harmful organizations like prison gangs. Cf. Craig Haney, Psychology and the Limits to Prison Pain: Confronting the Coming Crisis in Eighth Amendment Law, 3 PSYCHOL. PUB. POL’Y & L. 499, 550 (1997) (“Over the last several decades, a growing number of prisoners have adjusted collectively to deteriorating prison conditions by seeking strength and security in numbers through the formation of prison gangs.”).

Show More

This identity and solidarity can, in turn, enable inmates to engage in productive and peaceful bargains with prison officials for better conditions, higher pay, and other reform desires.

Bargaining is, in many respects, already very common in prisons, “for the simple reason that [prison] administrators rarely have sufficient resources to gain complete conformity to all the rules.”

148. Note, Bargaining in Correctional Institutions: Restructuring the Relations Between the Inmate and the Prison Authority, 81 YALE L.J. 726, 727 (1972).

Show More

However, such bargaining typically happens in an informal, ongoing, private process;

149. James W. Marquart & Ben M. Crouch, Judicial Reform and Prisoner Control: The Impact of Ruiz v. Estelle on a Texas Penitentiary, 19 LAW & SOC’Y REV. 557, 579 (1985); see also Melvin Aron Eisenberg, Private Ordering Through Negotiation: Dispute-Settlement and Rulemaking, 89 HARV. L. REV. 637, 681 (1976).

Show More

in their recurrent, day-to-day contact with inmates, prison administrators use their arsenal of tools

150. Note, supra note 148, at 730.

to “negotiate” only with select inmate leaders,

151. Id. at 738–39.

with the central goal of maintaining “short term surface order.”

152. Id. at 729.

This informal bargaining is “dysfunctional” to the long-term stability of prison institutions and “the real needs of those incarcerated within” them

153. Id. at 738.

— creating hierarchical relationships

154. Id. at 739–40.

that breed mistrust

155. Id. at 741–42.

and leave many inmates powerless and feeling aggrieved.

156. Id. at 741–43.

As a result, inmates often feel that they have to resort to violence to protect themselves from exploitation, express their dissatisfaction, and obtain redress.

157

Alternatively, peaceful, collective prison strikes avoid these harmful consequences by allowing for “open” and “formal” negotiations between all inmates and prison staff.

158. See Note, supra note 148, at 745–46.

Such transparent and legitimated bargaining benefits both inmates and prisons as a whole. By initiating peaceful protests such as work stoppages, all inmates are able “to solve problems, maximize gains, articulate goals, develop alternative strategies, and deal with [administrators] without resorting to force or violence.”

159. Id. at 752; cf. Fink, supra note 70, at 955–56 (discussing similar benefits of prison unions).

Show More

And by permitting peaceful strikes, prison administrators “provide inmates with a channel for airing grievances and gaining official response . . . giv[ing] the institution a kind of safety-valve for peaceful, rather than violent, change”

160. Note, supra note 148, at 755; see also Raven Rakia, A Prison Strike in Minnesota Actually Got Results, THE APPEAL (Jan. 25, 2019), https://theappeal.org/a-prison-strike-in-minnesota-actually-got-results/ [https://perma.cc/3YX7-XCN4].

Show More

— avoiding potentially expensive and time-consuming litigation and even helping rehabilitate inmates,

161. Note, supra note 148, at 751–52.

all while deemphasizing hierarchical structures in prisons that harm institutional order.

162. Much ink was spilled on prisoner collective bargaining, and the virtues of these associational efforts, at the height of the prison union movement in the 1970s and 1980s. See, e.g., Susan Blankenship, Revisiting the Democratic Promise of Prisoners’ Labor Unions, 37 STUD. L. POL. & SOC’Y 241, 244–47 (2005) (providing a literature review); Kara Goad, Note, Columbia University and Incarcerated Worker Labor Unions Under the National Labor Relations Act, 103 CORNELL L. REV. 177, 202–03 (2017) (similar). The modern-day resurgence of prison strikes and the ever-pressing problems of our criminal justice system compel revisiting this scholarship today. Cf. Blankenship, supra, at 248–54, 260–62 (positively reappraising prisoners’ unions and associated collective bargaining, noting benefits ranging from the enhancement of prisoners’ ability to assert particular needs and problem-solve to the promotion of prisoners’ autonomy, political action capacity, and therefore their rehabilitation).

Show More

2. Speech. — A prison strike also represents a critical way by which inmates can express themselves.

163. See Brown v. Louisiana, 383 U.S. 131, 141–42 (1966) (holding that protestors had a First Amendment right to engage in a peaceful sit-in at a segregated public library, emphasizing that First Amendment rights “are not confined to verbal expression” and “embrace appropriate types of action which certainly include the right in a peaceable and orderly manner to protest by silent and reproachful presence, in a place where the protestant has every right to be, the unconstitutional segregation of public facilities,” id. at 142); see also Texas v. Johnson, 491 U.S. 397, 404 (1989); Armstrong, supra note 81, at 224. For an argument that the text and original meaning of the First Amendment protect “symbolic expression,” see Eugene Volokh, Symbolic Expression and the Original Meaning of the First Amendment, 97 GEO. L.J. 1057, 1059 & n.11 (2009).

Show More

First, as alluded to above, a strike allows inmates to claim and communicate an identity — as more than just marginalized, ignored convicts with little to no self-determination, but instead as workers and human beings entitled to basic dignity. Such collective actions represent the “performative declaration and affirmation of rights that one does not (yet) have.”

164. Simonson, supra note 141, at 1620 (quoting Lisa Guenther, Beyond Guilt and Innocence: The Creaturely Politics of Prisoner Resistance Movements, in ACTIVE INTOLERANCE: MICHEL FOUCAULT, THE PRISONS INFORMATION GROUP, AND THE FUTURE OF ABOLITION 225, 227 (Perry Zurn & Andrew Dilts eds., 2016)).

Show More

And, as Professor Jocelyn Simonson discusses, these strikes are collective contestations to “demand dignity, calling attention to the ways in which [prisoners] are treated as less than human and in the process reclaiming their own agency.”

165. Id. (emphasis added).

Such dignitary considerations, which courts have sought to protect under First Amendment principles, should therefore naturally extend to prisoners attempting to, through strikes, express their basic self-worth.

166. Cf. Cohen v. California, 403 U.S. 15, 24 (1971) (describing the relationship between the “constitutional right of free expression” and “individual dignity”); United States v. Hamilton, 699 F.3d 356, 376–77 (4th Cir. 2012) (Davis, J., concurring) (similar); Kim Treiger-Bar-Am, In Defense of Autonomy: An Ethic of Care, 3 N.Y.U. J.L. & LIBERTY 548, 592 (2008) (discussing the dignity in autonomous self-expression).

Show More

Beyond representing a form of inherent, individual expression for inmates, prison strikes also represent a broader form of expression, allowing inmates to be visible to and heard by the public at large. Over the course of American history, inmates — by virtue of being locked up in isolated, impregnable penitentiaries — have largely been a silent and ignored segment of the American population.

167. See, e.g., Laura Rovner, On Litigating Constitutional Challenges to the Federal Supermax: Improving Conditions and Shining a Light, 95 DENV. L. REV. 457, 463 (2018).

Show More

Through peaceful protests like the 2018 national prison strike, however, their suffering, their calls for reform, and their voices are, for the first time, directly expressed on a large scale, ringing out loudly beyond the prison walls and jumpstarting important conversations of criminal justice reform. It is critical to protect such expression; “[i]ndeed, it is from the voices of those who have been most harmed by the punitive nature of our criminal justice system that we can hear the most profound reimaginings of how the system might be truly responsive to local demands for justice and equality.”

168. Simonson, supra note 141, at 1613.

3. Petition for Redress. — Inmates’ strikes can be seen not only as expressions of their dignity and general efforts to express their voices beyond prison walls but also as significant methods of assembly to call attention to specific grievances and seek redress from the government.

169. See U.S. CONST. amend. I (“Congress shall make no law . . . abridging . . . the right of the people to peaceably assemble, and to petition the government for a redress of grievances.”); De Jonge v. Oregon, 299 U.S. 353, 364 (1937) (“The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.” (quoting United States v. Cruikshank, 92 U.S. 542, 552 (1876)). But see Ashutosh Bhagwat, The Democratic First Amendment, 110 NW. U. L. REV. 1097, 1099 (2016) (“The Assembly Clause has not been addressed in over thirty years. The relevance of the Petition Clause has been limited to the peripheral issue of access to courts . . . .” (footnotes omitted)).

Show More

While in theory “[t]here is no iron curtain drawn between the Constitution and the prisons of this country,”

170. Tibbs, supra note 140, at 144 (quoting Wolff v. McDonnell, 418 U.S. 539, 555–56 (1974)).

Show More

in practice, “prisons often escape the daily microscope focused on other American institutions such as schools, churches, and government.”

171. Id. at 145.

Courts grant prison administrators wide deference not only in running day-to-day life within prisons but also in restricting press access to prisons.

172. See, e.g., Bill Keller, Let the Press In, MARSHALL PROJECT (Oct. 5, 2015, 11:01 AM), https://www.themarshallproject.org/2015/10/05/let-the-press-in [https://perma.cc/85RD-KS6S].

Show More

Therefore, much of the American public — already closed off from and largely indifferent to the lives of prisoners — is kept even more in the dark about prison conditions and the state of our carceral system as a whole.

Prison conditions, from what has been documented, are horrendous across states. Many prisons are severely overcrowded and seriously understaffed;

173. See, e.g., Sara Mayeux, Opinion, The Unconstitutional Horrors of Prison Overcrowding, NEWSWEEK (Mar. 22, 2015, 2:55 PM), https://www.newsweek.com/unconstitutional-horrors-prison-overcrowding-315640 [https://perma.cc/KR4M-S44U]; Prison Conditions, EQUAL JUST. INITIATIVE, https://eji.org/mass-incarceration/prison-conditions [https://perma.cc/5YE8-Q3G3].

Show More

inmates routinely experience physical abuse and even death at the hands of prison guards,

174. See, e.g., Tom Robbins, A Brutal Beating Wakes Attica’s Ghosts, N.Y. TIMES (Feb. 28, 2015), https://nyti.ms/1GAAkOo [https://perma.cc/832Y-Y7B8].

Show More

receive inadequate protection from guards, are deprived of basic necessities,

175. See, e.g., Mary Ellen Klas, Florida Prisons Have Toilet Paper, But They’re Not Supplying It to Some Inmates, MIAMI HERALD (July 20, 2017, 11:01 AM), https://www.miamiherald.com/news/special-reports/florida-prisons/article162565763.html [https://perma.cc/X2YY-AKRY].

Show More

are given substandard medical care,

176. See, e.g., Gabriel Eber & Margaret Winter, New Lawsuit: Massive Human Rights Violations at Mississippi Prison (Video), HUFFINGTON POST (Dec. 6, 2017), https://www.huffingtonpost.com/entry/east-mississippi-correctional-facility\_b\_3359864.html [https://perma.cc/NT8L-QB5Y].

Show More

and are forced to live in squalor and tolerate extreme circumstances;

177. See, e.g., Maurice Chammah, “Cooking Them to Death”: The Lethal Toll of Hot Prisons, MARSHALL PROJECT (Oct. 11, 2017, 7:00 AM), https://www.themarshallproject.org/2017/10/11/cooking-them-to-death-the-lethal-toll-of-hot-prisons [https://perma.cc/7489-DTG9].

Show More

most prisoners have minimal, if any, access, to rehabilitative or mental health services;

178. See, e.g., Alexa Lisitza, Florida Prisons Face a Bleak Sentence, POLITICO (June 11, 2018, 5:26 PM), https://www.politico.com/story/2018/06/11/florida-prisons-face-a-bleak-sentence-636583 [https://perma.cc/2VH3-5QM3].

Show More

and prisoners have little legal recourse, as internal prison grievance procedures are often stacked against inmates,

179. See, e.g., John J. Gibbons & Nicholas de B. Katzenbach, Confronting Confinement: A Report of the Commission on Safety and Abuse in America’s Prisons, 22 WASH. U. J.L. & POL’Y 385, 513 (2006); see also HUMAN RIGHTS WATCH, NO EQUAL JUSTICE: THE PRISON LITIGATION REFORM ACT IN THE UNITED STATES 11–17 (2009), https://www.hrw.org/sites/default/files/reports/us0609web.pdf [https://perma.cc/37BK-6877]; Caitlin Dewey, With Few Other Outlets for Complaints, Inmates Review Prisons on Yelp, WASH. POST (Apr. 27, 2013), https://wapo.st/2TBB5Dj [https://perma.cc/3B3R-PVGV].

Show More

and judicial deference and federal legislation have effectively shut the courthouse doors on prisoners’ civil rights claims.

180. See, e.g., Margo Schlanger, Trends in Prisoner Litigation, as the PLRA Enters Adulthood, 5 U.C. IRVINE L. REV. 153, 153–54 (2015).

Show More

And across prisons, criminal sentencing laws not only have contributed to an unprecedented era of mass incarceration, but also have forced African Americans and people of color broadly to bear much of this burden.

181. See, e.g., Judith Lichtenberg, How US Prisons Violate Three Principles of Criminal Justice, AEON (Sept. 19, 2016), https://aeon.co/ideas/how-us-prisons-violate-three-principles-of-criminal-justice [https://perma.cc/L49L-FP7H].

Show More

As the Marshall Project states, “[s]ociety won’t fix a prison system it can’t see”;

182. Keller, supra note 172.

peaceful prison strikes like the 2018 strike, however, draw back the “iron curtain” of prison walls, bringing to light many of the pressing issues described above. Through these strikes, inmates are able not only to express their grievances to their prison administrators, but also to “publicize their on-the-ground realities to the larger world”

183. Simonson, supra note 141, at 1620.

and, in turn, gain attention from and access to the political branches able to implement policy reforms.

184. See Andrea C. Armstrong, No Prisoner Left Behind? Enhancing Public Transparency of Penal Institutions, 25 STAN. L. & POL’Y REV. 435, 476 (2014).

Show More

As recent history has shown, inmates have experienced some success by pressing their claims against the government through publicized strikes. For example, as described above, the California strikes in 2011 and 2013 generated public outcry that eventually resulted in transformations to the California prison system’s solitary confinement policies.

185. See supra note 73 and accompanying text.

In Alabama, inmates’ participation in the 2016 nationwide prison strike helped prompt the Department of Justice to open an investigation into the state’s prison conditions.

186. Cora Lewis, Guards Sympathize with Striking Prisoners: “We See It as a Moral Issue,” BUZZFEED NEWS (Oct. 9, 2016, 11:54 AM), https://www.buzzfeednews.com/article/coralewis/the-prison-strike-is-spreading [https://perma.cc/J5ZU-5JHP].

Show More

And more broadly speaking, strikes like the 2018 strike have begun to “remedy power imbalances, bring aggregate structural harms into view, and shift deeply entrenched legal and constitutional” barriers to critical prison reforms.

187

#### Prison strikes don’t work – at best they cause incremental, half-hearted reforms; at worst prisoners get punished for them.

Thompson ’16 (Christie; writer for the Marshall Project; 9-21-2016; “Do Prison Strikes Work?”; Marshall Project; https://www.themarshallproject.org/2016/09/21/do-prison-strikes-work; Accessed: 11-8-2021; AU)

On Sept. 9, prisoners across the country stopped showing up for their work assignments to protest what they call slave-like conditions for incarcerated workers. Inmates make pennies an hour keeping the prison running — such as cleaning and cooking — or providing cheap manufacturing for private businesses. Inmates involved in the protest are calling for higher wages, better working conditions and less severe punishment while on the job. The work stoppage was organized by inmates in multiple states and labor activists with the Industrial Workers of the World to coincide with the 45th anniversary of the Attica riot, which was preceded by a strike in the prison’s metal shop. Prisoners and labor organizers on the outside hoped it would be the largest prison strike in history. It’s hard to quantify exactly how many prisoners in how many states have participated, as prison officials and organizers give conflicting accounts of its scope. Activists claim inmates in at least 11 states are taking part. This strike is the latest in a long history of prisoners trying to use what little leverage they have — whether work stoppages or hunger strikes — to demand change from administrators. Some have been more successful **than others**. Here’s a look at five other prison strikes and **what came of them**: Post-WWII Labor Strikes University of Michigan professor Heather Ann Thompson’s history of labor movements in prison details how a series of work stoppages and sit-down protests took off in prisons across the U.S. in 1947. In little over a decade, hundreds of prisoners in Connecticut, New Jersey, New York, Wisconsin, Louisiana, Ohio, and Georgia stopped working to protest long hours, trifling pay, and grueling work environments. Prisoners in Georgia and Louisiana went even further and slit their heel tendons so they could not be forced to work. While the work stoppages **did not lead** to immediate **changes**, they inspired another era of prison protest in the ‘60’s and ‘70’s, which included the Attica work stoppage and eventual riot. Those movements achieved **slight pay raises** and improved safety precautions in some states and led to the creation of prisoner-led unions. 2010 Georgia Labor Strike In 2010, state prisoners across Georgia launched what many then called the largest prison work strike in U.S. history — though official numbers are difficult to confirm. At the protest’s height, organizers said thousands of inmates participated across at least six state prisons. Georgia inmates were paid nothing for their work, as dictated by state law, and were asking for better conditions and more access to programming. Not only were Georgia inmates not showing up to their job assignments — they refused to leave their cells at all until their demands were met. The strike **lasted six days**, and garnered coverage in news outlets like The New York Times. It ended when prisoners decided to leave their cells to go to the law library and try to sue for improvements instead. (It’s **unclear** what became of those efforts). **Prisoners in Georgia are still not paid for their labor**. 2011-2013 Pelican Bay Hunger Strike In 2011, 400 prisoners in California’s supermax prison started refusing their meals. Their numbers grew to 7,000 as they were joined by prisoners all over the state. The inmates had a list of five demands, including limits on solitary confinement and changes to how the prison determines gang membership. Their fast ended after three weeks when prison officials agreed to reconsider some of their solitary confinement policies. Inmates returned to hunger-striking later in 2011 and again in 2013 saying the **changes were too small and too slow**. But the protests did have a significant impact. After the initial strike, the chair of the California Assembly’s Public Safety Committee held a hearing on conditions at Pelican Bay. In 2012, the nonprofit Center for Constitutional Rights filed a class-action lawsuit against the state over its use of prolonged isolation. Todd Ashker, one of the strike’s organizers, was the lead plaintiff. The suit was settled in September 2015, addressing many of the strikers’ concerns about how people end up in solitary and how long they remain there. 2013 Guantanamo Hunger Strike Detainees at the U.S. military prison in Cuba began hunger-striking in March 2013 to fight against their indefinite detention and alleged mistreatment. At the strike’s peak in July that year, 106 men were refusing to eat and 45 were being force-fed through nasal tubes. The strike — for its duration, size, and the graphic nature of force-feeding — **outraged** the public and policymakers and increased pressure on President Obama to fulfill his promise of closing the controversial prison. Since the strike, Obama has lowered the number of men held at Guantanamo from over 2,000 to 61, but has yet to close the prison entirely. 2015-2016 Immigration Detention Center Hunger StrikesSince 2015, hunger strikes have begun at various immigration detention centers — prison-like facilities where immigrants are held while their deportation case is decided — throughout the U.S. Roughly 200 detainees at Eloy Detention Center in Arizona stopped eating in June 2015, in part to pressure an investigation into recent deaths at the facility. That fall, immigrants in detention in California, Alabama, Louisiana, and Texas also stopped eating to object to their indefinite detention and poor conditions. More recently, 22 mothers being held with their children in a family detention center in Pennsylvania went on a hunger strike this August. Their strike accompanied a series of handwritten letters they sent to immigration officials asking to be released from indefinite detention. The strike has continued off-and-on since then, with even their children threatening to refuse to attend classes in solidarity with their mothers. It’s too soon to tell what the impact of their protests might be.

#### No visibility – lack of public attention means strikes never generate sufficient pressure to spark change.

HLR ’19 (Harvard Law Review; 3-8-2019; “Striking the Right Balance: Toward a Better Understanding of Prison Strikes”; Harvard Law Review; https://harvardlawreview.org/2019/03/striking-the-right-balance-toward-a-better-understanding-of-prison-strikes/; Accessed: 11-8-2021; AU)

But more broadly, the prison strikers sought to draw public attention to longstanding grievances over inhumane treatment within prisons across the country and to call for significant criminal justice reforms. The strikers, through the inmate organization Jailhouse Lawyers Speak, issued a list of ten national demands, calling for, among other things, improved prison conditions, better access to rehabilitation programs, voting rights for all current and former prisoners, and the “immediate end to the racial overcharging, over-sentencing, and parole denials of Black and brown humans.”4× Most critically, the strikers passionately called for the “immediate end to prison slavery”5× — the label that activists use to describe the exploitative labor practices within prisons of putting prisoners to work, sometimes compulsorily, for just “cents an hour or even for free.”6× Although **none of the strikers’ ten demands have yet been met**, the 2018 nationwide prison strike was still a remarkable event in its scope and coordination, as well as its ability to generate public support and attention. An estimated 150 different organizations endorsed the strike; citizens held numerous demonstrations outside of prisons in solidarity; and a range of national media publications provided detailed coverage of the protest’s motivations, objectives, tactics, and status as potentially the “largest prison strike in U.S. history.”7× Despite the 2018 prison strike’s apparent gravity, it is difficult to fully contextualize its significance because **surprisingly little attention** has been paid to prison strikes previously. For instance, just two years prior, in 2016, a similar nationwide prison strike was described as “[t]he **largest** prison strike . . . you [probably] **haven’t heard about**.”8× In light of this reality, this Note peers behind prison walls to improve our understanding of prison strikes — the end goal being to open the door to a broader discussion of why and how these strikes should receive legal protection. Part I briefly documents America’s history of prison strikes, showing that the 2018 nationwide strike is the latest in a long, important tradition of prisoners using the only real means available to them — collective actions against prison administrators — to protest labor conditions and other deeply held grievances. Part II then evaluates the legal framework governing prison strikes, demonstrating that such strikes likely do not receive sufficient protections under either the Constitution or federal and state statutes and therefore can be shut down by prison administrators without fear of judicial oversight. Part III, informed by the rich history of prison strikes, argues that their potential and demonstrated value demands, at the very least, consideration of the merits of protecting incarcerated individuals’ right to strike, and it contends that the First Amendment framework offers one potential avenue to allow prisoners to peacefully surface pressing problems in our carceral system and to collectively express their humanity and dignity.

#### Multiple alt causes to recidivism – low wages are a drop in the bucket.

Tegeng et al. ’18 (Goche; professor in the Department of Psychology at Wollo University; 2018; “Exploring Factors Contributing to Recidivism: The Case of Dessie and Woldiya Correctional Centers”; Arts and Social Sciences Journal; https://www.hilarispublisher.com/open-access/exploring-factors-contributing-to-recidivism-the-case-of-dessie-and-woldiya-correctional-centers-2151-6200-1000384.pdf; Accessed: 11-8-2021; AU)

Recidivism is “one of the most fundamental concepts in criminal justice” and relevant in understanding the core functions of the criminal justice system such as incapacitation, deterrence, and rehabilitation [1]. Within criminal justice agencies, the level of recidivism is an important outcome variable that provides the basis for determining the extent to which an agency has been able to effectively intervene in the criminality of the offender populations it serves, identifying the needs for more effective programs, communicating the need for increased resources, and demonstrating accountability to the public and to legislators [2]. There are **many different plausible contributing factors** that might explain why released offenders could not successfully reenter the community. A notable number of studies examined the contributing factors to recidivism among released offenders. The **most plausible reasons** to explain the relatively high recidivism rate among released offenders were centered on the offenders’ **educational illiteracy**, **lack** of vocational **job skills**, lack of interpersonal skills, or **criminal history**. Besides, socio-economic factors such as gender, **age and employment status** influence the possibility of committing crimes after first conviction. In terms of gender, men are more likely to return to prison because of **criminal peer associations**, **carrying weapons**, alcohol abuse, and **aggressive feelings** [3]. According to United States Sentencing commission 24.3 and 13.7 percent of males and females were recidivates respectively in USA. **Age is** also another demographic **determinant factor** for recidivism. A study in USA shows that recidivism rates decline relatively consistently as age increases. So youths are more likely to offend than older people. Among all offenders under age 21, the recidivism rate is 35.5 percent, while offenders over age 50 have a recidivism rate of 9.5 percent (United States Sentencing commission, 2004). Therefore, incarceration, particularly at a young age, can lead to an accumulation of disadvantages over the life course, with future opportunities severely restricted [4]. On the other hand, the **absence of employment** is a consistent factor in recidivism and parole or probation violations, and **having a criminal history** limits employment opportunities and **depresses wages**. In New York State, labor statistics show that **89%** of formerly incarcerated people who violate the terms of their probation or parole are unemployed

at the time of violation. Further research suggests that 1 year after release, up to 60% of former inmates are not employed. Nationally, according to a study by Bushway and Reuter [5], one in three incarcerated people reported being unemployed before entering state prison, and fewer than half had a job lined up before release. Moreover, family is **another main factor** in the formation of individual and social personally of the child. From the child’s point of view, parents are the most important and most valuable models of the universe. Prisoners’ recidivism rates are associated with the amount of contact they receive with their families [6]. Less care of family to their children [7] and lack of family involvement is **strongly related** to crime and incarceration rates. In line with this, studies in Australia revealed that, offenders with limited family support or attachment are more likely to reoffend. Alongside, drugs problem is one of the **main headline crime stories** of our times which leads to crime. The urge to commit crimes by drug addicts and alcoholics is **motivated** by the desire to support their habits. Much of these offenders’ behavior can be linked to substance abuse and addictions (UNODC, 2012). Because they tend to serve short-term sentences, their access to treatment and other programmers while in detention is quite limited and they remain at high risk of reoffending. The issue crime in general and recidivism in particular has attracted the interest of some researchers in Ethiopia. These studies were basically focused on criminal behavior; juvenile delinquency and the criminal justice system i.e. have tried to point out from legal perspectives. Yet the amount of researches and the knowledge obtained from those researches do not suffice to explain the extent and depth of the problem related to recidivism rather they try to highlight the issue from criminal behavior. Andargachew [8] in his book “The Crime Problem and Its Correction” found that Ethiopian prisons are suffered from over crowdedness, lack of sanitation, and insufficient amount and quality of food service. He has also focused the history of Ethiopian police force as well as the history of judicial system in Ethiopia. However, Andargachew failed address the issue of recidivism and lack of rehabilitation on repeat offenders. Daniel [9] also studied Crime incidences in Addis Ababa with an emphasis on the nature, spatial pattern, causes, consequences and possible remedies and showed different variables causing criminal behavior. But he too failed to identify the major causes of recidivism. Nayak [10] studies magnitude and impact Juvenile Delinquency in Gondar, explored that Juveniles who were from large sized /or disintegrated family commit delinquent act than smaller sized and healthy family. It has a greater impact on different levels like, individual, family, community and society at large. Yet, he also lacked from discussing recidivism. In addition to this, Meti [11] in his/her study in Addis Ababa tried analyze the influence of socio economic factors on crime with particular emphasis on the triggering factors that prompt criminal behavior is a timely endeavor. But he still refrained from explaining the factors contributing to recidivism. On top of that, methodologically, the aforementioned studies gave a huge emphasis on quantitative method in the understanding of crime and criminal behavior, for the sake of describing socio-economic and demographic characteristics of study participants’ vis-à-vis recidivism. On the contrary, in the present study attempt has made to incorporate qualitative method intensively due to the fact that lived experience of recidivists are more understandable through a detailed and rich data that could be collected by giving more attention to qualitative method.