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For the People Act (H.R. 1/S. 1) Unpacked

THE FOR THE PEOPLE ACT has received significant media attention and the partisan battles have been well-covered. Many Americans favor fair voting laws, access to voting for all, and campaign finance reform. Daniel I. Weiner and Edward B. Foley discussed these issues and offered solutions to promote democracy.

DANIEL WEINER

- The For the People Act is a historic piece of legislation intended to tackle the most pressing issues facing our democracy.
- Roughly the first third of the act is devoted to protecting voting rights nationwide—including two weeks of early voting, no-excuse vote by mail, and modernization of voter registration. Almost two dozen states have passed restrictive laws that would seriously curtail voting rights.
- We are standing on the cusp of another cycle of congressional redistricting that is likely to be characterized by extreme gerrymandering, in which entrenched majorities are determined to use their power to draw congressional maps to stem changing politics on the ground. The bill would ban partisan gerrymandering and would specify neutral criteria under which district lines should be drawn.
- The 2020 election was by far the most expensive election in our history. Since the Supreme Court's decision in *Citizens United v. Federal Election Commission*, the proportion of money coming from wealthy donors has grown exponentially compared to that of small donors. The bill contains major campaign finance reforms, including an overhaul of the Federal Election Commission.
- Can the For the People Act actually pass? The bill is very much alive. There is a misperception that the Senate's June procedural vote was a one-and-done situation. That is not the case.
- The bill was introduced two years ago and was reintroduced again in the current Congress. A lot has changed. We had a crisis in the aftermath of the 2020 election.

- The bill directly addresses not only the long-standing challenges we have around the right to vote, including money and politics, but also the more pressing concerns that arose in the aftermath of 2020.
- Bipartisanship has been the fundamental tension throughout this process. The vast majority of the provisions in the For the People Act are policies that Republicans have supported for decades (such as automatic voter registration). It is a bit unfair to say the bill was crafted as a Democratic wish list with no account of what Republicans might want.
- It is also difficult to tell Democrats in Congress to be bipartisan when responding to blatantly partisan efforts to suppress the vote in the states.
- When we talk about efforts to manipulate the vote count, we are really discussing efforts to manipulate voting rules. The best way to stop this is to have a clear, uniform set of federal rules.

EDWARD FOLEY

- The bill was initially written before the 6 January attack on the U.S. Capitol. The question is: what do we need now?
- A major concern about the For the People Act is its size—it is over 800 pages and covers many issues at once. This makes it easy to oppose, because if you oppose one thing in it, you could decide to block it.
- From a non-partisan perspective, what we need as a democracy is two healthy parties that believe in competition and believe in playing fairly based upon an agreed upon set of rules.
- Electoral reform has to be a bipartisan objective. The For the People Act, as it was originally written, did not take that approach. It was not an attempt to reach across the aisle and determine what we can agree upon, and how we can rebuild our democracy together.
- If components of the bill were divided into individual sections, certain pieces might be able to get 60 votes in the Senate. However, this method was not tested—instead there is an effort to ram the entire bill through one way or another. This will fail and democracy will suffer.
- Even if the bill contains better policies in one's own view, it is not undemocratic to feel that these are robust laws to pass at the federal level, which every state must then comply with. This is the philosophical premise that has allowed Senator Mitch McConnell to have unified opposition against it—Republicans tend to believe in more autonomy for the states.
- What is absolutely essential at the national level? At the moment, the issue of redistricting is crucial because of the potential for partisan gerrymandering—by which redrawing district lines can deprive voters of their authentic choice. This is fundamentally undemocratic and is an existential threat to democracy.
- If it were up to Foley, he would take the gerrymandering piece out of the bill, and put that to a vote now because of how time-sensitive it is. He would also fight the filibuster on this single issue, as there is no policy defense for gerrymandering.
- Even if Republicans are for a certain policy, they might prefer the policy to be implemented at the state rather than the federal level.
- Foley believes there should be a minimum federal threshold to secure the right to vote and to ensure that the ballots are cast and counted fairly. However, states should have the freedom and ability to improve the process.

QUESTION AND ANSWER TAKEAWAYS

Does any section of the U.S. Constitution prevent Congress from enacting voting rights that apply to all states?

- Foley: There is one piece of the bill regarding felon disenfranchisement. Although every citizen has the right to vote, the fourteenth amendment allows states to engage in felon

disenfranchisement. The portion of the bill that would stop states from engaging in that practice goes beyond what is constitutionally permissible.

- Weiner: Congress has a fairly broad authority to set the rules for federal elections. The states have the primary responsibility, but Congress has the right to supplant their rules with its own. If not every provision, the vast majority of the provisions in the bill are eminently constitutional.

If the bill were shorter and pared to the essentials, would it likely pass the Senate?

- Foley: The compromise proposed by Senator Joe Manchin has a greater chance of success, but it will be tough no matter what. It is difficult to get 60 votes for anything, and the larger the bill the harder it is.
- Weiner: It probably would not get any farther if broken into pieces. This is all part of the legislative process, and many provisions will likely not be included in whatever finally passes.

The Texas voting reforms allows voting by mail, but asks for verification on the part of the voter, such as indicating a driver's license number or the last four digits of a SSN. What is wrong with this to eliminate ballot harvesting or votes submitted by a deceased person?

- Weiner: We are talking about avoiding voter fraud which is rare. When adding these requirements, you have to ask: what is the basis for suddenly needing these new restrictions? There is no evidence of any problem they are combatting. While the issue of voter ID may be a benign burden for someone who is relatively affluent, that burden may be different for someone else. We are seeing most of the state voter laws being passed on fairly strict party-line grounds. Ballot integrity is important, but who is bearing the brunt of these new requirements? And why suddenly propose them now?
- Weiner: A numerical ID for vote by mail is actually more voter-friendly than signature matching. If you can get a number free of charge from

the government when you register to vote, it is probably a better system from the voter's perspective.

What new acts by the states would make it harder for minority voters to vote?

- Weiner: A long-term target has been rollbacks to early voting. There are also efforts to eliminate Sunday voting, when many black churches sponsor "souls to the polls" drives. Limits to vote by mail and voter IDs can disproportionately impact communities of color, including Native Americans living on reservations. Gerrymandering also frequently targets communities of color.

Do you feel the Democrats' behavior is just a backlash to Republican behavior?

- Foley: A lot of members of Congress have good faith beliefs and principles. However, sometimes the Democratic Party acts on behalf of its own partisan interests. It wants to hold power. They are not always pure as a Party.
- Weiner: Neither party is always pure. The For the People Act is what Democrats generally believe to be best for an open and inclusive democracy, rather than a reaction to Republican partisanship. It is also important to note that Republicans controlled the Senate the first time the bill passed.

How does the bill address gerrymandering?

- Foley: It requires states that do not already have independent redistricting commissions to establish them. It then has a few ancillary provisions about how the independent commissions would operate to avoid gerrymandering.
- Weiner: It sets forth the criteria for drawing congressional maps. The criteria would safeguard communities that are protected under the Voting Rights Act. It strictly bans partisanship as a consideration—maps that show partisanship as a motivating factor could get thrown out.

With enormous advances in tech, how can we have such an antiquated electoral system?

- Weiner: Voter registration is ridiculously antiquated. We should be more technologically advanced in getting people registered and getting them the opportunity to vote. Accuracy, not rapidity, is the most important consideration when it comes to the counting of votes. The standard of care, and other constraints, are just not comparable to any other transaction you would engage in in society.
- Foley: The secrecy of the ballot imposes some inability to use the full advance of technology. We probably will not solve this for a couple of decades.

Are third-party election audits by groups like Cyber Ninja here to stay?

- Foley: If these third-party audits become the standard operating procedure, it is antithetical to the values of transparency. We would not be able to have a system that functions.
- Weiner: The audits are charades—sham audits. It would be catastrophic if this becomes the new normal.

What path is there for the bill to pass if Manchin and Senator Kyrsten Sinema will not repeal the filibuster?

- Weiner: There are a lot of other paths this can take beyond just abolishing the filibuster. One option is changing the voting threshold or having a staggered threshold. If the public cares about this bill, they need to let elected leaders know that this is a top priority, and failure is not an option. The health of our democracy impacts virtually every aspect of our society.
- Foley: The most realistic path at the moment is conversion to the “talking filibuster” that would put the burden on the opposition to come up with 41 votes to block the legislation.

FOR THE PEOPLE ACT UNPACKED

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