

# Report of the ABA Task Force For American Democracy

Initiated by the American Bar Association in 2023

## Background

- Initiated by ABA President Mary Smith at the start of her term in August 2023
- Co-chairs: former federal appellate Judge J. Michael Luttig and former Secretary of Homeland Security Jeh Johnson
- A bipartisan group of 23 distinguished Americans including progressives and conservatives, lawyers and non-lawyers, former judges, former government officials, retired corporate CEOs, law professors, historians, and commentators
- Not every signatory agrees with every recommendation, but every signatory agrees that this is a perilous moment in our nation's history and that these recommendations should be part of the discussion on how we can better support and defend our democracy, the rule of law, and the Constitution

## 12 Recommendations

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- A. Reinvigorating American Civics Education**
- B. Citizens Redistricting Commissions**
- C. Open, Nonpartisan Primaries / Ranked Choice Voting / Fusion Voting**
- D. Reducing Partisan Influence in Election Administration**
- E. Increasing Election Worker Safety**
- F. Increasing Access to Voting**
- G. Role of the Press and Social Media in Promoting Our Democracy**
- H. Role of Cyberspace in the Democratic Process**

## 12 Recommendations (cont.)

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- I. Lawyers' Obligations to the Rule of Law and Democracy**
- J. Curbing Frivolous Election-Related Lawsuits**
- K. Enhance Law School Training on our Democracy and Rule of Law**
- L. "Disagree Better"**

## A. Reinvigorating American Civics Education

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### **Problem Statement:**

- We have historically faced a conflict of what to teach:
  - The basic mechanisms of government while imbuing students with loyalty to America and her ideals
  - Or a pluralist, multicultural version of American history that incorporates the narratives of the historically marginalized and underrepresented
- We have had a big push for enhanced education in science, technology, engineering and math (STEM) and the education money followed
  - In 2023, the federal government allocated \$50 per student for STEM education and \$0.50 per student for civics education
  - The current administration appears to be putting put more money into civics education grants with priority to “patriotic education” ... stay tuned

## A. Reinvigorating American Civics Education

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### **Proposed Solutions:**

- The federal government should seriously invest in civics education
- But it should not mandate any specific curriculum or programming
- One legislative proposal is consistent with these recommendations:
  - The Civics Secures Democracy Act is bipartisan legislation
    - Endorsed by over 200 civics organizations
    - \$1 billion annually over 5 years
    - Grants require participation in National Assessments of Educational Progress tests of civics & history
    - Also includes grants to civics organizations, higher education, and a new fellowship program

## A. Reinvigorating American Civics Education

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### Proposed Solutions (cont.):

- There is other federal legislation on the table
- It also endorses a number of state-level reforms
  - Enhancing civics instructional requirements at all grade levels
- iCivics (nonpartisan group) *Roadmap to Educating for American Democracy*
  - Provides a blueprint of educational strategies, examples, and implementation recommendations
- Colleges & universities should also offer advance civics education

## B. Citizens Redistricting Commissions

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### Problem Statement:

- The United States is the only democracy where redistricting is largely controlled by politicians who benefit most from how the districts are drawn
  - Gerrymandering tends to reward more extreme candidates
  - A few states have independent citizens redistricting commissions
- Congress has the authority to regulate federal elections, but the only real restrictions are that all districts must have roughly equal populations and precluding racial gerrymandering
- The Supreme Court has abdicated responsibility to prevent non-racial gerrymandering
  - Some state courts have stepped in to preclude gerrymandering

## B. Citizens Redistricting Commissions

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### Proposed Solutions:

- All jurisdictions in the United States should institute independent citizens commissions with authority to conduct congressional and state legislative redistricting
  - Commissions made up of citizens who are insulated from professional politics and selected without input from politicians are the most likely to:
    - Create fair districts that give voters a real opportunity to choose their representatives and incentivize those representatives to take positions that have broad appeal among their constituents
- At a minimum states can mitigate the partisanship of redistricting by enacting constitutional provisions that bar partisan or incumbency considerations when new lines are drawn

## C. Open, Nonpartisan Primaries / Ranked Choice Voting / Fusion Voting

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### Problem Statement:

- Closed primaries tend to reward more extreme candidates who appeal to the more partisan primary voters
  - Winning candidates tend to govern in a highly partisan fashion to avoid being “primaried” by more extreme candidates
  - Primary voters are less likely to support compromise positions
- Voters increasingly vote ‘against the other party’
- All of this dissuades moderate candidates from even running

## C. Open, Nonpartisan Primaries / Ranked Choice Voting / Fusion Voting

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### Proposed Solutions:

- **Open, nonpartisan primaries in which all voters can participate**
  - Alaska's open, top-four primary creates a field of candidates in the general election whose political views more closely mirrors the general electorate
  - It incentivizes more candidates to run including candidates from third parties
- **Ranked-Choice voting**
  - Requires majority support to win
  - Encourages more civil campaigns with a focus on issues rather than personalities as candidates want to be second or third choices
- **Fusion voting**
  - Enables two or more parties to nominate the same candidate with that candidate's consent

## American Academy of Arts & Sciences

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- Just issued a report on our election process that recommends 'multi-member' district using Ranked Choice Voting
  - Using 'single transferable vote' process
- Would provide a roughly proportional representation
- Might provide minority representation without requiring 'majority-minority' districts which are currently the subject of a Supreme Court case

## D. Reducing Partisan Influence in Election Administration

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### Problem Statement:

- Election administration varies by state, but is done at the state and local level
  - Typically, by someone elected or appointed by someone who is elected
  - Elections in most democracies are run by independent bodies
- Confidence in U.S. elections is generally low, but quite variable based on satisfaction with the outcomes
  - Majority of Republicans (63%) continue to think the 2020 election was stolen
    - But they are quite satisfied with the 2024 election
  - While a significant number of Democrats (44%) question the 2024 election

## D. Reducing Partisan Influence in Election Administration

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### Proposed Solutions:

- Professionalized election administration
  - Good example was the Wisconsin Governmental Accountability Board
    - Retired judges with no partisan affiliation
    - Highly praised for nonpartisan handling of election disputes
    - Disbanded in 2016 and replaced with a “stalemated and ineffective” Elections Commission
- Separate election administration from other responsibilities
  - Nonpartisan or bipartisan positions
- Introduce professional certification and ethics standards

## E. Increasing Election Worker Safety

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### **Problem Statement:**

- **After the 2020 election, election workers became the scapegoats for the election results and the targets of harassment**
  - **Increasing threats resulting from election deniers' false narratives**
    - **Led to Dept. of Justice investigations, charges and convictions ... but didn't stem the tide**
- **Resulted in a "tsunami" of election officials departing their jobs**
  - **Raising concerns about smooth operations and integrity of future elections**

## E. Increasing Election Worker Safety

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### **Proposed Solutions:**

- **Federal funding to improve election workers safety:**
  - **Bullet-proofing windows & doors at election offices**
  - **Installing panic alarms**
  - **Implementing key card restrictions**
  - **Video surveillance**
- **Pro Bono Assistance**
  - **Provide free legal assistance to election worker under threat or who are improperly charged with civil offenses or crimes**

## E. Increasing Election Worker Safety

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### Proposed Solutions (cont.):

- Expanding legal protections
  - 35 states & D.C. have laws addressing protections for election administrators
  - Colorado is one of the better ones
    - Protection for full & part-time election workers
    - Prohibits threatening or intimidating election workers
    - Bars release of personal information on election workers or families
- Guidance for local law enforcement
  - Continue support for the Justice Systems Elections Crimes Task Force

## F. Increasing Access to Voting

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### Problem Statement:

- The United States lags behind other democratic nations in voter participation
- There are also significant variations in ease of voting across the states
- National voter turnout was 64.07% in 2024
  - A roughly 50% difference in turnout between states
    - Low of less than 55% in Hawaii, Oklahoma, & Arkansas
    - High of 76%+ in Wisconsin & Minnesota
- Over 80% in some of the European countries

## F. Increasing Access to Voting

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### Proposed Solutions:

#### Some of the better features across the states:

- Automatic voter registration
  - Enables normal governmental interactions to include voter registration unless a person opts out
  - Assists maintenance of voter rolls and reduces the need for provisional ballots
  - 25 states & D.C. have some form of automatic voter registration
- Same-day voting
  - Allows qualified voters to register to vote on Election day
  - 23 states & D.C. have some form of same-day registration

## F. Increasing Access to Voting

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### Proposed Solutions (cont.):

- Early voting
  - Early voting & mail-in voting have become very popular (~30% each in 2024)
  - Standardizing deadlines & procedures will facilitate their usage
- Maintenance of voter registration lists
  - Ensure easy voter access to check and update their status
  - Mailings to check on infrequent voters have proven to be ineffective
    - Re-activation by Same-day voting is important to avoid unnecessary disenfranchisement
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## F. Increasing Access to Voting

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### Proposed Solutions (cont.):

- Permit a variety of forms of voter identification
  - There is little evidence that voter impersonation is serious problem and little evidence that voter ids are particularly effective in addressing it
  - Strict voter id laws disproportionately impact people of color, people with disabilities, low-income voters, and students
  - Required ids should be easy to obtain
    - Michigan has 160 self-service stations that enable documentation renewal and voter registration
    - Virginia will bring identification services to people who can not travel to the DMV

## F. Increasing Access to Voting

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### Proposed Solutions (cont.):

- Curing ballot errors
  - It should be easy to fix any correctable ballot errors
    - The voter should be clearly notified
    - There should be clear rules for what can be corrected, how it is done, and the timeline
- Federal holiday
  - The Election Day Holiday Act or similar would remove job-related impediments for public-sector employees
  - The remaining 19 states should consider making Election Day a holiday or require employers to provide paid time off for voting

## G. Role of the Press and Social Media in Promoting Our Democracy

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### Problem Statement:

- The good news: experts believe that social media has had a positive effect on civic engagement, voter registration, and early voting
- The bad news: social media platforms far too often amplify false and misleading political information
  - And AI-generated content compounds the problems
- The rush of election night coverage to call elections can undermine voters' confidence in the election process
- Lawsuits against mainstream media pose a serious threat to freedom of the press and democratic accountability

## G. Role of the Press and Social Media in Promoting Our Democracy

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### Proposed Solutions:

- Laws requiring disclosure of AI-generated campaign ads are the most viable path to addressing deceptive deepfakes
  - At the federal level, consider the Protect Elections from Deceptive AI Act
- Private industry should continue to adopt policies that guard against the spread of deceptive AI in elections
- Media outlets must continue to work on clarifying their messages on election night
  - Example: 'calling' an election vs 'projecting' an election with appropriate disclaimers
  - Determining 'when' & 'how' to debunk false stories

## H. Role of Cyberspace in the Democratic Process

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### **Problem Statement:**

- **The 2016 election clearly highlighted the potential for a cyberattack on our elections by foreign adversaries**
  - **The Cybersecurity and Infrastructure Security Act (CISA) was established to protect critical infrastructure including elections**
  - **The law establishing CISA was just allowed to expire, much of the staff had been terminated, and there are significant furloughs due to the shutdown**
- **Some locations continue to use paperless electronic voting systems**
  - **Courts in New Jersey and Georgia prohibited their use based on insecurity**
- **Voter registration data bases may be the most vulnerable aspect of the election system as they are tied to the internet**

## H. Role of Cyberspace in the Democratic Process

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### **Proposed Solutions:**

- **Robust and continuous investment in CISA staffing and funding is essential**
- **State authorities must continually adapt and leverage the latest techniques to respond to emerging threats**
  - **Require nationwide information sharing facilitated by CISA to preempt cyberattacks**
- **Partner with private companies who will innovate faster than government**
  - **CISA should strengthen alliances with global partners**
- **Transition to 100% paper ballot voting with optical scan voting machines**
  - **Include machine tabulation, risk-limiting audits, & proper chain of evidence**

## I. Lawyers' Obligations to the Rule of Law and Democracy

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### Problem Statement:

- 'Rule of law' is under tremendous strain ... even siege
  - Politicians, lawyers and law professors have suggested that court orders can be disregarded
- Judges are being threatened by the president and legislators
  - The House approved a measure that would limit judges' ability to penalize anyone who disobeyed a judicial order ... although it didn't become law
- Law firms and lawyers have been targeted for their client advocacy
- Retribution is now front and center in this administration

## I. Lawyers' Obligations to the Rule of Law and Democracy

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### Proposed Solutions:

- The ABA, state & local bar associations should continue to address threats to democracy, the rule of law, and the independence & legitimacy of courts
- Revise the Oath of Admission to the bar to include a commitment to upholding democracy and the rule of law
- Bar associations should reiterate that government lawyers are subject to the same rules of professional conduct as are other members
  - Disciplinary proceedings against government lawyers should not be deferred until they leave office
- Department of Justice should strengthen its guidance regarding government lawyers' obligations to the courts

## I. Lawyers' Obligations to the Rule of Law and Democracy

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### Proposed Solutions (cont.):

- The ABA should develop courses focused on democracy & the rule of law
  - Encourage states to award CLE credits for such courses, workshops & conferences
- The ABA should create a repository of material related to our democracy & the rule of law
- Lawyers can volunteer on & around election day with voter protection organizations
  - Or work as election officials or workers on election day

## J. Curbing Frivolous Election-Related Lawsuits

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### Problem Statement:

- Election lawsuits are high-profile, filed & litigated on an expedited basis, and a threat to the election with judges under extreme pressure
- Their existence serves to feed baseless narratives of unfair elections
- Yet, we must have access to courts for serious challenges

## J. Curbing Frivolous Election-Related Lawsuits

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### Proposed Solutions:

- Recommend election lawsuits be handled by three-judge panels accompanied by an expedited appellate pathway
  - Help reduce errors of law
  - Prevent “forum shopping” for sympathetic judges
- Allow special motions to dismiss, cost shifting, and sanctions of parties filing frivolous lawsuits
  - Similar to anti-SLAPP laws that deter frivolous defamation lawsuits
  - Also recommends that courts consider the imposition of attorney’s fees or judicial sanctions for frivolous lawsuits
- Recommends the ABA continue to examine trends & drivers of election-related lawsuits to explore other ways to address them

## K. Enhance Law School Training on our Democracy and Rule of Law

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### Problem Statement:

- Lawyers play a critical role in upholding the rule of law and sustaining our democracy
- At a time when the judiciary, democratic norms, and institutions of higher learning are under threat, law schools can play a critical role in promoting a greater focus on the rule of law for the next generation of lawyers
- At the very least, law schools should prepare their students to make the difficult choices needed to fulfill the oaths they take when admitted to the bar

## K. Enhance Law School Training on our Democracy and Rule of Law

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**Proposed Solutions (from a pledge by law school deans in a June 18, 2024 letter to members of the legal profession):**

- Teach students to uphold the highest standards of professionalism including support for our democracy
- Offering courses, workshop & events that engage the rule of law and sharing teaching resources thru a new ABA clearinghouse
- Teach students to disagree respectfully and engage across partisan divides
- Encourage students to support the Constitution and rule of law thru clinical work, public education, and advocacy
- Support public education and events focused on the rule of law and the values of our constitutional democracy

## L. “Disagree Better”

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**An initiative launched by Utah Governor Spencer Cox and Tennessee Governor Bill Lee in July 2023**

- The essence is to foster a culture of civic discourse grounded in mutual respect and constructive engagement
- Frames disagreement as a pathway to problem-solving and policy making

## L. “Disagree Better”

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### As Governor Cox puts it:

*“I started Disagree Better because I’m deeply concerned at the division and hatred consuming the country. We’ll never make progress on important issues when each side thinks the other is the enemy. Politicians need to do better, but there is a role for everyone. There are practical steps, like service, we can all take to heal the divide. I hope the campaign inspires more Americans to discover the transformative power of volunteer service in their communities.”*