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“The Prospect of Minority Rule Is Certainly Not New”

In our event-driven media landscape, we tend to think about things only when there is a scheduled event coming up or an unscheduled crisis underway. And so it is with voting rights; we tend to think about them in the months leading up to an election. Or when significant numbers of people attempt to invalidate an election that has already occurred. The next national-scale elections are eighteen months away, but democracy-lovers would do well to start paying attention now. Here are a few reasons why I say this.

The influential conservative activist Paul Weyrich said to a gathering of evangelical leaders in 1980: “I don’t want everybody to vote. Elections are not won by a majority of the people. They never have been from the beginning of our country and they are not now. As a matter of fact, our leverage in the elections quite candidly goes up as the voting populace goes down.”

Skip ahead to a couple of weeks ago (March 11 2021), and listen to Rep. John Kavanaugh, speaking to CNN on behalf of himself and fellow Arizona Republicans: “We don’t mind putting security measures in that won’t let everybody vote—but everybody shouldn’t be voting.”

And there is the logic behind the decades-long attack on voting rights, which has now evolved from a more-or-less fringe movement to a central organizing principle of the “conservative” activists who now dominate the Republican Party.

Speaking of the Republican Party, it was about a year ago (March 30 2020), that the London Guardian led off a story like this: “Donald Trump admitted on Monday that making it easier to vote in America would hurt the Republican party. The president made the comments as he dismissed a Democratic-led push for reforms such as vote-by-mail, same-day registration and early voting as states seek to safely run elections amid the Covid-19 pandemic. Democrats had proposed the measures as part of the coronavirus stimulus. They ultimately were not included in the \$2.2 trillion final package, which

included only \$400 million to states to help them run elections.

They quoted Trump speaking about Democrats’ attempts to expand voting access during an appearance on Fox & Friends: “The things they had in there were crazy. They had things, levels of voting that if you’d ever agreed to it, you’d never have a Republican elected in this country again. They had things in there about election days and what you do and all sorts of clawbacks. They had things that were just totally crazy and had nothing to do with workers that lost their jobs and companies that we have to save.”

Paul Weyrich, who I mentioned earlier, died in 2008, but his legacy lives on. For example, H.R. 1, a piece of legislation which I discuss elsewhere in this issue, is currently moving through Congress and, if enacted, “would be the most significant voting rights and democracy reform in more than half a century.” Weyrich was a co-founder of the reactionary Heritage Foundation, which just this month (March 12th) published a piece entitled “H.R. 1 Is a Threat to American Democracy. Period.” Bloomberg News recently quoted Republican Senator Mike Lee of Utah, who went a bit further. He said that the For the People Act was “written in Hell by the Devil himself.”

Whether due to the efforts of Satan or not, the Alice-in-Wonderland idea that expanding the franchise is a threat to democracy is now widely accepted, and is in fact used as justification for restricting the franchise.

Republicans Have Been Losing. But Winning.

There is some political logic at work here. Republicans have been failing to garner a majority of votes in U.S. elections for decades, a reality obscured by the fact that they have nonetheless been winning elections.

Republicans are well aware of this reality. Consider the
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Greetings,

I talk a lot about voting rights, and in this issue of Nygaard Notes I do it again. The attack on voting rights has been going on for a long time, but the difference now is that it is much more out in the open. And while the rhetoric is (as always) high-sounding calls for "election integrity" and the addressing of fraud, it's not too hard to find "conservatives" willing to admit that the real point of voter suppression is to make it possible to hang onto power at any cost.

Depriving someone of their right to vote is a devastating form of "othering," as it tells certain groups of people that they don't belong. And not only that they don't belong in the voting booth, but that they don't belong in the society. The United States was founded by white people, for white people. Can we change enough to become a true multiracial democracy? I think we can, but our success in beating back these many attempts at excluding those identified as "them" will tell us how far along the road we have traveled, and how far we have still to go.

I hope that Nygaard Notes can help us see a bit more clearly the road ahead, and the possibilities that await us as we travel the road to justice.

Your fellow traveler,
Nygaard

Minority Rule *from page 1*

words of "conservative" pundit Ramesh Ponnuru, who wrote in the March 14 2021 edition of Bloomberg Opinion, "Only once in the last three decades have Republicans won more votes than the Democrats in a presidential election. The Electoral College has allowed them to win three presidential elections notwithstanding that fact."

And here's a lengthy excerpt from a lengthy article in the NY Times of November 13, ten days after the recent presidential election. It ran under a lengthy heading: "The Electoral College Is Close. The Popular Vote Isn't; The Prolonged Uncertainty in Spite of the Clear Preference of the Public Has Intensified Some Americans' Anger at a System in Which a Minority of People Can Claim a Majority of Power." In the article, political reporter Maggie Astor made the following comments:

"Amid all the anxiety over the counts in Pennsylvania and Georgia, and despite Americans' intense ideological divisions, there was no question that — for the fourth presidential election in a row, and the seventh of the past eight — more people had chosen a Democrat than a Republican.

"Only once in the past 30 years have more Americans voted for a Republican: in 2004, when President George W. Bush beat John Kerry by about three million votes. But three times, a Republican has been elected.

"In 2000, when Al Gore won the popular vote by about

550,000 votes but Mr. Bush won the Electoral College, such a split hadn't happened in more than a century. Now, it has happened twice in 20 years and come close to happening a third time, despite much larger popular-vote margins. What used to be an extreme rarity has begun to feel common.

"The prospect of minority rule is certainly not new, and the fact that the Constitution allows it is by design, not accident. When the Constitution was ratified, most states only allowed white, male property owners to vote."

I'll give the last word here to Stacey Abrams, voting rights advocate extraordinaire and former Georgia gubernatorial candidate, who spoke to the London Guardian on March 24th, "The coordinated onslaught of voter suppression bills is not the norm. What is so notable about this moment, and so disconcerting, is that they are not hiding. There is no attempt to pretend that the intention is not to restrict votes. They are responding to the big lie, to the disproven, discredited, the blood-spilled lie of voter fraud. They are responding by conforming to a lie and cloaking it in this mask that this is somehow ethical, that this is somehow about protecting, when it is about restricting and suppressing."

Lest the reader finds all this depressing, recall the federal legislation H.R. 1 that I mentioned earlier. The Brennan Center for Justice has analyzed each of the restrictive voting bills pending in the states and concludes that H.R. 1—also known as the For the People Act—"would thwart virtually every single one." Let's have a look. ◆

Voting Rights: Support the For The People Act

A remarkable piece of legislation was adopted in the U.S. House of Representatives on March 3, and introduced in the Senate on March 17th. The bill—H.R. 1 in the House and S. 1 in the Senate—is known as the “For the People Act.”

The headline in *The Intercept* of February 14th read, “The ‘For the People Act’ Would Make the U.S. a Democracy.” I don’t know about that, but I do agree with author Jon Schwarz that the bill “is plausibly the most important legislation considered by Congress in decades.”

Schwarz briefly summarized the FTPA like this: “The bill’s provisions largely fall into three categories: First, it makes it far easier to vote, both by eliminating barriers and enhancing basic outreach to citizens. Second, it makes everyone’s vote count more equally, especially by reducing gerrymandering. Third, it hugely amplifies the power of small political donors, allowing them to match and possibly swamp the power of big money.”

For a more detailed analysis of the bill, we turn to the President of the Brennan Center for Justice, Michael Waldman. He testified before the Senate Committee on Rules & Administration on March 24th. What follows is a brief summary of some of his key points about the For the People Act, or “S. 1.,” excerpted from his 65 pages of testimony.

He introduced his presentation by emphasizing the power of national legislation to address the many-headed attack on voting rights that is largely taking place at the state level: “The For the People Act (S. 1) is the next great civil rights bill and comes in response to the demand for racial justice in our country. It is long overdue and it is urgently needed now.

“And now, in states across the country, we see a wave of legislative attempts to curb the vote, the most significant attempted cutback of voting rights since the Jim Crow era. The Brennan Center has studied these laws for years and last month found 253 bills in 43 states, seven times the rate of four years ago, and the number is even higher right now.

“The For the People Act deals with this in a very important way. It would stop the new wave of voter suppression, cold. It stops it in its tracks, and Congress

has the power, the right, the authority — constitutionally and legally — to do this.

“The For the People Act would markedly improve the workings of American democracy, modernizing it, opening access, and restoring public trust,” Waldman told the Committee. He then listed a few of the specific measures contained in the bill. The legislation, he said:

- sets national standards to ensure that all eligible citizens can cast a ballot—guaranteeing access to vote by mail and early voting, and extending automatic voter registration nationwide;
- bans partisan gerrymandering and sets clear rules for the drawing of congressional districts;
- curbs the corrosive role of big money in politics, requiring disclosure and enforcement, and enacting a system of voluntary small donor matching funds;
- strengthens rules to ensure ethical conduct by executive and judicial branch officials; and
- restores the right to vote for people with past criminal convictions, and commits to strengthening the Voting Rights Act.

He listed a few examples of how S. 1 would deal with the attacks on voting rights at the state level, noting that “Some proposed laws would cut back who can vote by mail; S. 1 would require no-excuse absentee balloting. Some proposals would restrict the use of secure drop-boxes, frequently used to vote absentee; S. 1 would ensure that voters can vote securely and conveniently. Some proposals would eliminate same day or automatic registration; S. 1 would protect them. Some proposals would end early voting on Sundays; S. 1 would require 14 days of consecutive early voting.

“A key strength of this legislation, in contrast to earlier and narrower reform proposals, is that it links voting and redistricting and campaign finance and ethics. Throughout, this legislation would set a national standard. Access to our electoral system should be the same regardless of where a citizen lives. Of note, every measure in this bill has been drawn from successful

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FTPA *from page 3*

policies at the national, state, and local level. Every one has been honed by election officials over the years. Every one has been supported or used by both parties. They are widely popular with the public, and with voters of all political persuasions.

“Taken together, the reforms in the For the People Act represent a powerful response to the demand for racial justice heard so passionately throughout the country. Our voting system, politically manipulated gerrymandering, and a dollar-driven campaign finance system all combine to stifle the voices of communities of color. Recent proposed electoral changes in the states would markedly shrink the electorate, again in a manner that would hit those voters hardest. If we are to build a thriving multiracial democracy that reflects a changing country, we have no choice but to modernize our electoral systems and prevent abuse.

Here are a couple of other things he mentions:

“S. 1 also tightens restrictions on coordination between candidates and outside groups like super PACs that can raise unlimited funds, another important reform.” And...

“S. 1 also overhauls the dysfunctional Federal Election Commission, which has failed to meaningfully enforce existing rules and would almost certainly struggle to implement the other ambitious campaign finance reforms in the Act.”

There’s so much more! But for now, just contact your Senators and Congressman and tell them to support the For the People Act.

If you do want to learn more, aim your browser here: www.brennancenter.org/our-work/analysis-opinion/people-act-would-stop-voter-suppression-its-tracks

Before I discuss the second major piece of voting rights legislation, the John Lewis Voting Rights Advancement Act, let me take a minute to discuss this idea of “states’ rights,” a key weapon in the attack on voting rights. ♦

A Word about Federalism

How, one might wonder, do Republicans defend their attack on voting rights and their opposition to the For the People Act? A typical argument was made by right-wing pundit Ramesh Ponnuru on March 14th. His opinion, expressed in Bloomberg Opinion, is that the For the People Act “is just a liberal wish list to be imposed on the states with no concern for federalism.” www.bloomberg.com/opinion/articles/2021-03-14/republicans-aren-t-against-democracy

“No concern for federalism”? What is he talking about? Well, a lot of what we’ve been fighting about in the U.S. in recent years (actually, a lot of what we’ve always fought about) is “federalism.” So here’s a very brief refresher course in “federalism,” condensed from the pages of various Nygaard Notes issues over many years:

Put most simply, Federalism is the process of removing power from the federal government and sending it back to state and local governments. When it comes to the federal government, federalists say that small is beautiful.

The reason rich and powerful people want to shrink the

federal government is pretty obvious: The federal government is seen by the modern American aristocracy as an impediment to their desire for an unfettered freedom to accumulate wealth, and the accompanying freedom to exploit the vulnerable classes to the degree necessary to accomplish it. This is “freedom” to them.

The acceptance of – indeed, the acceleration of – this process in the 21st Century has been called “devolution” or “The New Federalism.” President Reagan was really into this, but it goes back much further than that. The biggest battle over this was the Civil War. Slave-owners did not want to be told they couldn’t own slaves, so they invoked the idea of “federalism” and went to war with the noble-sounding goal of protecting “states’ rights.”

In the Reconstruction era, a similar demand was made by the Southern planter (slave-holding) class. They demanded what they called “Home Rule,” which was the euphemism of the time for the restoration of white supremacy in the South. “It matters little to us who rules in Washington,” commented an Abbeville newspaper in early 1877, “if South Carolina is allowed to have...Home Rule.” 

→→ In the 20th century, the rhetoric of “federalism” was used in much the same way, for much the same purpose: to enforce the successor to chattel slavery, the Jim Crow system. All during the 1950s and 1960s white racists attempted to use it to resist federal civil rights laws and rulings. The Supreme Court’s landmark civil rights ruling in *Brown vs. Board of Education* in 1954, for example, was attacked by racists as a violation of “states’ rights,” since it forbade the states from having “separate but equal” schools if they wanted to.

The courts are seen as another impediment to minority rule, which is why “conservative” judges have come to dominate not just the Supreme Court, but the entire federal court system of 800-plus judges. The most influential organization in this realm—the one that “has

amassed power for the right-wing legal movement’s efforts to take over the courts”—is The Federalist Society.

At the dawn of the new millennium, for the first time since 1888, a President was elected who did not win the popular vote. Back in December of 2000 I said “In the wake of our own disputed election, we can expect to see a continuation of the shrinking of the federal government and a continued resistance to supplying the levels of funding necessary to carry out the federal government’s historic functions of regulation and enforcement.”

In other words: Less democracy, more plutocracy.
Or: Federalism run amok. ◆

Support the John Lewis Act

I’ve just discussed the For the People Act, or H.R. 1. The second major pieces of legislation that have been introduced in the current Congress, and which deserves broad support, is The John Lewis Voting Rights Advancement Act, or H.R. 4. This bill aims to restore the power of the last major voting rights legislation, the Voting Rights Act of 1965.

Here’s Sylvia Albert, the director of voting and elections at Common Cause, writing in *Roll Call* on March 2: “In 2013, in a 5-4 decision, the Supreme Court eroded key parts of the Voting Rights Act of 1965, which protected voters from racial discrimination and intimidation. This decision led to numerous states passing new anti-voter laws that restrict access to the ballot box and cut the number of polling places in our communities.

“These changes have disproportionately restricted the freedom to vote for voters of color, often leading to long lines and less resources to run accessible elections in Black and brown communities. The John Lewis Voting Rights Advancement Act is our chance to reverse this trend by restoring the Voting Rights Act and strengthening the provisions in it to protect the freedom to vote for all Americans, particularly voters of color.”

And there’s no time to waste. The attack on voting rights is underway and is accelerating as the Trump-led Republican Party continues to leak voters in many states. CNN reported on March 26th that “Republicans in Georgia sped a sweeping elections bill into law [on

March 25th], making it the first presidential battleground to impose new voting restrictions following President Joe Biden’s victory in the state.”

Voting rights advocates have already filed a lawsuit challenging the Georgia law, but *New York Magazine* writer Ed Kilgore, writing on March 25th, points out that such lawsuits wouldn’t be necessary if the John Lewis Act were passed: “Let’s not forget, by the way, that the new Georgia election law is precisely the sort of legislation that would have been put on hold pending Justice Department review of its impact on minority voting rights had the U.S. Supreme Court not gutted the preclearance requirements of the Voting Rights Act of 1965. That’s another reason congressional Democrats should find a way to enact the John Lewis Voting Rights Advancement Act.”

For more on H.R. 4, read the Brennan Center’s brief summary, published on January 28th: “How to Restore and Strengthen the Voting Rights Act; If enacted, the Voting Rights Advancement Act would help protect voters from racial discrimination and vote suppression.”

The For the People Act and the John Lewis Voting Rights Advancement Act are a powerful one-two punch support of democracy at a time when authoritarianism is on the rise in this country. Democracy is not to be taken for granted. If we want to live in a truly multiracial democracy, supporting these two bills is a good way to start. ◆

“Quote” of the Week: “*Suppress the Vote*”

Unusually, this week’s “Quote” of the Week—or, as I call it, the QOTW—is actually a collection of four related quotations. This departure from the single-“Quote” norm is aimed at underlining the point that the current phase of the decades-long attack on voting rights in this country is exploding into a multi-pronged campaign to move us toward a system of formal minority rule. I don’t think I’m overstating it; we’ve already got a de facto plutocracy in the United States, and after power concentrates in the hands of the super-rich beyond a certain point, why bother to pretend that the majority is in charge? The next step is to “other” enough undesirable voters...

QOTW #1

On January 27th the Washington Post published a column by Paul Waldman, who wrote: “The truth ... is that there’s really only one goal Republicans have right now: getting back in power, first in 2022 by taking back one or both houses in the midterms, and then in 2024, in the next presidential election. And they’ve already settled on a three-part strategy to do it.” One of the parts he lists is “Step 1: Obstruct the Biden agenda.” And Step 3 is “Motivate the GOP base by going full Trumpist.”

But the most dangerous and anti-democratic of the steps is this one:

Step 2: Suppress the vote. Republicans understand quite well that their power is based on structural factors and rules that allow them to win despite the fact that many more Americans support Democrats. As a new report from the Brennan Center for Justice documents, so far in 2021, “legislators have introduced three times the number of bills to restrict voting access as compared to this time last year.” They include new restrictions on mail voting, stricter ID requirements, bans on ballot dropboxes, barriers to registration and aggressive voter purges.

QOTW #2

This one was published in USA Today on March 9th:

Nationwide, states are debating more than 250 voting restriction bills that all pursue the same fundamental strategy: giving one party an advantage in elections by making it harder for communities of color to cast their ballots. And they have made no bones about their intent. Take it from Senator Lindsey Graham, who declared that he was going to investigate mail-in voting because “if we don’t do something about voting by mail, we’re going to lose the ability to elect a Republican in this country.

QOTW #3

The third quotation is from the February 24th issue of Mother Jones magazine, in an article by Ari Berman:

The explosion of new GOP bills making it harder to vote is increasing pressure on Democrats in Washington to pass the John Lewis Voting Rights Act and the For the People Act to stop new voter suppression efforts. As one GA Republican told the Atlanta Journal-Constitution:

“If Democrats were looking for a reason to pass a new federal voting rights law, this is example 1A.”

The “example 1A” to which the Georgia Republican refers is Senate Bill 241, which was introduced earlier this year, passed by the Georgia Senate on March 8, and signed by the Governor on March 25th. Just one of scores of voter-suppression bills that have been introduced in state legislatures around the country.

By the way, Ari Berman has done some of the best reporting on voter suppression that I’ve seen. He literally wrote the book: “Give Us the Ballot: The Modern Struggle for Voting Rights in America,” published in 2016.

QOTW #4

Most recently, the New York Times’ Jamelle Bouie wrote in the lead editorial on March 23rd:

Convinced, after Trump’s defeat in the 2020 presidential election, that there is no way to win the White House in a diverse electorate with high turnout, Republicans have made it their mission to restrict the vote as much as possible.

Lest you think that this fear of mass disfranchisement is little more than left-wing hysteria, just aim your search engine at “republican voter suppression.” Then read.

Support the Reparations Commission

The date that pro-Trump mobs attacked the U.S. Capitol—January 6—is on everyone’s mind as the investigation into that disaster continues. But two days before that, on January 4th, Texas Representative Sheila Jackson Lee introduced a bill in the U.S. House of Representatives that deserves more attention and support than it has gotten to date. The bill is HR 40, the “Commission to Study and Develop Reparation Proposals for African Americans Act.” Introduced with 169 co-sponsors, here is the official summary of the bill:

“This bill establishes the Commission to Study and Develop Reparation Proposals for African Americans. The commission shall examine slavery and discrimination in the colonies and the United States from 1619 to the present and recommend appropriate remedies. The commission shall identify (1) the role of the federal and state governments in supporting the institution of slavery, (2) forms of discrimination in the public and private sectors against freed slaves and their descendants, and (3) lingering negative effects of slavery on living African Americans and society.”

It’s common these days to hear that the United States is engaged in a process of “racial reckoning” in the wake of the murder of George Floyd on May 25 2020. A “reckoning” is a settling of accounts. The establishment of an official commission to put reparations onto the public agenda would be a great step forward in our long-overdue coming to terms with our white supremacist history. Has your U.S. Representative signed on to this key step in our ongoing racial reckoning? Give her/him a call and make sure that they do.

(I haven’t heard about any legislation concerning reparations for the indigenous people of this continent. That’s a whole other issue, and one which I discussed back in 2017, in a pair of essays called “A Note About Reparations and Indians,” and “An Indigenous Theory of Justice.” To read them, aim your search engine at this: “nygaard notes reparations and indians.” Or, check out the work of William Bradford or Daniel R. Wildcat)

Air Pollution Story Followup

A couple of issues back (NN #666), I cited a report in the London Guardian newspaper that said “Air pollution caused by the burning of fossil fuels such as coal and oil was responsible for 8.7 million deaths globally in 2018, a staggering one in five of all people who died that year, new research has found.”

I was horrified by that fact, and now I’m horrified—but not surprised—by a followup article in the March 18th issue of the Guardian, which tells us that the oil industry knew all about this, but covered it up. The followup article begins like this: “The oil industry knew at least 50 years ago that air pollution from burning fossil fuels posed serious risks to human health, only to spend decades aggressively lobbying against clean air regulations, a trove of internal documents seen by the Guardian reveal.”

It’s more than 50 years, actually. The Guardian states that “an Exxon subsidiary acknowledged in 1967 that the petroleum industry was a ‘major contributor to many of the key forms of pollution...’”

“In an internal technical report in 1968, Shell went further, warning that air pollution ‘may, in extreme situations, be deleterious to health’ and acknowledging the oil industry ‘reluctantly’ must accept that cars ‘are by far the greatest sources of air pollution.’”

Followup *from page 7*

I referred in NN #666 to tiny particles of air pollutants known as fine particulate matter, or PM2.5. The Guardian tells us that “Small particles given off by fossil fuels ... are the ‘real villains in health effects’, the Shell report admits.” They’re referring to PM2.5.

Knowing about the health risks, the oil industry carried out a decades-long campaign to conceal the links and prevent or weaken environmental regulations regarding PM2.5.

Remarks the Guardian, “This undermining of air-pollution science is likened by some researchers to efforts by tobacco companies to muddy the connection between cigarette smoking and cancer.”

Since this issue of the Notes is mostly about voting (and since I have some extra room in the paper edition), here are three bonus paragraphs from the Guardian that I think indicate the importance of voting:

The industry’s approach bore fruit during Donald Trump’s administration, when senior executives from Exxon, Chevron, Occidental Petroleum and API met the then US president in the White House. A cavalcade of clean air regulations were scaled back, such as rules to limit pollution from cars and trucks, while a so-called “transparency” rule for science risked invalidating studies based on confidential medical data, which is vital for bedrock air pollution research.

Under Trump, Tony Cox, a researcher who received funding from API and allowed the lobby group to copy-edit his findings, was named as chairman of a key EPA clean air advisory board. Cox, whose previous work has questioned the harm caused by particulates, accused EPA experts of bad science and subjectivity when they found that particles can be deadly even in low concentrations.

Last year, in the midst of an historic pandemic of respiratory disease, Trump’s EPA decided to not strengthen standards around fine soot particles. A Harvard study found that air pollution was associated with worse outcomes for people with Covid-19. API said the Harvard paper merely included “preliminary findings” that had provoked “scare headlines and erroneous media reports”.

OK, that’s it. The time has come for the U.S. government to nationalize the fossil fuel industry.

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