Reimagining Rights & Responsibilities in the U.S.

Toward a More Equal Liberty
Reimagining Rights & Responsibilities in the United States: Toward a More Equal Liberty

Reimagining Rights & Responsibilities in the United States
Carr Center for Human Rights Policy, Harvard Kennedy School
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Dedicated to the legacy of John Lewis and Justice Ruth Bader Ginsburg

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INTRODUCTION

“I can’t breathe.” The last words George Floyd spoke as a Minneapolis police officer knelt on his neck for nearly nine minutes on May 25, 2020 have become emblematic, inspiring months of mass protest in cities across the nation and around the world. The killing of George Floyd cast a spotlight on the impact of racism in the United States and reignited a movement for racial justice. The outpouring of public anger by millions of Americans of all races, generations, and socioeconomic backgrounds in the midst of a pandemic demonstrated the new urgency of protecting core American values.

Demands for rights are coming in many forms. As demonstrations against racism have taken place, other Americans have rebelled against emergency rules that they wear masks in public to prevent the spread of the COVID-19 virus, claiming that their individual freedom is being curtailed. But one person’s claim of freedom can deny the rights of others. Can a right not to wear a mask during a pandemic override the responsibility to respect the rights of others to health and safety?

Rights are entitlements that define the relationship of people to each other and to the government. As citizens of a democratic nation built on racial, ethnic, and cultural diversity, people in the United States are bound together by common ancestry and blood ties, but by the values of liberty and equality that underlie all rights. Without rights, there is no pluralist democracy, only factions competing for dominance and groups struggling for survival. A national poll conducted by the Harvard Kennedy School Carr Center for Human Rights Policy in July 2020 as part of this study showed that a super-majority of Americans across demographic and partisan lines continue to believe that “without our freedoms America is nothing.”

The value of freedom is embedded deeply in American culture. The drafters of the Declaration of Independence proclaimed their commitment to the principle that “all men are created equal [and] are endowed with certain inalienable rights.” A decade later the drafters of the Constitution announced their intent “to form a more perfect Union . . . and secure the Blessings of Liberty to ourselves and our Posterity.” The Declaration is a document of dissent, encouraging protest when rules and institutions become tyrannical; the Constitution is a document of consent, establishing rules and institutions to protect freedom.

This report is about the rights and responsibilities intended to secure freedom in the United States. It is about how rights might be reimagined at a time of disruption and potential transformation. The report presents a nonpartisan view of the state of rights today based on the aspects of US constitutional and statutory law that over time have established, articulated and interpreted a US system of rights.*

The government has a constitutional responsibility to protect equal rights and equality of opportunity, the right to vote, the freedoms of speech and the press, freedom of religion, the right to due process of law, and the right to privacy and autonomy. Citizens have a responsibility to “respect the rights, beliefs and opinions of others” and to “participate in the democratic process” that elects and holds the government accountable to the people.2

The original promise of equal rights was initially poisoned by the self interest of the Constitution’s drafters, most of whom were wealthy, white, slaveholding men. While the document was intentionally oblique in referencing race, it legitimized slavery and restricted rights to white males. Subsequent generations struggled to expand rights. After the Civil War, the 13th Amendment abolished slavery, the 14th Amendment guaranteed “equal citizenship,” and the 15th Amendment extended voting rights to formerly enslaved males. These post-Civil War "Reconstruction Amendments" brought about a brief period of transformation. The suppression of rights soon continued, however, in a different but similarly brutal manner for millions of formerly enslaved people and their descendants, as well as Native Americans and other racial minorities. The legacy of suppression and struggle to overcome it runs deeply throughout US history.

Today rights and freedoms in the US have come under broad attack. Racial discrimination in policing is rampant, exemplified by the fact that Black men like George Floyd are two and a half times more likely to be killed by police1 than White men.4 Inequality is growing like a cancer on the social fabric of the country. The politics of exclusion are undermining the rights of racial minorities, women, LGBTQ+ people, and people with disabilities. Cruel treatment of refugees and asylum seekers has been carried out in violation of international and domestic law.

These developments endanger democratic governance. Voting rights are under assault. Judicial independence is facing intense political pressure. Patterns of authoritarian rule have emerged, characterized by the disregard of scientific evidence and the rule of law. The quality of public discourse has been degraded.

*The principles embedded in the US system of rights are among the building blocks of an international system of human rights law that the US helped to create after World War II. The US has ratified five major human rights treaties and incorporated them into US law, including the United Nations Refugee Convention, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racism, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Prevention and Punishment of the Crime of Genocide. Other human rights treaties have been signed by the US but not yet ratified, including conventions on the rights of women, people with disabilities, migrant workers, children, and economic, social and cultural rights. The interplay between domestic and international law reinforces the system of rights and responsibilities in the US and creates opportunities for reimagining an expansive vision of rights.
New forms of digital surveillance and personal data collection developed by the private sector are eroding the right to privacy. Violations of rights are magnified by technological changes that have brought about a new political reality in which many actors are now seemingly beyond the reach of accountability to citizens and the government.

Amid all these threats, the COVID-19 public health crisis has put additional strain on rights. The pandemic has laid bare the structural racism affecting Black Americans and other people of color, whose health and livelihoods are at greater risk than non-minorities because of the socioeconomic effects of deeply rooted racial discrimination. The pandemic has also impacted overcrowded prisons and demonstrated the vulnerability of elderly Americans with limited means in nursing homes ravaged by COVID. The pressure that rising COVID cases and deaths has put on the health care system, the downturn in the economy, the increase in home evictions, and the unprecedented levels of unemployment have all wreaked havoc on the principles of liberty and equality.

The electoral process was in grave danger during last year’s presidential election. Voting in person was risky to health and voting by mail came under attack by President Trump, who in August 2020 raised the prospect of postponing the election on the basis of completely unsubstantiated claims of fraud, and in September called mail-in voting “a whole big scam” and refused to commit to accepting the results of the election and allowing a peaceful transition of power.

In a time of disruptive change, the deepening threat to rights and freedoms has sparked new activism by political movements working to advance rights and reconstruct democratic institutions. The ongoing nationwide protests against racism stimulated by Black Lives Matter, as well as demonstrations against sexual violence led by the #MeToo movement, are powerful examples of this activism and the possibilities of transformation. On the other hand, fear of change has produced a backlash against rights, including demands for “law and order” in response to calls for police reform to end institutional racism in law enforcement. Fear has been stimulated by politicians seeking to polarize citizens and provoke attacks on the rights of “others.”

Divisive leadership has stirred up factions in a nation that should be defined by the equal rights and responsibilities of all its citizens.

Americans are well aware that their rights are under attack. The nationwide poll conducted last year by the Carr Center for Human Rights Policy, with support from the Institute of Politics, revealed that 75% of Americans across the political and demographic spectrum believe that rights are “very important” but are “not very secure.” While there were deep partisan divides over the 2020 presidential election, more than two-thirds of respondents (71%) believe that people in the United States “have more in common with each other than many people think,” including 74% of Democrats, 78% of Republicans, and 66% of Independents. Central to this perspective is the US system of rights and responsibilities, with 81%—a super-majority across all demographic and political subgroups—believing that “without our freedoms America is nothing.”

Americans have an expansive view of their freedoms. More than three-quarters—and more than 60% from both political parties—believe that the following rights are “very important.” Only a small minority believe that these rights are “very secure.”

- Voting (86% very important - 34% very secure)
- Equal opportunity (86% - 14%)
- Racial equality (85% - 17%)
- Equal protection (85% - 12%)
- Quality education (85% - 17%)
- Clean air and water (85% - 17%)
- Personal safety (85% - 16%)
- Affordable health care (83% - 10%)
- Free speech (83% - 22%)
- Privacy (82% - 13%)
- Protection of personal data (79% - 11%)
- The right of a woman to choose (76% - 16%)

Rights carry responsibilities. The government has a responsibility to protect rights and the people have a responsibility to respect them. Our poll shows that a majority of Americans believe that neither the government nor the people are exercising their responsibilities to protect and respect rights. Sixty percent believe that the government is “not doing a good job protecting and enforcing the rights of citizens and others lawfully in the United States,” and 63% believe that Americans “are not doing a good job protecting the rights of other Americans.” The government’s early ineffective response to the pandemic as well as the economic and racial crises has caused people to think differently about government responsibilities for rights. A super-majority (84%) reported that “events in recent months have made me think differently about the role and responsibility of government to protect the rights of all Americans,” while 85% said that they now “think differently about the responsibility Americans have to our fellow citizens.”
This shared belief by a broad majority of Americans in an expansive view of rights and the responsibility of government and citizens to protect them demonstrates that there may be an opportunity to bridge polarizing divisions, connect people with differing conceptions of their rights, and redefine what it is to be a citizen in a nation of ever-expanding diversity. Our poll shows strong majorities supporting rights in areas that are embroiled in political controversy, including immigration, policing, and a woman’s right to choose when to bear a child. The constitutional system of rights and responsibilities is a work in progress that must always be improved. This is what the Constitution’s goal of creating “a more perfect union” is all about.

Americans today know they face threats to their rights, their democracy, their health, and their economy. The threats are interrelated and demand a transformative response. There have been major transformations at other pivotal moments in our nation’s history—at its founding during the American Revolution, its reconstruction after the Civil War, its recovery from the Great Depression and rise after World War II, and its reimagining by the Civil Rights Movement. Can today be a similar moment of transformation, turning threats into opportunities through the power of civic activism, voting, and government intervention? Will we reimagine the promise of rights that can bind us together as a nation of diverse histories, identities, and lived experiences?

This report is based on a wide range of sources from across the political and demographic spectrum. It is informed by a series of town hall meetings of broadly representative groups of citizens in Phoenix, Arizona; Detroit, Michigan; and Atlanta, Georgia, convened in March and April 2020. It takes account of the results of our poll of a nationwide sample of 2,093 Americans from all demographic groups and political perspectives. In drafting the report we have drawn from many experts and practitioners who participated in seminars and consultations on all aspects of the report during the spring and summer of 2020. Research was conducted by a team organized by the Carr Center for Human Rights Policy. The town hall meetings were hosted by the Carr Center with support from Institute of Politics, and the national poll was conducted by the National Opinion Research Center at the University of Chicago.

The report was part of a Carr Center research project directed by John Shattuck, Carr Center Senior Fellow and former U.S. Assistant Secretary of State for Democracy, Human Rights and Labor, and overseen by a faculty committee chaired by Carr Center Faculty Director Mathias Risse with the participation of Executive Director Sushma Raman and the support of the Carr Center staff.

Reimagining Rights and Responsibilities in the United States provides a nonpartisan snapshot of the current rights landscape and a set of recommendations for strengthening rights directed at policymakers at national, state, and local levels. The recommendations vary from broad and structural to detailed and instrumental depending on context and circumstances. The report covers the major categories of rights defined by the Constitution, laws, and customs of the United States. It is divided into 15 chapters, each of which is summarized in the text and covered in a series of longer research papers linked to the report and published separately by the Carr Center. The report and the research papers include the following topics:

1. the democratic process (voting rights, money in politics, civic education);
2. equal protection and equality of opportunity (racial discrimination, women’s rights, LGBTQ+ rights, disability rights, equality of opportunity);
3. freedoms of speech and religion (speech and media, religious liberty and non-establishment of religion, hate crimes);
4. due process of law (criminal justice, immigration, gun rights and public safety); and
5. the right to privacy and personal autonomy (personal data and surveillance).

Reimagining Rights depicts a nation wrestling with its ideals. The report is intended to provide a guide for reimagining rights and responsibilities in the United States. We are at a moment of urgency in our country in which a transformation like the one brought about by the Civil Rights Movement might again be achieved through committed and persistent struggle for rights.
I. The Ongoing Struggle for Rights

The United States was founded on an ideal that all people, regardless of ancestry or national origin, race, religion, or creed, were endowed with fundamental rights. As conceived in the late 18th century, these included freedom of assembly, freedom of speech, freedom of religion, and due process of law. For a democratic nation exceptional in its diversity, the challenge from the beginning was to secure these rights for all people in the face of racism, discrimination, exclusion, bigotry, and intolerance. In the Gettysburg Address, Abraham Lincoln, who understood the promise and challenge of rights, expressed his vision of the United States as “a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.”

Liberty advocates the spirit of personal independence free from coercive control, while equality is based on the ideal of equal standing within society that prevents the emergence of oppression. While these two ideals have often worked together, they have also frequently clashed. Champions of liberty have sometimes insisted on an extreme individualism that threatens the equal status of others; and champions of equality have promoted government support of equal status that some have regarded as limiting their personal liberty.

At the beginning of the nation, only a small minority made up of white male property owners was considered by the founders to have rights. The vast majority of people, including enslaved Africans, Native Americans, women, and people without land were effectively excluded. The existence of a hierarchy among human beings was taken for granted. Most of the founders supported the institution of slavery, denied that indigenous peoples had a right to territorial independence or self-governance, and barred women from political and economic rights. The story of the United States is a story of struggle to expand rights, marked by constant setbacks and periods of transformation.

In the decades after ratification of the Constitution in 1789, a protest movement to dispense with property requirements for voting succeeded in extending voting participation to all white men. Apart from this limited expansion of rights, the territorial expansion of the United States in the 19th century was marked by constant exclusion and inequality. The government intensified its persecution of Native Americans through the Indian Removal Act of 1830, which forced southern Native American tribes to move under military gunpoint to inferior territory. Slaves and Black freemen were also denied rights: the Fugitive Slave Law of 1850 and the Dred Scott decision of 1857 proclaimed that the rights and privileges conferred upon American citizens did not apply to Black people. Starting in the 1850s, the Know-Nothing Movement, a far-right intensely anti-Catholic nativist party, violently discriminated against new immigrants from Italy and Germany. The Chinese Exclusion Act of 1882 banned all Chinese immigration, and the Dawes Act of 1887 destroyed traditional Native American communities by imposing private property law.

In the face of this racism and bigotry, oppressed groups in the 19th century nevertheless persevered to achieve some progress in expanding rights. Women met at the 1848 Seneca Falls Convention to launch their demand for women’s equality, progressively winning over the next 70 years the right to work, to hold public office, and eventually the right to vote. Following the 1863 Emancipation Proclamation granting freedom to slaves during the Civil War, America underwent a “Second Founding” through a series of constitutional amendments that recognized citizenship for all native-born Americans, and granted all men, including former slaves, the right to vote and hold property. Despite these post-Civil War “Reconstruction Amendments” extending legal rights to formerly enslaved people, the Electoral College, an institution originally designed to enhance the political power of slaveholding states, was left unchanged and remains in the Constitution to this day, a symbol of the racism and white supremacy on which the nation was founded.

The story of the United States is a story of struggle to expand rights, marked by constant setbacks and periods of transformation.

In reaction to the expansion of rights, a long post-Reconstruction-era was marked by severe repression of Black Americans by white supremacists who used systemic violence and enactment of state “Jim Crow” laws forcibly to impose racial segregation. Segregation was upheld by the Supreme Court in 1896 in Plessy v. Ferguson, legalizing the notorious “separate but equal” doctrine. The systemic violence enforcing segregation included more than 4,000 documented lynchings of Black Americans between 1882 and 1968. The courageous work in the 1890s of Black investigative journalist Ida B. Wells demonstrated that lynchings were a key component of racial oppression that spread fear through the Black population and led to massive internal migration. In 1921, the massacre of an estimated 200 to 300 Black Americans in Tulsa, Oklahoma was the largest single example of systemic racism and violence perpetrated by state officials and ordinary citizens.

Race-based nationalism persisted throughout the early 20th century with the rise of the Ku Klux Klan, which fomented violence not only against African Americans, but also against newly arrived immigrants. The government enacted repressive immigration laws targeting Chinese, and Eastern and Southern

Following the turbulent disruption of the Great Depression, the new government of Franklin Delano Roosevelt developed a series of programs and regulations, financial reforms, and public works projects collectively known as the New Deal. Designed to restore financial prosperity, these reforms included the creation, through the Social Security Act, of an insurance system for unemployed Americans, as well as government support for dependent children and the disabled. Even as these new economic rights were being recognized, however, Congressional segregationists succeeded in excluding domestic and agricultural workers from Social Security benefits, disproportionately impacting Black Americans working in these sectors.

In his 1941 State of the Union, Roosevelt outlined new interpretations of rights and freedoms, emphasizing the interrelationship of economic, social, political, and civil rights, including “freedom from want,” “freedom of speech,” “freedom of worship,” and “freedom from fear.” At the same time the government was pursuing these programs to increase freedom and opportunity for citizens, however, Roosevelt also issued an executive order internimg more than 100,000 Japanese Americans, and was reluctant to protect refugees during World War II. The government was slow to respond to the Holocaust, denying refugee status and visas to Jews and other persecuted people during the war. After World War II, the US helped to lead an international human rights movement that included opening borders to refugees. Following Roosevelt’s death, Eleanor Roosevelt, his widow, continued that work by chairing the United Nations committee that wrote the Universal Declaration of Human Rights.

In the late 1940s and 1950s, hysteria over politically exaggerated threats of communists and anarchists led to the investigation and repression of citizens accused by Senator Joseph McCarthy and other nativist politicians of being “subversive elements.” During the 1950s, white nationalists and white supremacists continued to direct violent attacks against Black Americans.

In the 1950s and 1960s, the US Supreme Court expanded rights through constitutional interpretation. Brown v. Board of Education ended the notorious “separate but equal” doctrine of segregation, and Loving v. Virginia struck down laws banning interracial marriage. This period also ushered in a Supreme Court-driven expansion of the rights of the accused, and extended the Bill of Rights to states and municipalities, when it had previously applied only to the federal government.

In the 1960s, the decades of oppression of African Americans and other racial minorities exploded into a new protest movement for civil rights. Using mass mobilization and civil disobedience, civil rights leaders such as Martin Luther King, Jr. and John Lewis succeeded in ending the Jim Crow laws that enforced segregation. The movement culminated in the Civil Rights Act, the Voting Rights Act, and other Congressional legislation to outlaw discrimination based on race, color, sex, religion, or national origin. During the 1970s, women organized to demand a constitutional Equal Rights Amendment. While that effort has not yet succeeded, the protests spotlighted issues of gender inequality, leading to increased employment opportunities for women, laws against sexual violence, and the passage of federal legislation to promote gender equality in education. Following the police riot at the Stonewall Inn in 1969, gay rights advocates protested throughout the 1970s and 1980s for the repeal of sodomy laws and to obtain medical treatment for the burgeoning AIDS crisis.

The rights movement was pushed back in the 1980s, with attacks on affirmative action and reproductive rights and the use of judicial nominations to begin to restrict rights and close off access to the courts for many rights violations. Since the 1990s, the deterioration of legal rights for many Americans has continued, despite gains in disability and LGBTQ+ rights and new protections against employment discrimination. Over the last 20 years attacks on rights have increased, including the 2001 Patriot Act, which expanded surveillance and eroded privacy rights in the name of fighting terrorism; the use of torture and indefinite detention as part of the George W. Bush administration’s “war on terror;” and the Supreme Court’s decision in 2013 striking down core provisions of the Voting Rights Act, which has led to a return of discriminatory voting policies in several states.

The first two decades of the 21st century have been marked by progress and setbacks in rights. Progress has included increasing recognition of the rights of gay Americans, including the right to marry, and the election of the first African-American president. At the same time, attacks have increased on the rights of people of color, immigrants, low-income people, and other vulnerable groups. In response to these developments, the 21st century has seen renewed civic engagement and vibrant social movements on the left and right advocating rights. These include #MeToo, Black Lives Matter, and Climate Justice on the political left, as well as the Tea Party, FreedomWorks, and Young Americans for Liberty on the political right.

With the ongoing COVID-19 pandemic and civil rights protests against police brutality and misconduct, Americans are continuing to grapple with questions about liberty and equality that are as old as the nation itself. The events we are living through today demonstrate the urgent need for policy initiatives to renew rights and responsibilities in the United States. The responsibilities of government to enforce rights and of citizens to respect the rights of others are essential to reimagining and reconstructing the rights system.
Our July 2020 national poll demonstrates that Americans have become aware of these responsibilities at a time when they feel that rights are in jeopardy. A bipartisan super-majority of 84% say “the events of recent months have made me think differently about the role and responsibility of government to protect the rights of all Americans,” as well as “the responsibility that Americans have to our fellow citizens.” That sentiment underscores the potential of this moment for historic renewal of liberty and equality in the United States.

We turn now to an examination of specific rights and responsibilities related to the democratic process, equal protection and equality of opportunity, freedoms of speech and religion, due process of law, and the protection of privacy. For each of these areas we report on the current condition of rights and responsibilities and make policy recommendations for reimagining and reconstructing the rights system in the United States.

II. The Democratic Process

VOTING RIGHTS

After more than two centuries of struggle to secure the voting rights of African Americans, women, and other previously disenfranchised groups, the American electoral system today is again confronted by political and legal maneuvers to suppress and deny this core democratic right. Fear of demographic change has motivated a political campaign by voting rights opponents using new tools of regulatory suppression. These efforts threaten to undermine the principles of free and fair elections essential to democracy.

More than a century ago, the Supreme Court declared that voting is the “fundamental political right...preservative of all rights.” It is the heart of a democracy, the instrument citizens use to participate in government decisions affecting their lives. Political leaders and parties fearing the results of voting have long worked to deny or dilute voting rights through both age-old and new mechanisms, such as implementing racial and partisan gerrymandering, creating voter identification laws, blocking mail-in voting, purging voter lists, disenfranchising people with felony convictions, and perpetuating the Electoral College.

In March 2020, as Congress debated a $2 trillion economic relief bill for coronavirus, President Trump made a stunning statement, referring to provisions in the bill for remote voting and automatic voter registration. “The things they had in there were crazy,” he told FOX News. “They had things—levels of voting that, if you ever agreed to it, you’d never have a Republican elected in this country again.” The President’s comment made explicit the strategy the Republican party has been pursuing for more than a decade: to reduce voter participation in the United States.

Political efforts to suppress or dilute votes have the effect of corroding democracy, frustrating the popular will, and stimulating polarization. Discriminatory electoral practices such as racial gerrymandering have been undertaken by both parties in the past. Between the Civil War and the 1960s, it was most often the Democratic Party that engaged in these race-based tactics. In recent years, in most instances it has been Republican elected leaders who have engaged in gerrymandering and the restriction of voting in a campaign of voter suppression. National and state officials, led by President Trump, have sought to justify these measures by making unsupported claims of voter fraud, despite multiple studies that have found no significant evidence of voter fraud in the US.

Voting expansion peaked in 2008. Barack Obama was elected president that year by a coalition that included 15 million first-time voters, 11.5% of the total, comprising a larger proportion of minorities and younger citizens than was reflected among returning voters. In 2008, African American voting participation increased by five percent and youth participation by two percent from the 2004 election, resulting in the highest numerical participation by African American and 18-24 year-old voters in thirty years. In the 2012 presidential election, the African American turnout rate exceeded the white turnout rate for the first time since the U.S. Census Bureau began reporting voting participation by race. By 2016, however, turnout had fallen by 7.1% for African Americans from their participation peak in 2012 and 5.5% for 18-24-year-old voters from their peak in 2008. From 2008 to 2016 the turnout of all racial minorities combined dropped by 5%.

Many factors contributed to the 2016 falloff in voting participation by minorities and younger voters, including the identities and campaigns of the presidential candidates. Political efforts to halt the expansion of voting rights with new voting restrictions played a role, as did the Supreme Court decision in Shelby v. Holder invalidating core provisions of the Voting Rights Act of 1965.

Since 2010, new regulations to suppress the vote have been imposed in 19 states with Republican-majority legislatures and three with Democratic-majority legislatures. These regulations include stricter identification requirements, proof of citizenship laws, restriction on voter registration drives, closing of polling places in mostly rural and minority areas, expanded bans on voting by convicted felons, limitations on early and absentee voting, and purges of voter rolls. Studies have shown that many of these regulations disproportionately affect minorities.

In Georgia in 2018, for example, allegations of fraud by then-Secretary of State Brian Kemp, a Republican, led to an “exact match” registration law requiring voters’ personal information on their registration forms to exactly match the information on their ID and Social Security cards. The new law was used to purge voter rolls summarily, but its enforcement was enjoined by two
The negative impact of new voting restrictions on racial minorities has been exacerbated by the withdrawal of federal safeguards of the 1965 Voting Rights Act.
federal courts because it provided no opportunity to challenge a purge and had a disproportionate impact on minority and low-income voters. Kemp was elected governor over Democratic candidate Stacey Abrams.

The negative impact of new voting restrictions on racial minorities has been exacerbated by the withdrawal of federal safeguards of the 1965 Voting Rights Act, parts of which were struck down by the Supreme Court in the 2013 case of Shelby v. Holder. That decision invalidated the formula used by the federal government to determine whether state voting restrictions have a racially discriminatory effect. Despite the Court’s conclusion that such restrictions were no longer necessary, the impact of new voting restrictions has had the greatest impact in areas with a history of racial discrimination. These areas were previously required to submit any proposed new voting regulations to the Justice Department for review.

In addition to the new voting restrictions, the COVID-19 pandemic has made it dangerous to go to the polls, where challenges in social-distancing increase the risk of exposure. The alternative to in-person voting, of course, is voting by mail, now available to voters in 37 states and the District of Columbia. Former President Trump has attacked voting by mail and is impeding the capacity of the US Postal Service to support mail-in voting by cutting its funding.

The most effective way to dilute votes is through legislative gerrymandering. This technique involves the drawing of boundaries of electoral districts in a way that aims to maximize chances of election by members of a given party. Gerrymandering makes it possible for the party that controls the drawing of district boundaries to receive a minority of votes in a future election but still gain a majority of legislative seats, turning redistricting into a partisan weapon to use against political opponents.

A wave of partisan gerrymandering after 2010 enabled Republicans, who by then controlled 58 state legislative chambers, to capture 54 percent of US congressional seats in 2012 while winning only 49% of the national congressional vote. Democrats also engaged in gerrymandering in Maryland, but since 2010 the practice has been carried out extensively, systematically and exclusively by Republicans. Anti-gerrymandering reforms would require the appointment of independent commissions responsible for approving maps for legislative districts based on rational geographic and municipal boundaries.

The Electoral College presents a major impediment to free and fair presidential elections and denies equal protection to voters in populous states. Originally devised as an alternative to electing the president by Congress, the Electoral College had the effect of boosting the political power of Southern slaveholding states where the Constitution’s notorious three-fifths compromise counted three out of five disenfranchised slaves as “people.” After the 13th Amendment abolished slavery and the 15th Amendment guaranteed the right to vote to formerly enslaved men, the Electoral College became a means of avoiding election of the president by popular vote, discounting votes in populous states, distorting politics by encouraging presidential campaigns to concentrate their efforts in a few states that are not representative of the country at large, and handing victory to the loser of the popular vote twice in the past two decades.

In response to the current campaign to suppress or dilute votes, a counter-movement has emerged that seeks to secure and expand voting rights. The voting restoration movement reflects the belief of an overwhelming majority of Americans (86% according to our July 2020 national poll) that the right to vote is “very important,” although only 34% of Americans believe voting rights are “very secure” today. The movement to secure voting rights had major successes at the state level in the 2018 midterm elections. The gold standard of reform is automatic universal voter registration, which guarantees the right to vote for all citizens based on routine interaction with government agencies. Since 2010, 18 states and the District of Columbia have adopted automatic voter registration policies, and comparable proposals are being considered in 14 other states. Finally, voter restrictions have been rolled back in 11 states through litigation. Even with efforts to suppress voter registration and turnout, a new voting rights movement is working to protect the right to vote.

An important new area of electoral reform to enhance voting rights is ranked choice voting, a practice instituted by other democracies around the world to ensure proportionate representation of interests in the electorate. By having voters rank candidates in order of their preferences and elect the candidate with the highest number of total preferences, ranked choice voting broadens representation and reduces polarization. Ranked choice voting replaces elections where the winning candidate may receive only a plurality of votes (and be opposed by a majority of voters) with elections where the winning candidate receives a majority of voting preferences. Nineteen jurisdictions, including 18 cities and the state of Maine, have adopted ranked choice voting as of July 2020.

How to Reimagine Rights and Responsibilities:

- **Restore the Voting Rights Act.** Enact safeguards against voting regulations that have a racially discriminatory impact by reinstating federal government oversight of state or local jurisdictions with a recent or previous history of racial discrimination. These jurisdictions should not be permitted to change their electoral regulations without prior federal approval.

- **Improve Access to Voter Registration.** Enact federal or state laws to implement same-day registration and universal automatic voter registration. Ensure adequate funding and training for citizen-facing government agencies to include

- **Training for Citizen-Facing Government Agencies.** Enact federal or state laws to implement same-day registration and universal automatic voter registration. Ensure adequate funding and training for citizen-facing government agencies to include
voter registration in the course of their regular processes. States should also pass laws to pre-register 16- and 17-year-olds to vote when they turn 18.

- **Eliminate or Simplify Voter ID Laws.** Fifteen states do not require voter identification and none of these states have experienced widespread voter fraud. If states do not want to remove ID requirements altogether, they should standardize issuance of state ID cards to ensure that all eligible voters have an acceptable form of ID. For example, states could issue a state ID card to all residents when they turn 18.

- **Authorize Universal Voting by Mail or in Person.** 37 states and the District of Columbia have already implemented early voting and all-purpose absentee voting by mail, which allows any voter to request an absentee ballot for any reason. The capacity of the US Postal Service to support voting by mail should be periodically verified. States that have not already done so should adopt all-purpose absentee voting by mail, expand early voting periods to at least two weeks before an election, and authorize mail ballot tabulation when ballots are received. States can also ease access to voting by allowing voters to register at the same time they vote, a practice currently in place in ten states and the District of Columbia.

- **Prevent Automatic Voter Roll Purges.** States should enact legislation to prevent the automatic purging of voters from state voter rolls. Removing a voter from the rolls should require a transparent procedure and specific evidence showing that the voter is ineligible, and an opportunity for the voter to contest the evidence and proposed removal.

- **Restore Voting Rights for Citizens with Felony Convictions.** Federal and state voting rights should be restored to citizens with felony convictions immediately and automatically upon their release from prison, and voting rights should be restored to convicted felons previously released and living in the community.

- **Implement Ranked Choice Voting.** By having voters rank candidates in order of their preferences and elect the candidate with the highest number of total preferences, ranked choice voting can broaden representation and reduce polarization. Currently 18 cities and the state of Maine have ranked choice voting.

- **Prevent Partisan Gerrymandering.** States should establish independent redistricting commissions to determine the boundaries of congressional districts. Several models have been tried in different states in recent years. While there is no single best model, the Brennan Center for Justice at New York University has identified a set of best practices to ensure that redistricting commissions remain impartial and effective: select commission members from a pool of citizen applicants; include nine to fifteen members on the commission representing geographic and demographic diversity of the state; establish clear rules and priorities for redistricting before beginning the map-drawing process; hold public hearings on the proposed redistricting map before finalizing it; and establish redistricting criteria that include equality of district populations, protection against minority vote dilution, geographical contiguity, and compactness.

- **Reinforce the Responsibility to Vote and Make Election Day a National Holiday.** Voting participation is a responsibility of citizenship which should be reinforced and promoted by voter education programs implemented at federal, state, and local levels. Election day should be moved to Veterans Day to honor citizens who have served their country and to increase voting participation by providing that voting in person is on a national paid holiday and voting by mail is universally authorized.

### MONEY IN POLITICS

The role and influence of money in politics in the US has greatly increased in recent years. Unlimited and unregulated political funding from major donors to both Democratic and Republican candidates and parties, and to outside groups supporting candidates, limits the rights of voters to participate in the political process, diminishes the value of that right for the average voter, and creates a disincentive for low-income non-donors to vote. At the same time, it promotes disproportionate influence by major donors in the selection of candidates, the election of officials, and the development of public policy. The outsized influence of major donors in both parties undermines the democratic process by tilting policy outcomes to the interests of wealthy individuals and institutions.

Vast amounts of spending on elections are made on behalf of both major parties. The 2016 campaign of presidential candidate Hillary Clinton, for example, spent approximately $600 million, both directly by the campaign and by political action committees (PACs) specifically dedicated to the candidate. The total money raised for the Clinton candidacy, however, was $1.4 billion—including $800 million spent on the candidate’s behalf by outside organizations. In total, the amount spent by all candidates and groups in 2016 was a record $6.5 billion. For 2020, forecasters project that the total amount spent on political advertising alone will reach $10 billion. This explosion of money in politics has been accelerated by a series of Supreme Court decisions equating campaign finance with political speech, thereby protecting it under the First Amendment. That equation was first made in the case of *Buckley v. Valeo* in 1976, where the Court ruled that limits on contributions to candidates were permissible to avoid corruption or the appearance of it, but restrictions on spending by individuals, groups, or candidates was prohibited by the First Amendment. Throughout the following decades, to avoid the contribution limits major donors made unlimited “soft money” contributions to outside political groups, which were often used indirectly to support candidates.
Beginning in 2000, Congress made a series of efforts to regulate outside political groups with new disclosure and transparency requirements. In particular, the bipartisan Campaign Reform Act, known as the McCain-Feingold Act, expanded disclosure requirements for “issue groups” known as 527s, restricted contributions for campaign ads, and banned the spending of “soft money” by political parties. Between 2002 and 2010, however, a series of judicial decisions greatly eroded McCain-Feingold, nullifying its provisions on soft money, and weakening other restrictions, again on the basis of free speech. These decisions paved the way for the most consequential change to campaign finance law, the 2010 Supreme Court decision in Citizens United v. FEC. In Citizens United the Court ruled, 5-4, that corporations and outside groups have a First Amendment right to raise and spend unlimited amounts on elections.

Today, outside spending is conducted by three major players: so-called super PACs, joint fundraising committees, and “dark money” groups. Political Action Committees are private organizations that raise money to influence elections or legislation. Super PACs can raise unlimited amounts of money from corporations, unions, associations, and individuals to spend on elections, so long as they are not directly coordinating with candidates. Since 2010, Super PACs have proliferated, spending more than $1 billion in the 2016 election,\(^{19}\) funding over 33,000 television ads in key states.\(^{20}\) Participation in these groups involves the very wealthiest donors. Between 2010 and 2015, fewer than 200 US households funded nearly 60% of all spending by Super PACs, allowing a small number of megadonors to sidestep all limits on direct campaign contributions.\(^{21}\)

Megadonors have sought new pathways to donate the maximum individual contributions to as many candidates and party committees as possible in a single election cycle. Set up by one or more candidates, joint fundraising committees allow megadonors to write one check to be distributed across many candidates and committees. This allows joint fundraising committees to solicit larger contributions, which they can distribute as they see fit, permitting donors to exceed their contribution limits to the national party.

“Dark money” groups are nonprofit organizations engaged in political spending—for example, social welfare, union, and trade association groups that are not required to disclose their donors. Sometimes dubbed “issue advocacy” groups as opposed to groups directly supporting a candidate, these organizations can receive unlimited donations from corporations, individuals, and unions. In addition, they can also raise unlimited contributions from nonprofit organizations and “shell” corporations that are not subject to disclosure requirements. While these organizations must report overall spending on their annual federal tax 990 forms, they are allowed to submit nonspecific information regarding their expenditures, obscuring spending related to direct political advocacy, such as attack ads against candidates opposing trade association positions, or police union funding of municipal candidates. This trend means that voters do not know the identities of individuals or entities that are funding the political advertising and other communications they see.

The result of the lack of regulation of money in politics is that major donors can effectively buy access to influence candidates and their policies, while average voters cannot. The lack of regulation disproportionately favors the interests of major donors, and discounts the influence of low-income, small-donor, and non-donor voters. The burgeoning manifestations of unlimited and unregulated money in politics can have devastating consequences for democracy by diluting the votes of tens of millions of citizens.

### How to Reimagine Rights and Responsibilities:

- **Require Disclosure of Political Funding and Spending.** Require full transparency and disclosure of all political fundraising and spending in federal and state elections by candidates, political parties, political action committees, and “dark money groups.”
- **Authorize Citizen Funding of Elections.** Enact “clean election laws” for federal, state, and local elections through mechanisms such as voluntary public financing programs, including matching programs, voucher systems, and tax credits that amplify the contributions and power of small donors.
- **Amend the Constitution to Permit Regulation of Money in Politics.** Authorize the regulation of political funding and spending in order to eliminate undue influence of money in the US political system by constitutional amendment overturning decisions of the Supreme Court interpreting the First Amendment to bar such regulation.

### CIVIC EDUCATION

A well-informed citizenry is essential to American democracy. Civic education teaches democratic values and encourages citizen participation. In recent decades, civic education has been systematically downgraded in the nation’s public schools.

Civic education is essential to democratic governance because it imparts democratic values, teaches about rights and responsibilities, encourages civic participation, and develops civic skills such as voting and political debate.

In addition to providing students with a basic knowledge of government, civic education can inject diverse perspectives into the classroom and help students learn how to engage productively with peers on current issues. Studies have found
that public schools today with limited civic education tend to avoid deep exploration in the classroom of important historical issues—such as the removal and destruction of Native American peoples, the origins, practices and legacies of slavery, and the political and cultural suppression of women—for fear of offending political sensibilities. The teaching of American history needs to lead to an understanding of the complexities of events and to avoiding judgment of the US as either fundamentally good or fundamentally bad.

As of 2018, only nine states and the District of Columbia required one year of study in U.S. government and civics. Thirty-one states required only a half-year of civics or U.S. government education, and 10 states had no civics requirement at all. Federal funding for civic education has been drastically cut. As recently as the early 2000s, the federal government spent approximately $40 million a year on civics programs. After Congress shifted more dollars towards STEM (Science, Technology, Engineering, and Mathematics) in the early 2010s, federal spending on civic education was cut to just $4 million a year—compared to $3 billion a year spent on STEM education.

As a result of the long-term trend toward reduced emphasis on history and civics in U.S. schools, many Americans today have a poor understanding of their own system of government and the importance of voting in democratic governance. Only 39% of Americans can name all three branches of government, and 22% cannot name any. Voting rates average only 56% in presidential elections, and as low as 40% in mid-terms, ranking the US far below most other democracies in voting participation.

By contrast, young people taking part in a civic education curriculum are four times more likely to volunteer and work on community issues. Additionally, civic education is associated with an increase in young people’s ability to interpret political information, discuss political issues with peers and adults, monitor the news, and feel confident about their ability to speak in public.

In 2015, there was an effort by Congress to reestablish civics in K-12 education through the “Every Student Succeeds Act” (ESSA). The law created programs to support teacher training in history and civics, and established a system of grants for innovative and expanded programs in civic education. However, ESSA authorized but did not appropriate the funding, which is currently less than 1% of the authorized amount, $10 million out of more than $1.6 billion authorized.

Engaging in discussion of controversial historical topics and political issues helps students develop the ability to weigh fact-based evidence, consider multiple perspectives, form and articulate their own opinions, and respond to people who disagree. Research shows that when students engage in discussions about controversial issues and events with people who disagree, they develop tolerance for others and build understanding of the range of views about how best to solve public problems.

**How to Reimagine Rights and Responsibilities:**

- **Require and Fund Civic Education.** Enact legislation requiring U.S. history and civics to be taught in all public and private schools, with federal grant programs to support history and civics teachers. Invest in civic education for all ages in all communities through curricula, professional development for teachers, and a federal award program that recognizes innovative civic education initiatives at local, state, and national levels.

- **Broaden History and Civic Education Curricula.** Develop new content and pedagogy for teaching difficult historical subjects relating to the denial of rights—such as slavery, Native American removal, racist restrictions on immigration, antisemitism, and the political and cultural suppression of minorities and women—in order to promote understanding of the value of diversity and the need for rights to define the relationship of people to each other and to their government in a democracy.

- **Promote Media Literacy.** Develop media literacy education to assist media consumers in evaluating information and navigating the rapidly changing marketplace of ideas. Media literacy is critical for a democratic information system to function effectively under the principles of free speech and media freedom in the midst of technological change.

- **Support Civil Society Partners.** Encourage and promote funding for large and small civil society organizations that provide civic education at national, state, and local levels and can be engaged as partners in school-based civic education programs. These organizations can be especially effective in developing content and pedagogy on rights and responsibilities in the U.S. Constitution and laws, and the role of rights and responsibilities in binding together a nation of unprecedented diversity.

- **Establish National Trust for Civic Infrastructure.** Following the recommendation of the American Academy of Arts and Sciences in its 2020 report, Our Common Purpose, a National Trust for Civic Infrastructure should be established as a public-private initiative to “scale up social, civic and democratic infrastructure. Civic infrastructure supports the activities and interactions through which people gain the motivational and practical capacities needed to develop a sense of common purpose . . . and connect disparate segments of our society.”
III. Equal Protection and Equality of Opportunity

RACIAL DISCRIMINATION

Half a century after the enactment of landmark civil rights laws in the 1960s, courts and administrative agencies are undermining the protection of equal rights and opportunities across racial identities. While the legal prohibition against racial discrimination remains, these government actors have employed a very narrow definition of discrimination, requiring a showing of intentional discrimination that is extremely difficult to meet. This has made it increasingly difficult in recent years for racial minorities to obtain remedies for discrimination in criminal justice, housing, education, employment, and health care. The COVID-19 pandemic has additionally laid bare the pervasive and detrimental impact of systemic racial discrimination in the US. Minority communities already disadvantaged with unequal access to housing, quality education, affordable health care, and decent employment now face greater threat of COVID-19 infection and economic loss.

When President Lyndon B. Johnson signed the 1964 Civil Rights Act into law, the action marked the culmination of a decades-long struggle of grassroots activists and dedicated political leaders to make progress toward national protection of racial equality. This historic legislation outlawed racial discrimination in broad categories including employment, education, voting, and public accommodations. Over half a century later, the promises of the Civil Rights Act are threatened by sustained efforts to undermine its protections for equal rights and opportunities across racial identities. On the other hand, the campaign today to eliminate structural racism and reimagine equal protection is bolstered by the findings of our July 2020 national poll in which 85% of Americans cite the right to “racial equality” as “very important.” The urgency of the struggle to achieve racial equality is demonstrated by the fact that only 11% of Americans believe this right is “secure.”

No area is more emblematic of the ongoing crisis of racism than the criminal justice system. Aggressive police practices and mass incarceration perpetuate discrimination against minority communities. Racial discrimination is rife in every aspect of the criminal justice system, from policing, prosecution, sentencing, and incarceration through reentry into the community. A national study found that because of systemic discrimination minorities are more likely to be killed by police than their white counterparts, with Black and Native American men 2.5 times more likely to be killed by police than White men. 29 Racial targeting in police stops and arrests illustrate the continuing racism in policing. Racial disparities in law enforcement are even greater when minorities enter the justice system. Black men are imprisoned at nearly five times the rate of White men, while Black women are twice as likely to be imprisoned compared to White women. In 2015, African Americans and Latinos accounted for 56% of the US prison population despite making up only 36% of the population. 30

Native American youth are disproportionately represented in the juvenile justice system, where their rate of incarceration is higher than for any other racial or ethnic group. Similar to African Americans, Native Americans face negative stereotypes of criminality that lead to harsher encounters with law enforcement and sentencing. Compared to white youth, Native youth are more likely to be arrested for low-level infractions like liquor law violations or lack of cooperation with law enforcement. When they are arrested, Native youth are almost twice as likely as their white counterparts to be referred to the adult criminal justice system or to youth residential treatment centers.

Unequal access to housing is another major area of continuing racial discrimination. The 1968 Fair Housing Act outlawed institutional housing discrimination known as redlining—state-supported segregation of housing that denied African Americans and other minorities access to white neighborhoods. Despite the formal prohibition against such practices, minorities continue to be at a disadvantage when seeking housing. They receive far lower than average response rates from landlords, are required to provide more information about credit qualifications, wait longer times for viewings, and are less often told about rental incentives or discounts than are similarly situated whites.

Housing discrimination has a negative social, financial, and health impact on minorities, further segregating communities and limiting upward mobility and the ability to build net worth. In 2013, the average net worth of a white family was $132,000 compared to $12,000 for a Hispanic family and $9,000 for a Black family. 31 Due to the nation’s decentralized public funding structures, lower property values result in lower local tax revenues, which in turn result in lower availability of social services and funding for public schools.

Racial disparities and segregation in education continue at high levels. Despite the 1964 Civil Rights Act and the 1954 case of Brown v. Board of Education that outlawed segregation in public education, school segregation and discrimination continue today. A 2019 report found that the discrepancies in property tax bases and rates have led to an estimated $23 billion funding gap between minority and non-minority school districts that serve the same numbers of students. 32 Predominately minority schools have fewer physical and instructional resources than non-minority schools. This funding gap results in lower salaries for teachers, lower quality teaching, limited instructional materials, and overall degradation of the quality of education for many minority students.

While legal protections against discrimination in employment have long existed, discrimination continues there as well. Studies show minorities have higher rates of unemployment and lower
If there is any bright spot in the current state of race in the United States, it is the increased attention that issues of racism are now receiving.

Wages compared to white workers, even when controlling for other variables such as education and gender. Other studies have shown that applicants with White-sounding names are 50% more likely to receive callbacks than applicants with Black-sounding names who have identical resumes – an employability advantage equivalent to eight years of work experience. In 2018, the Equal Employment Opportunity Commission received over 24,500 race-based complaints.

The COVID-19 pandemic powerfully demonstrates the entrenched impact that structural racism is having on people of color in the United States. Sub-par housing and densely populated areas have made social distancing more difficult. African Americans and Hispanics are more likely to work in “essential” service positions, including jobs paid by hourly wages rather than by salary, increasing their incentive to return to work and leaving them at greater risk of infection. Minorities are disproportionately represented in the prison system, which has seen a higher rate of infection compared to the general population. Because of this combination of factors, preliminary data has shown dramatically higher rates of infection and death from COVID-19 in multiple minority localities, especially Native American and African American communities.

Despite an overall negative picture of entrenched racism in the US, the federal government has made some small headway in the area of criminal justice reform, with the recently signed First Step Act reducing mandatory minimum sentences for drug offenses and implementing measures to reduce recidivism. The same cannot be said for housing, education, and health care, which have seen significantly reduced protections for minorities during the current administration.

If there is any bright spot in the current state of race in the United States, it is the increased attention that issues of racism are now receiving. Even before the recent protests over police brutality this past summer, a December 2019 Gallup survey of adult voters in the 2020 election found that 66% ranked ‘Race’ as being an “extremely important or very important” consideration in their vote, with another 23% claiming it to be “important.” Based on the results of our own poll, those numbers seem to have only grown since then. Heightened social awareness of and mobilization around topics such as police brutality targeting minorities, reparations, and systemic discrimination have put the issue of racism squarely on the national agenda.

Public activism against racial discrimination has increased dramatically. Black Lives Matter (BLM), a national social movement against systemic racial discrimination and for criminal justice reform, began in 2013 as a social media reaction to the acquittal of a white man for the shooting death of fourteen-year-old African American Trayvon Martin. BLM organizes mass protest against systemic discrimination in the criminal justice system. The movement gained significant political and social traction during the mass interracial mobilization in the summer of 2020 as a protest against police brutality and racism following the police killing of George Floyd.

How to Reimagine Rights and Responsibilities:

- **Require Opportunity Impact Statements.** Require federally funded programs and projects to have Opportunity Impact Statements to ensure anti-discrimination practices and equal access and opportunity for racial minorities.

- **Reform Law Enforcement and Strengthen Public Safety.** Public safety reforms should be designed and implemented to redefine law enforcement, increase funding of social services, abolish “qualified immunity” (which shields police officers from accountability through civil liability), demilitarize the police, prohibit chokeholds and “no-knock” unannounced searches, eliminate racial discrimination in policing, and bar police unions from blocking disciplinary actions against police officers. The call for “defunding” should not mean abolishing the police, but shifting some funds to social service agencies that can perform non-law enforcement functions currently assigned to police such as mental health care, drug treatment, homeless assistance, community mediation, and restorative justice. Public safety and racial justice would be advanced by making greater investment in communities ravaged by violence and the discriminatory justice system.

- **Reduce Mass Incarceration.** Review and reform federal and state sentencing codes and procedures to reduce mass incarceration and provide alternatives to imprisonment. The US is an international outlier on incarceration, holding 22% of the world’s prisoners with only 4% of the world’s population. The US imprisons more than two million people in federal and state prisons and jails, 56% of whom are Black and Hispanic.

- **Enact Legislation Allowing Proof of Disparate Discriminatory Impact.** In cases seeking remedies for racial discrimination in housing, employment, education and health care, allow proof of the disparate impact of policies and practices on racial minorities, and eliminate requirement of proving that the discrimination was specifically intended by those responsible for the policies and practices that caused it. Congress should enact explicit, actionable disparate impact protections in areas like criminal justice and environmental siting where inadequate protection against racial discrimination now exists.
• **Reform Education Funding.** Establish federal requirement through legislation or administrative action to disconnect public school funding from local property taxes and provide federal funding to eliminate disparities in school district zones resulting from differential property tax bases.

• **End Employment Discrimination.** Strengthen federal enforcement of protections against employment discrimination and increase funding for job training programs and access to employment community services.

• **End Housing Discrimination.** Strengthen federal authority to oversee local officials and private parties on fair housing practices and improve renter protections to prohibit discrimination based on public assistance status.

• **Provide Public Community Investment.** Provide public community development investments in African American and Native American communities that have historically been denied economic opportunity and equality as a result of federal policy (e.g. slavery, removal, and more recently, redlining, and land seizure). Establish a National Truth Commission to provide an official US public apology to acknowledge, document, and recommend remedies for historic and continuing systemic racism in the United States.

**WOMEN’S RIGHTS**

Despite national legislation barring sex discrimination, women face barriers to equal rights across policy areas, including employment, health services, and protection against sexual misconduct, with disparate impacts by race, ethnicity, and sexual identity. Women in the United States forgo health services at a higher rate than men due to cost barriers. Women’s reproductive rights are jeopardized by legislative, judicial, and administrative decisions at the federal and state level. Relative to men, women are 35% more likely to be living in poverty, and continue to experience significant wage disparities. Many women have disproportionate childcare and household responsibilities, especially in single-parent families. This prevents them from working full hours, affecting their pay and eligibility for promotion. Sexual violence against women at home, work, or in educational settings impacts women’s health, well-being, and economic outcomes.

Employment discrimination affects women at all socioeconomic levels. Today women earn 82% of what men earn in the workplace. The pay gap is higher for minorities. Black women only earn 62% of white men and Hispanic or Latina women 54% of white men, translating to a median earnings loss of $23,540 and $28,036 a year respectively. Factors contributing to this gap include discrimination, differences in job types and hours worked, and the availability of paid family and maternal leave. Currently, the US is one of the few developed countries without a national paid family leave policy, only offering federal unpaid leave of up to 12 weeks. The COVID-19 pandemic has further exposed gender-based disparities in the workplace due to the higher percentage of women working in “essential” jobs vulnerable to infection, and higher likelihood of bearing the burden of unpaid caregiving and housework as schools and businesses are closed.

Women are 35% more likely to be living in poverty than men, and anti-poverty programs are essential to their lives. In 2018, the Trump administration issued an executive order requiring new work requirements for Supplemental Nutrition Assistance Program (SNAP) and other anti-poverty programs, negatively affecting low-income women who already struggle with balancing work and childcare. Attempts to reduce the overall budget for SNAP by 30% have so far been defeated in Congress. Violence against women is a major ongoing crisis for women’s rights. Approximately 80% of domestic violence survivors are women. The risk of violence is even greater for immigrants, LGBTQ+ women, and women with disabilities, who have a 40% greater risk of intimate partner violence. Acts of domestic violence remain largely underreported due to the victim’s fear of further violence, shame, and distrust of law enforcement. The Violence Against Women Act (VAWA), passed in 1994, increased protections and federal funding for programs serving victims of domestic violence, but the act expired in 2019 and Congress has not reauthorized it. A rise in domestic violence reports during the coronavirus quarantine has added new urgency to the need to reauthorize the law. Sex- and gender-based harassment and misconduct continues to be a problem in educational settings, with more than 25% of women in universities reporting nonconsensual sexual contact and 60% reporting sexual harassment.

The right of women to make their own reproductive choices is a longstanding flashpoint in American politics. Our poll demonstrates that this right has broad support today: a surprisingly strong bipartisan 76% of Americans regard “a woman’s right to choose” as an “important right” that only
16% believe is “very secure.” Despite this strong public opinion support, women’s right to choose and access to reproductive health services is an increasing challenge throughout the United States. While the Affordable Care Act (ACA) mandated access to contraception, the requirement has been weakened by the Supreme Court ruling in *Burwell v. Hobby Lobby,* and by further executive orders from the Trump administration granting “religious” and “moral exemptions.” These executive orders create exemptions for organizations, employers, and individuals who are opposed to coverage of some or all contraceptive or sterilization methods, leading to exclusion of those options from health insurance plans. Without this coverage, many low-income women may be no longer able to afford contraception.

In 1973, the Supreme Court decision in *Roe v. Wade* established that a woman’s reproductive choice to have an abortion is protected as a constitutional right to privacy. A 1992 ruling in *Planned Parenthood of Southeastern Pennsylvania v. Casey* further clarified this protection by preventing states from placing an “undue burden” on women seeking abortions. Ever since these rulings, lawmakers and Republican administrations supported by the religious right have attempted to place restrictions on family planning services to prevent women from exercising their constitutional right to reproductive choice. In 2019, the Trump administration issued rules restricting federal funding for women’s health services to be withheld from clinics offering family planning, including information on and referrals for abortion. Planned Parenthood and other providers withdrew from funding rather than following new regulations.

In recent years, states have moved to limit abortions, with 17 states enacting restrictions in 2019 alone. These laws have included bans on abortion once a fetal heartbeat can be detected at around six weeks, as well as other restrictions based on gestational age, type of procedure, or rationale for obtaining an abortion. Alabama passed a law banning abortion at all stages of pregnancy. While that law and many of the others have been struck down by federal courts, they illustrate a continuing effort to overturn the legislation and Supreme Court decisions that protect women’s reproductive rights.

These challenges illustrate why it is important for women to be represented in stronger numbers in political decision-making and policy development in order to ensure the challenges are addressed. Despite major recent gains, a large gender gap remains in Congress, where women hold only 24% of the seats. At current rates, it would take 88 years for women to achieve equal representation.

In response to continuing discrimination against women, new social movements for women’s rights have emerged in recent years. In January 2017, activists from around the world held the first annual Women’s March as a nonpartisan response to the rhetoric against women in the 2016 election, and the march has continued every year since. There has also been a renewed push to pass the Equal Rights Amendment to provide that “equality of rights shall not be denied or abridged on account of sex.” The Amendment was approved in 1972 with bipartisan support, but failed to be ratified by three-quarters of the states by the 1982 deadline. A new movement is seeking to overturn the previous deadline and gather enough states for ratification. Also starting in 2017, the #MeToo movement has sparked national activism against sexual assault and sexual harassment, leading to the creation of Time’s Up, an influential new coalition to end sexual assault, discrimination, and the gender pay gap. These movements have been credited with the record number of female candidates winning state and federal office in 2018, a trend predicted to continue in the coming years.

**How to Reimagine Rights and Responsibilities:**

- **Strengthen Women’s Rights in the Workplace.** Establish child care for working parents, protect pregnant workers from discrimination, and provide three-month paid parental leave. In addition, mandate fair pay and pay equity, require large employers to disclose employee pay by gender and race, and prohibit employers from requiring employees to settle gender discrimination cases by arbitration as a condition of their employment. Finally, include low-wage workers and domestic workers under minimum wage laws, and prohibit government contractors from firing employees whose identities or choices do not conform to the employer’s religious views.

- **Protect Women’s Access to Health Care.** Guarantee women’s right to choose when to bear children, protect access to contraceptive services and medically safe abortion services, expand pregnancy coverage in federal health insurance programs, and provide federal funding for programs to decrease preventable maternal deaths.

- **Expand Women’s Access to Anti-Poverty Assistance.** Abolish work requirement and expand eligibility and funding for federal anti-poverty assistance programs, and expand Child Tax Credit eligibility so that single mothers living in poverty are able to access benefits.

- **Expand Protection Against Sexual Violence and Harassment.** Define “sexual harassment” as “unwelcome conduct of a sexual nature,” amend the Violence Against Women Act to include provision banning marital rape, and update legislative definition of “sex” to include people who are transgender or gay.

- **Ratify Equal Rights Amendment.** Complete the process of amending the Constitution to affirm that “equality of rights shall not be denied or abridged on account of sex.” The Equal Rights Amendment would assure that women’s rights have full constitutional protection and cannot be curtailed by judicial, legislative or administrative decisions.
The Convention that existing civil of Supreme Court decisions starting in the 1950s that reversed right to express themselves and advocate freely through a series of sexual and/or gender identity. LGBTQ+ people gained the progress towards the recognition of rights for people regardless in different ways, each of these generations made significant marriage and the military. “Marriage generation” from the 1990s to the present day, the face of the mounting death toll from the pandemic. During the “AIDS generation” of the 1980s and 1990s, the broader queer community came together to care for and mourn one another in the face of the mounting death toll from the pandemic. During the “Marriage generation” from the 1990s to the present day, the LGBTQ+ movement reoriented its work to focus on the struggle for equal rights through more formal, institutional channels like organizing.

Many historians locate the “origin” of what we now call the “modern LGBTQ+ movement” in the United States in the Stonewall rebellion that exploded in June 1969, when the LGBTQ+ patrons of the Stonewall Inn in New York City fought back during a raid of the bar by plainclothes police officers. In reality, however, the foundations of the movement were built long before then, in the decades after World War II, when “homophile” organizations became crucial locations for community building and political organizing.

Over the last fifty years, there have been three main generations of LGBTQ+ lived experiences that have shaped the larger history of both the movement and the nation. During the Stonewall generation of the late 1960s and 1970s, LGBTQ+ people became increasingly politicized, forcefully protesting normative and oppressive constraints on gender and sexuality. During the AIDS generation of the 1980s and 1990s, the broader queer community came together to care for and mourn one another in the midst of the AIDS crisis, and to act up and speak up in the face of the mounting death toll from the pandemic. During the Marriage generation from the 1990s to the present day, the LGBTQ+ movement reoriented its work to focus on the struggle for equal rights through more formal, institutional channels like marriage and the military.

In different ways, each of these generations made significant progress towards the recognition of rights for people regardless of sexual and/or gender identity. LGBTQ+ people gained the right to express themselves and advocate freely through a series of Supreme Court decisions starting in the 1950s that reversed the longstanding stigma of homosexuality as “deviant.” These decisions led to a gradual repeal of laws criminalizing sodomy. The work of AIDS activists during the 1980s and 1990s had a significant impact on rights and equal protection in health care, immigration, and same-sex relationships. In 2003, the Massachusetts Supreme Court legalized same-sex marriage, a landmark decision that was followed by the enactment of legislation in several states guaranteeing “marriage equality.” In 2015, the Supreme Court ruled in the case of Obergefell v. Hodges that bans on same-sex marriage were unconstitutional, thereby establishing the freedom and equal right to marry for same-sex couples throughout the country.

Despite these historic victories, the LGBTQ+ movement has continued its struggle to achieve full equal rights. Openly LGBTQ+ elected officials constitute only 0.16% of total elected officials nationwide, no “out” queer person has yet served as a confirmed cabinet secretary, and no transgender person has yet been elected to the US Congress. Across the US, a patchwork of laws protect people against discrimination on the basis of sexual orientation and gender identity in over 400 cities and 23 states. However, the degree and domain of these protections change drastically from one jurisdiction to another, variously covering areas such as employment, housing, and other public accommodations. Due to the uneven coverage of these laws, nearly half of all LGBTQ+ people are still unprotected from certain forms of discrimination in the US.

In 2017, the longstanding tension between equality and liberty erupted onto the national stage in the Supreme Court case of Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission. In this case, a private business owner refused to design and bake a wedding cake for a gay couple, claiming that doing so violated his religious beliefs. The Supreme Court did not ultimately answer this question, ruling in favor of the baker on a technicality. During the litigation, however, the Trump administration made its opinion clear when the Department of Justice submitted an amicus brief in favor of the baker’s right to refuse service to LGBTQ+ people on the basis of “sincerely held” religious beliefs. Despite the pitting of religious freedom against LGBTQ+ rights, studies show that most religiously identified individuals oppose the use of religious grounds as a basis for LGBTQ+ discrimination.

LGBTQ+ discrimination is still widespread in the workplace, with 16% of LGBTQ+ workers in the US reporting that they have lost a job because of their sexuality, gender identity, or expression. Eighteen percent of lesbian and gay people, and 30% of transgender people, report they have been denied a job or promotion due to their LGBTQ+ identity. In a series of recent Supreme Court cases, the Trump Justice Department filed briefs arguing that sex discrimination in the workplace does not include discrimination on the basis of sexual orientation and gender identity. Rejecting this position, in June 2020, the Court ruled in a 6-3 decision in Bostock v. Clayton County that existing civil
LGBTQ+ people continue to encounter significant barriers to accessing health care, including discriminatory treatment from providers or insurers, difficulty finding providers who are knowledgeable about LGBTQ+ health care needs, and foregoing care altogether for fear of mistreatment. In June 2020, the Trump administration instituted a rule removing nondiscrimination protections for health care and health insurance based on gender identity. Setbacks such as this demonstrate the importance of LGBTQ+ advocacy, and the need for national recognition that equal protection applies to both sexuality and gender identity and expression. A growing majority of Americans (54% according to our July 2020 national poll) believe that LGBTQ+ rights are “very important,” while only 16% believe they are “very secure.”

How to Reimagine Rights and Responsibilities:

- **Enact the Equality Act.** Ban discrimination against LGBTQ+ people nationwide. The Equality Act would amend existing civil rights laws to provide consistent and explicit protections for LGBTQ+ people in employment, housing, credit, education, public spaces and services, federally funded programs, and jury service. By explicitly including sexual orientation and gender identity in federal civil rights law, LGBTQ+ people will be afforded the same protection as race, sex, and other explicitly covered characteristics.

- **Provide Military Service Opportunities and Appoint Federal Officials.** Allow transgender people to enter and serve in the U.S. military, make efforts to appoint openly LGBTQ+ people to serve in Presidential cabinet-level positions, and nominate openly LGBTQ+ and LGBTQ-friendly Supreme Court justices and federal judges.

- **End Family and Health Care Discrimination.** Require federally funded adoption agencies to provide service to LGBTQ+ couples and families, expand existing resources to support LGBTQ+ elders and people living with HIV/AIDS, and expand the Affordable Care Act to fully cover LGBTQ+ related health needs, including HIV/AIDS medication, hormone treatment and sex-reassignment surgery, mental health services, and elder care.

- **End Employment and Workplace Discrimination.** Enact the Do No Harm Act which amends the Religious Freedom Restoration Act to clarify that discrimination on the basis of race, sex, or LGBTQ+ status by individuals or organizations claiming infringement of their religious liberty is prohibited. In addition, reinstate LGBTQ+ non-discrimination requirements in federal contracting.

- **End Discrimination in Schools.** Require public schools to prohibit discrimination against LGBTQ+ students, issue clear federal and state mandates and guidelines for LGBTQ-inclusive curriculum, ensure that transgender students are protected from bullying and allowed access to bathroom and other facilities consistent with their gender identity, and require that the history and practice of the “gender binary tradition” is addressed explicitly in schools so that gender diversity is fully accepted and no longer considered “abnormal.”
Nearly 61 million Americans have a legally recognized disability.54 The Americans with Disabilities Act protects individuals from discrimination based on disability, but people with disabilities still face major challenges today. Approximately 60% of working-age people with disabilities are unemployed,55 and even those who have a job earn, on average, less than 70% of the earnings of people without disabilities.56 People with disabilities are more likely to live in poverty, and more likely to experience higher annual healthcare costs. Recent policy changes in education, health care, employment, immigration, and voting have negatively impacted people with disabilities. Despite formal legal protections, people with disabilities often find that protections are fragmented and difficult to navigate, and may not provide meaningful accommodations and relevant social supports.

For much of the nation’s history, both government and American society mistreated people with disabilities, regarding them as “incapable,” “inferior,” or “shameful,” and subjecting them to institutionalization, medical experimentation, and sterilization. Congress began enacting benefits for veterans with disabilities following World War I, and the New Deal provided some financial benefits for people with disabilities following World War II. It wasn’t until the passage of the Rehabilitation Act in 1973, however, that people with disabilities were protected from discrimination, and affirmative programs implemented to hire people with disabilities to counter their sense of isolation.

While that law only applied to contractors and programs receiving federal funds, the Americans with Disabilities Act of 1990 (ADA) and the ADA Amendments Act of 2008 (ADAAA) went much farther, protecting people with disabilities as a civil right, and preventing discrimination based on disabilities in all aspects of public life. The ADA defines disability as a “physical or mental impairment that substantially limits one or more major life activity.”57 Those activities include “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” While the ADA doesn’t name specific disabilities, they include physical disabilities such as motor impairment, deafness, and blindness; mental impairment, psychological disorder, and learning disabilities; chronic illness and certain medical conditions such as HIV.

Despite often having increased healthcare needs, people with disabilities are also less likely to have access to medical care due to factors including lack of mobility, lack of knowledge by providers, lack of proper equipment, and cost of treatments. The Affordable Care Act, passed in 2010, significantly increased healthcare coverage through the expansion of Medicaid, which covers 30% of adults and 60% of children with disabilities.58 In 2012, the Supreme Court limited the ACA’s Medicaid expansion, giving states the option to discontinue it. Currently, 12 states have decided against Medicaid expansion, disproportionately affecting people with disabilities. In addition, in 2018, the Trump administration allowed states to enact work requirements for adult Medicaid enrollees. While people with disabilities may apply for exemption from these requirements if they receive Supplemental Security Income (SSI) through Medicaid, or Social Security Disability Insurance (SSDI) through Medicare, applying is a lengthy and uncertain process, with long delays and an approval rate of only four in ten applications.59 As a result, recipients of SSDI have fallen by a third since 2010.60

A 2010 executive order sought to further encourage federal agencies to recruit, hire, and retain workers with disabilities, and some states have passed similar laws encouraging the hiring of people with disabilities. Implementation has been uneven. Federal law allows authorized employers to pay a subminimum wage to people with disabilities, and this affects 420,000 workers nationwide.61

The protection of children with disabilities in schools has been established through two types of educational plans. A “504 plan” provides services for children learning in traditional classrooms, and an Individualized Education Plan (IEP) provides additional services. Together, these plans serve approximately 7.1 million students, making up 14% of the school population, most commonly for learning disabilities and speech and language impairments.62 The Trump Administration rescinded guidance documents concerning children with disabilities to interpret more narrowly how schools should apply federal laws.63 Students with disabilities are disproportionately subject to disciplinary measures, including being more than twice as likely as students without disabilities to receive out-of-school suspensions—a disproportion that is higher for students of color.

People with disabilities face immigration barriers in entering, settling, and applying for naturalization. A new rule went into effect in 2020 allowing the government to deny applications for entry and change in status for immigrants likely to become a “public charge” by depending on public assistance, a measure disproportionately affecting immigrants with disabilities. The Trump administration also reversed a longstanding “medical deferred action” program that allowed immigrant families to remain in the US if at least one member has a serious or life-threatening health condition. For immigrants with disabilities, deportation to a country with inadequate medical services can be devastating to their health, and even result in death.
Individuals with disabilities comprise one-fifth of the electorate. They face multiple barriers to voting, especially in person. Among people with disabilities who did not vote in 2018, 41% cited their disability as the reason.
Disabilities are both a cause and a consequence of poverty. Currently, 30% of working-age Americans with disabilities live in poverty, two and a half times the rate for those without disabilities.64 These rates are caused by a variety of factors, including unemployment, educational barriers, and healthcare costs. Forty-one percent of all households having a person with a disability are unable to afford adequate housing.65 Adults with disabilities are twice as likely as those without disabilities to have inadequate access to transportation. While people with disabilities are eligible for benefits under the Supplemental Nutrition Assistance Program (SNAP), the program provides lower benefits for people who do not meet strict definitions for having a disability. Stricter work requirements for receiving SNAP enacted in 2019 created additional burdens for those with disabilities.

Individuals with disabilities represent a large proportion of the voting-age population, comprising an estimated 35.4 million Americans, one-fifth of the electorate.66 They face multiple barriers to voting, especially in person, which makes them less likely to participate in elections. Among people with disabilities who did not vote in 2018, 41% cited their disability as the reason.67 Difficulties include accessing polling places, using voting equipment, and reading the ballot.

While discrimination on the basis of disability is prohibited as a matter of civil right, significant hurdles for meaningful social, political, and economic inclusion remain.

How to Reimagine Rights and Responsibilities:

• **End Employment and Workplace Discrimination.** Eliminate subminimum wage for people with disabilities, provide additional incentives for employers to hire people with disabilities, require employers to report data on hiring of people with disabilities, increase workplace protections for people with disabilities during times of national emergency (e.g. COVID-19 pandemic), address complaints of workplace discrimination at federal agencies, and evaluate the representation of people with disabilities throughout federal and state agencies.

• **Improve Supports for Students with Disabilities in Schools.** Increase educational support for remote and in-school learning by students with disabilities during times of national emergency (e.g. COVID-19 pandemic), expand educational support for mental health-related and cognitive disabilities, prohibit seclusion of students with disabilities, and increase the supply of special education teachers.

• **Improve Meaningful Access to Health Care.** Expand Medicaid and remove work requirements for persons with disabilities, streamline the application process for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI), remove the mandatory waiting period for Medicare benefits for persons with disabilities who are approved for SSDI, and reinstate the “medical deferred action” program for immigrant families with persons with disabilities residing in the U.S.

• **Increase Assistance to Address Poverty, Housing, and Transportation Needs of People with Disabilities.** Remove work requirements for anti-poverty programs for people with disabilities, provide equal access to housing support programs to persons with disabilities, increase funding to replace public transportation systems that remain inaccessible, and expand transportation access.

• **Protect Voting Rights.** Increase funding and make necessary upgrades for accessibility of polling places, and provide accessible absentee ballots for persons with disabilities.

• **Ratify the Convention on the Rights of Persons with Disabilities.** The international convention has been signed but not yet ratified by the United States.

### EQUAL ACCESS TO PUBLIC GOODS AND SERVICES

The COVID-19 pandemic and its devastating impact on public health and the economy have dramatically revealed the failure of government institutions to protect public welfare. The national health and economic crisis demands a redefinition of the responsibilities of government to provide and secure the rights of all citizens to equal access to public goods and services such as affordable health care, quality education, adequate housing, and environmental protection. As the United States struggles to control the pandemic and stabilize the economy, it is essential for public and private sectors to work together to create a new social contract that includes all citizens.

A right of equal access to public goods and services is deeply rooted in the values of “life, liberty and the pursuit of happiness” at the heart of the Declaration of Independence. Nearly a century later in the nation’s “second founding” after the Civil War,68 the 14th Amendment to the Constitution provided a new guarantee of equal protection of the law. A right of equal access to education, health care, housing, and environmental protection is encompassed by the principle of equal protection and today is strongly endorsed by public opinion. Our July 2020 national poll demonstrates that overwhelming bipartisan majorities of Americans believe that equal opportunity rights to these public goods and services are “very important,” and that these rights are not “secure.” Eighty-five percent believe that “the right to quality education” and “the right to clean air and water” are “very important,” while only 17% believe these rights are “secure.” A similar result (83%-10%) is shown for “the right to affordable health care.”

The federal government’s responsibility to protect these rights requires changes in federal fiscal policy, regulation of market-
driven economic activity, and government partnership with the private sector. Successive administrations since the 1980s have advocated against the growth of government spending and regulation. By prioritizing private economic activity, the federal government has substantially curtailed its responsibility to invest in and provide public goods and services.

For the last half century, the federal government has taken an incrementalist approach to supporting health services through programs such as Medicare, Medicaid, the Children’s Health Insurance Program, and most recently the Affordable Care Act. However, chronic inequities in access reflect the lack of a comprehensive approach to ensuring affordable healthcare. In 2018, approximately 14% of Americans did not have health insurance; many are racial minorities or members of marginalized groups. Despite progress made under the Affordable Care Act, the Trump administration attacked the Act in court and implemented policies to curtail its reach. These policies exacerbated the barriers to healthcare that large portions of the nation face during the COVID-19 pandemic, highlighting the need for coordinated public investment and private efforts to secure equal access to basic healthcare services.

Many children continue to be deprived of equal access to quality public education, reinforcing racial and economic disparities. These inequalities are rooted in the system of local control over public schools, requiring communities to rely on property taxes to fund their own schools. This has resulted in the concentration of underfunded public schools in low-income communities, many residents of which are predominantly racial minorities. Test scores among students in these low-income, rural, and minority communities continue to trail those in affluent non-minority communities. Policies should be developed for equitable access and increased investment in public education to provide students with equal opportunity and equip them with skills for democratic participation.

The federal government has previously played a role in the provision of safe, decent, and affordable housing for low-income families. Recently, rising rents, stagnant wages, historically low rental vacancy rates, and the severe decline of public funding for subsidized housing have led to critical shortages of affordable housing units in the United States. These shortages are exacerbated by federal policy, where decades of chronic underinvestment in renovating existing public housing and a low rate of new construction have resulted in a national shortage of seven million affordable homes, disproportionately impacting minority communities. Addressing the housing crisis in the United States will require a strategy beyond expanding the number of available housing units; it must also include policies to increase stagnant wages and purchasing power so that citizens can pay for the basic shelter they need.

The United States has previously been a leader in developing concepts and strategies around environmental protection. The Trump administration rolled back many existing environmental protections, embracing a “business-friendly” agenda that experts and some companies say will be detrimental to the long-term interests of the private sector. The impact of this rollback disproportionately affected low-income families and communities of color, which have historically had greater exposure to toxic pollution and environmental degradation.

With the United States reeling from major public health and economic challenges, now is the time for a transformative 21st century social contract, under which the nation can finally break out of its self-reinforcing cycle of economic and political inequality. A new social contract would guarantee every American equality of access and opportunity to benefit from expanded public investment in public goods and services, including health care, education, housing, and environmental protection.

**How to Reimagine Rights and Responsibilities:**

- **Establish Fiscal Policy to Promote Investment in Public Goods and Services.** Enact a framework for government taxing and spending policy that promotes equality of access and opportunity in education, health care, housing, and the environment; enact tax reform that establishes graduated tax responsibility based on income and worth, with tax incentives for private sector initiatives that would complement government fiscal policy in promoting equality of access and opportunity in education, health care, housing, and the environment; enact comprehensive relief to protect equality of access and opportunity during the COVID-19 pandemic and similar emergencies.

- **Promote Equal Access to Health Care.** Transition to a healthcare system that provides universal equal access to affordable healthcare; provide funding for health care programs targeted at minorities and low-income groups at-risk of developing COVID-19 or other chronic diseases; reduce the national shortage of physicians by expanding federal funding for residency training.

- **Promote Equal Access to Education.** Reform public education funding by disconnecting the funding of local public schools from local property taxes and expanding federal funding to eliminate inequities among school districts resulting from differential property tax bases; establish universal pre-kindergarten education; increase federal support for intervention programs that provide academic resources for at-risk youth; increase federal funds to states that provide residents with free or substantially subsidized access to public universities and community colleges; target federal funds to high school science, technology, engineering and mathematics (STEM) programs and to students pursuing postsecondary degrees in STEM; invest in trade and technical schools.
• **Promote Equal Access to Affordable Housing.** Expand funding for low-income housing, including new construction and renovation; increase federal mortgage assistance and relief programs; expand Earned Income Tax Credit to assist low-income home buyers and renters; develop a programmatic strategy to address homelessness.

• **Promote Equal Access to a Safe Environment.** Implement a comprehensive strategy for transitioning the nation away from fossil fuels while investing in renewable energy; promote environmental justice by protecting vulnerable populations and communities from toxic and hazardous materials and other forms of environmental degradation; prohibit private and public entities from exploiting resources for economic gain within federal and state designated public lands; invest in maintaining critical physical and digital (e.g. broadband) infrastructure.

• **Promote Fair Labor.** Guarantee all members of the national workforce the opportunity to earn a ‘living wage’; reaffirm and enforce the right to engage in collective bargaining; address systemic racial and gender discrimination in the workplace.

A right of equal access to education, health care, housing, and environmental protection is encompassed by the principle of equal protection, and today is strongly endorsed by public opinion.
IV. Due Process: Fairness and the Rule of Law

IMMIGRATION

US exclusionary immigration policies and practices have violated longstanding domestic and international standards of due process and accountability. The Supreme Court has long established that procedural due process protections extend to foreign migrants seeking entry, and US ratification of the 1951 United Nations Refugee Convention binds the US to international treaty obligations to secure the rights and safety of asylum seekers. Recent US policies have been inconsistent with these standards, including the summary removal of refugees, drastic limitations on the right to asylum, the forcible return of refugees to conditions of serious danger from which they fled, the separation of children from families, the denial of access to counsel, private government contractors operating for-profit substandard migrant detention facilities, the ban on asylum claims during the COVID-19 pandemic, and the creation of health hazards for asylum seekers by locking them up in detention centers.

A third rail of American politics, immigration has long been a source of controversy in our national discourse. Immigration policy has been torn between competing visions of what the United States should be—a nation of immigrants based on an inclusionary vision that imagines a broad pathway to the rights and responsibilities of citizenship, or a walled-off nation based on an exclusionary vision that imagines immigration as a threat to the security of current citizens. U.S. politics and media have recently been flooded with images of the latter: children piled into cages at detention camps, migrant caravans “invading” the southern border, and court battles over walls and travel bans.

Tensions over these competing visions of immigration have marked most of America’s history. In the late-19th and first half of the 20th century, immigration policies actively discriminated against Asian and Middle Eastern immigrants, favoring literate European nationals, and numerically restricting the number of people who could seek refuge in the US. In the decades following World War II and the Holocaust, the US was at the forefront of an international human rights movement, implementing changes in domestic policy to protect asylum seekers from persecution, end quotas based on nationality, and affirm constitutional protections for migrants seeking entry. At the same time, exclusionary xenophobia produced new caps on immigration from Mexico and Latin America. Today, U.S. laws guarantee due process rights for immigrants and safety for refugees, reflecting the legal basis for a rights-oriented vision of America, despite attempts in recent years to undermine it.

Our July 2020 national poll reveals that “events of recent months” (COVID, economic crisis, anti-racism demonstrations) have caused 36% of Americans to have “more respect” for immigrants, and only 9% to have “less respect.” In addition, 62% believe that “immigrants facing persecution or violence in their home countries have a right to seek asylum in the US,” and 64% agree that “new immigrants are good for the US.” In the past several years, however, the Trump administration has made it more difficult for immigrants to enter the US, including severely curtailing the right for refugees to seek asylum.

Following the creation of the U.S. Customs and Border Protection Authority in 2003, serious problems emerged with due process and accountability at the border. Despite thousands of complaints of physical, sexual and verbal abuse, and property theft, over 90% resulted in “no action” decisions against border agents. The Trump administration has expanded the impunity of CBP by limiting public information about the scope of misconduct and authorizing summary removal of migrants without a judicial hearing. New expedited removal programs implemented in 2020 targeted Mexican and Central American migrants for removal within 10 days, precluding any time for detailed screenings and legal counsel. The Trump administration has also increased hurdles for asylum seekers by raising the standards for “credible fear” interviews, the first step in the asylum process. In 2018, then-Attorney General Jeff Sessions reversed policies allowing asylum for victims of domestic violence or gang violence, dramatically decreasing acceptance rates in some localities.

Through a series of interlocking policies and programs, the Trump administration has severely limited the ability of immigrants to seek asylum at the southern border, cutting refugee admissions to a trickle. These programs included a “metering” policy limiting the number of individuals who can make asylum claims at the border; Migrant Protection Protocols, which returned Central American asylum seekers to potentially dangerous conditions in Mexico while awaiting decisions on their claims; and bans on asylum to immigrants who do not present themselves at a recognized port of entry. Another program required Central American migrants to present themselves for asylum in the countries through which they transit, including Guatemala, El Salvador, and Honduras, despite longstanding concerns about violence and persecution in those countries.

The most notorious recent immigration policy was the separation of migrant children from their parents and caregivers at the border, scattering them among 100 Office of Refugee Resettlement shelters and other sites across the country. Internal government memos show that this policy—which effectively forced migrants to choose between remaining in their home countries in dangerous circumstances with their children, or leaving their children behind—was explicitly intended to deter asylum seekers.
Following nationwide criticism, the Trump administration ended the family separation policy in June 2018. Since the official end of the policy, however, more than a thousand additional children have been separated from their families. The total number of children separated since the implementation of the separation policy in July 2017 is estimated to be more than 5,400. While in detention facilities, separated children and unaccompanied minors were often subject to abuse, including hundreds of reported cases of sexual abuse by adult staff members.

The vast majority of immigrants facing removal do not have access to legal counsel. Even young children are expected to shoulder the cost of counsel or represent themselves in immigration court. As a result, only 37% of all immigrants are able to secure legal representation in their removal cases. An additional problem that confronts due process in immigration courts is the severe shortage of immigration judges, with hearing backlogs of over a year and a half, often resulting in those with valid claims ultimately giving up their right to a hearing. An accelerated “rocket docket” system introduced in 2019 limited refugees’ ability to appear in court; in some 17,000 cases, 80% resulted in absentee removal orders, increasing the likelihood that refugees would be sent back to conditions of danger.

Private businesses and corporations are contractors in the U.S. immigration system, operating detention centers and conducting surveillance of asylum seekers. Private prisons became the federal government’s default detention facilities for undocumented immigrants during the Trump administration, housing more than three-quarters of the average daily immigration detainee population. Private prison contractors profit from the detention of migrants by implementing cost-cutting measures. Human rights organizations have reported on contracted facilities with sordid, unhygienic conditions, inadequate food and water, overcrowding, physically violent staff, and lack of medical and mental health treatment in facilities.

How to Reimagine Rights and Responsibilities:

- **Secure Due Process at the Border.** Reform the border control system: mandate accountability and transparency of Customs and Border Protection, issue broad “credible fear” guidance for assessing asylum claims, require asylum claims raised in removal proceedings to be fully reviewed and if plausible to be referred to an immigration judge for determination, curtail expedited removal at the border, and reopen the green card renewal process and temporary work visas.

- **Secure Humanitarian Protections.** Reform the asylum and refugee processing system: bar the separation of migrant children from their families; prohibit the return of refugees to conditions of persecution; end the ban on asylum claims of refugees coming through transit countries; overturn the designation of Guatemala, El Salvador, and Honduras as “Safe Third Countries”; establish federal court review of “safe country” designation procedures; reinstate the Temporary Protected Status program for refugees fleeing war, famine, or natural disasters; reinstate the Deferred Action for Childhood Arrivals program, and provide pathways to citizenship for TPS and DACA individuals.

- **Secure Due Process in Immigration Proceedings.** Reform the immigration court system: increase the number of immigration judges; transfer immigration courts from the federal executive to the judicial branch; implement right to government-funded counsel for indigent noncitizens eligible for relief from removal and unaccompanied children and migrants with mental disabilities; provide access to qualified interpreters to facilitate communication with immigrants who have difficulty understanding procedures; end the detention of immigrants charged with non-felony crimes; and end the expedited removal of immigrants already in the US, unaccompanied minors, and the mentally ill.

- **Establish Accountability for Private Contractors.** Provide congressional oversight of private contractors performing immigration functions; ban private detention facilities; end private contractors’ DNA testing and surveillance of asylum seekers.
“Today, U.S. laws guarantee due process rights for immigrants and safety for refugees, reflecting the legal basis for a rights-oriented vision of America, despite attempts in recent years to undermine it.”
The U.S. is an international outlier on incarceration, holding 22% of the world’s imprisoned people with only 4% of the world’s population. The US imprisons more than two million people in federal and state prisons and jails. The annual cost of mass incarceration in state prisons is more than $80 billion, the second-fastest growing category of state spending after Medicaid. Mass incarceration threatens the mental and physical health of prisoners, and disrupts the lives of their families and communities. The high rate of COVID-19 infection in prisons has brought new attention to overcrowding and unsanitary conditions.

The U.S. Constitution provides the right to due process of law through the Fifth and 14th Amendments, measures intended to protect individuals against arbitrary deprivation by the government of life, liberty or property. These due process rights are applied unevenly and inequitably in the criminal justice system, disproportionately affecting people of color and other disadvantaged populations. In addition, the criminal justice system is both costly and ineffective, with high expenditures often unrelated to public safety.

Over the past several decades, police and law enforcement have become increasingly militarized. Through federal grants starting in the 1960s, and dramatically increasing after the attacks of September 11, 2001, local governments have obtained military gear, weapons, and vehicles, ostensibly for counterterrorism and counter-drug programs. Now, nearly 90% of cities in the US with populations over 50,000 have SWAT (Special Weapons and Tactics) Teams. Some studies have tied the rise in killings of civilians by police in certain areas to increased police militarization. Over 1,000 people are killed by police each year, with racial minorities far more likely to be victims of police violence.

The high volume of arrests in the US disproportionately targeting minority and disadvantaged populations is a result of policies instituted around the “war on drugs” in the 1980s and 1990s. While drug arrests decreased slightly from 2006 to 2015, the rate has recently increased again, even as arrests for violent crimes and property crimes have continued their downward trend. These drug arrests come at a high cost to taxpayers with no clear correlation to public safety.

Once arrested, many individuals spend long periods in jail before they are tried for a crime. Half a million people are currently in state and local jails awaiting trial. Many economically disadvantaged people are incarcerated because of their inability to pay bail, sometimes spending weeks or months imprisoned—a violation of due process and the right to a speedy trial. Pretrial detention can severely impact employment, family relationships, and mental health. The federal Bureau of Justice Statistics reports that over half the individuals charged with nonviolent crimes have their bail set above $5,000, a prohibitive cost for many. Some defendants plead guilty simply in order to be released from detention. As with other aspects of the system, pretrial detention disproportionately affects people of color, with studies finding that minorities are more likely to be required to pay bail, amounts are set higher, and they are less likely to be able to pay than non-minority defendants.

Once a verdict has been reached or a guilty plea entered, injustices continue in sentencing. In federal cases sentences are based on guidelines issued by the US Sentencing Commission, while at the state level sentencing varies according to state law. Both federal and state sentencing practices include mandatory minimum sentences and, most recently, algorithm-based assessment tools that predict the likelihood of recidivism. These practices have been criticized for taking away the sentencing discretion of judges, and for lack of transparency and removal of the ability of defendants to challenge the accuracy of information used in sentencing. More than 90% of criminal cases are settled with a plea bargain, which can lead to innocent defendants pleading guilty in order to avoid long sentences. Twenty-five states allow the death penalty for crimes, and in July 2019, the Trump administration announced the resumption of capital punishment on the federal level. In addition to constitutional issues with the death penalty, capital punishment has been shown in some cases to have executed innocent individuals, and has not been proven to be a deterrent to crime.

The rapid increase in the federal prison population before 2013 led to increased use of private prison facilities, which at their peak incarcerated 19% of federal inmates, as well as 7% of state inmates. After a 2016 report by the Justice Department found that private prisons are less safe and less effective than government-run institutions, the US government began phasing out private prisons. In 2017, the Trump administration reversed course and began using private prisons again. Despite documented flaws in prison privatization, private prisons now account for approximately 15% of federal and 7% of state prisoners. Their use has been increasing for the detention of immigrants, where private detention facilities are located in remote locations and have less accountability than government facilities.

The final stage of the criminal justice process is post-conviction release. There are approximately 4.5 million people under probation or parole supervision in the US, more than double the number of individuals incarcerated. Data show that 45% of state prison admissions are a result of violations of the probation or parole terms, accounting for 95,000 people a day. Recidivating people who have already served a prison term and are not a threat public safety costs states $2.8 billion annually. After final release, convicted felons face disenfranchisement and difficulties in obtaining employment. Only 14 states now restore
the right to vote after a convicted felon is released. Additionally, an estimated 70 million people in the United States have a criminal record that impacts their ability to find a job after release, one study estimates that this results in an annual loss of at least 1.7 million workers from the workforce with a cost of at least $78 billion to the economy. The high costs, inequities, and limited effectiveness of the criminal justice system have sparked recent bipartisan efforts to reform aspects of the system. In 2018, Congress passed the First Step Act (FSA), which expands early-release programs, increases job training and other programs aimed at reducing recidivism, and modifies mandatory minimums for drug offenses and other crimes. States have also undertaken reforms, with 35 states reducing their imprisonment rates following reductions in crime rates. Texas and Minnesota, for example, have made changes in probation and parole to improve reentry outcomes. Colorado and New Jersey have reformed pretrial detention and bail to reduce the number of people in prison awaiting trial. Kansas and South Dakota recently reformed their juvenile detention systems by creating diversion programs to keep youth out of prison, reducing the number of incarcerated youth and reducing prison costs.

How to Reimagine Rights and Responsibilities:

- **Reform Law Enforcement and Strengthen Public Safety.** Public safety reforms should be designed and implemented to redefine law enforcement, increase funding of social services, abolish “qualified immunity” (which shields police officers from accountability through civil liability), demilitarize the police, prohibit chokeholds and “no-knock” unannounced searches, eliminate racial discrimination in policing, and bar police unions from blocking disciplinary actions against police officers. The call for “defunding” should not mean abolishing the police, but shifting some funds to social service agencies that can better perform non-law enforcement functions currently assigned to police such as mental health care, drug treatment, homeless assistance, community mediation, and restorative justice. Public safety and racial justice would be advanced by making greater investment in communities ravaged by violence and the discriminatory justice system.

- **Reduce Mass Incarceration.** Review and reform federal and state sentencing codes and procedures to reduce mass incarceration and create alternatives to imprisonment, establish procedures for the early release of prisoners during COVID pandemic and similar public health emergencies, expand the release of nonviolent offenders, and create increased opportunities for home confinement under the federal First Step Act.

- **Reform Sentencing Laws and Practices.** Eliminate federal and state mandatory minimum sentencing, treat drug abuse as a rehabilitation issue not requiring imprisonment, decriminalize marijuana use, and abolish the death penalty.

- **Reduce Pre-trial Detention.** Eliminate federal and state cash bail in most cases and limit the use of pre-trial detention to violent crimes where the defendant is a direct threat to public safety.

- **Reduce Juvenile Detention.** Develop federal and state programs to shut down the “school-to-prison pipeline,” implement diversion and rehabilitation programs for juveniles who have committed non-violent crimes, prohibit the charging of juveniles as adults and holding them in adult facilities, and resentenced prisoners serving long prison sentences imposed when they were juveniles.

- **Ban Private Prisons.** Ban the private operation of prisons and detention centers.

### GUN RIGHTS AND PUBLIC SAFETY

Despite strong public support for regulation of gun sales and ownership, an increasing partisan divide and an uncompromising stance by gun lobbyists led by the National Rifle Association have repeatedly stymied efforts for gun safety. The Second Amendment right to bear arms must be balanced against the government’s responsibility to protect public safety. Given the extent of gun violence and the frequency of high-profile shootings in the US it is essential to find a balance that protects both the constitutional right and public safety. Our July 2020 national poll demonstrates that Americans are seeking this balance: while 52% believe that “a right to bear arms” is “very important,” 85% believe that “a right to personal safety” is “very important.”

In March 2018, hundreds of thousands of young people walked out of school and marched on their local statehouses and on the Capitol in Washington, DC, to advocate for stricter controls on gun sales and ownership. The March for Our Lives was initially organized by students at Margery Stoneman Douglas High School in Parkland, Florida, where a school shooting had killed 17 students. During the year following the mobilization, 26 states passed 67 different laws strengthening gun control, in efforts led and supported by both Democratic and Republican public officials.

Despite those changes, federal gun safety laws failed to be enacted following the protests; in fact, no major gun regulation has been passed in years. These trends reflect the crisis of gun safety in the US.

Each year, 36,000 people are killed by guns—25 times the average number of deaths per capita in peer nations. Almost half of Americans (44%) personally know someone who has been shot, either intentionally or accidentally. Gun ownership is concentrated within a relatively small minority of the population. Despite an estimated 393 million civilian-owned firearms in the US—more guns than people—only 30% of Americans own a gun.
Each year, 36,000 people are killed by guns—25 times the average number of deaths per capita in peer nations.
Of these owners, 37% own more than one gun, and 29% own five or more. Gun owners are predominately white, older, rural, and southern. Most owners cite protection as their primary reason for owning a gun. Gun fatality statistics show, however, that guns are not primarily used for self-defense. In fact, 61% of gun deaths are suicides. Deaths from homicide disproportionately affect African Americans, who are 10 times more likely than whites to be murdered with a gun.

The debate over guns centers around the Second Amendment. The Amendment is split into two clauses: a prefatory clause, “a well regulated Militia being necessary to the security of a free State,” and an operative clause, “the right of the people to keep and bear Arms shall not be infringed.” The interpretation of these two clauses has changed and sometimes clashed over the years. While the prefatory clause indicates that the right to bear arms is a collective right that exists in the context of “a well regulated Militia,” the operative clause indicates it is an individual right “of the people.” Prior to 1990, the Supreme Court framed the right to bear arms as a collective, rather than an individual right. More recently, however, the predominant view of the Second Amendment has shifted towards an individual right. In 2008, the Supreme Court took that view in a 5-4 decision striking down the ban of handgun ownership in the District of Columbia. In 2010, the Court held that the Second Amendment limits but does not preclude the federal government or states from regulating guns to protect public safety.

The NRA has its roots as a hunting and sporting organization for gun enthusiasts. Since becoming a lobbying organization in the 1970s, however, the NRA has taken a hard line on any regulation. Today, the NRA claims a membership of more than five million, and has significant financial strength and political influence, although it is currently embroiled in allegations of corruption. Gun safety lobbying groups, including the Giffords Law Center and Brady United Against Gun Violence work to counterbalance the NRA’s anti-regulation message with advocacy and research on the consequences of gun violence.

Federal laws regulating guns have been enacted at earlier times. These include the 1934 National Firearms Act, the 1968 Gun Control Act, and the 1993 Brady Handgun Violence Protection Act. Together these laws have implemented licensing for gun sellers and required background checks for purchasers. A ban on semi-automatic assault weapons, passed in 1994, was allowed to expire in 2004.

Other federal laws have loosened gun restrictions, including the 1986 Firearm Owners Protection Act, which prohibited a national database of firearms dealers. That law, in turn, laid the groundwork for the “gun show loophole” which allows offsite sales by licensed gun dealers without a background check. Federal laws passed in 1996 and 2003 limited government research on gun safety and information the government can collect on gun sales and trafficking. In the wake of the 2017 mass shooting in Las Vegas, Congress attempted to pass a law banning bump stocks, which allow semi-automatic weapons to mimic fast-firing automatic weapons, but the effort was unsuccessful. However, the Justice Department reclassified bump stocks as machine guns, making them illegal. Apart from that one regulation, bills passed by the House to prevent school violence and expand background checks have not passed the Senate.

In the absence of consistent federal legislation, states have enacted a complex patchwork of gun regulations across the country. Some require gun owners to obtain a permit to purchase a gun, or to license or register a gun. For background checks, 18 states have stronger requirements than federal law—for example, barring possession in the case of a domestic violence conviction. Differences from state to state include concealed carry laws, waiting periods for purchases, and limits on the type of guns and ammunition allowed. A controversial area of deregulation is “stand your ground” laws, which authorize lethal force even in situations where retreating or non-lethal force would be effective. Another area of active debate is “red flag” laws, that permit the removal of a gun from someone deemed to pose extreme risk. The lack of consistency in state gun laws has created confusion and difficulty in advocating for stronger gun regulation, and opportunity for gun trafficking from states with less regulation.

There is widespread public agreement on the need for tighter gun control. A recent Pew poll found 91% support for prohibiting gun ownership by people with mental illness. The same poll found 88% support for closing the “gun show loophole.” Other areas of potential regulation reveal a partisan split, even though a majority of people of both parties support them. For example, 71% support banning high-capacity ammunition magazines, including 87% of Democrats and 54% of Republicans; 69% support an assault weapons ban, including 88% of Democrats and 50% of Republicans.

Public opinion demonstrates that the public understands it is possible to maintain gun rights while regulating gun ownership to protect public safety. The polling indicates that additional federal and state regulation is feasible. Research has shown that states with stricter gun control measures see fewer gun deaths. Reframing the debate in terms of gun safety brings it closer to public concerns about gun violence and the government’s responsibility for protecting public safety along with the individual right to own and carry a gun.

How to Reimagine Rights and Responsibilities:

- **Mandate Gun Regulation.** The Presidents should take the lead in calling for legislation that balances Second Amendment rights with the protection of public safety. Gun regulation can be formulated that protects both the constitutional right to bear arms and the public safety.
• **Ban Categories of Gun Sales and Restrict Gun Ownership.** Federal and state legislation should ban the sale or use of assault weapons and high capacity ammunition magazines; ban the purchase and ownership of guns by persons with mental illness, individuals under 21, and domestic partners with domestic violence misdemeanor convictions (“boyfriend loophole’); and require gun owners to store guns in locked containers.

• **Regulate the Sale and Manufacture of Guns.** Federal and state legislation should require background checks for all gun sales, including at gun shows and online and in private sales; mandate a one week waiting period for gun sale approval; require the Justice Department to publish the identities and locations of gun dealers who have sold guns that have been used in crimes; and repeal federal law protecting gun dealers and manufacturers from liability in civil suits for death or injury resulting from the use of guns sold or manufactured by them.

• **Institute Federal Gun Buyback Program.** The federal government should establish a program to buy back guns from private owners in order to reduce the size of a national arsenal of 393 million guns now privately owned in US.

• **Expand Research and Polling on Gun Violence.** The federal government should support research and polling on gun violence in the US in order to provide a scientific basis and public opinion support for establishing the balance of gun rights and public safety in gun regulation.

V. First Amendment Rights

**FREEDOMS OF SPEECH AND MEDIA**

In the midst of technological revolution, freedoms of speech and media are being transformed. Stories about social media giants wielding algorithms for and against the spread of disinformation flood the news. Expanding controversies about information and truth raise questions about the responsibilities of government, corporations, media, and citizens to protect the integrity of democracy. Free speech is more than a constitutional right; it is also a cultural norm that promotes the free exchange of information and opinion in a public “marketplace of ideas.” Today misinformation and disinformation are being spread by public and private actors through both social and traditional media. Regaining control of the media landscape will require action by all stakeholders—the government, social media companies and consumers—with a mixture of external regulation, self-regulation, and media literacy education.

Freedom of speech and freedom of the press are bedrock rights guaranteed by the First Amendment and essential to constitutional democracy. Freedom of speech ranks high today among Americans. In our July 2020 national poll a super-majority of Americans (83%) believe that freedom of speech is “very important,” while only 22% believe it is “very secure.” Freedom of the press is equally important, and equally insecure.

Distrust in media has reached an all-time high, encouraged by President Trump. Prior to the Trump presidency, the term “fake news” was used to refer to false news stories spread by hoax and propaganda. During his first year in office, former President Trump appropriated the term to attack the press, claiming that major news outlets were “enemies of the American people,” undermining their legitimacy and distancing his administration from negative press.108

The former President himself was a perpetrator of both misinformation and disinformation. *The Washington Post* reported that as of July 2020, Trump had made more than 20,000 false or misleading claims during his time in office.109 Repetition of these claims had a strong negative impact on media trust among partisan lines. One poll found trust in media to be at 36%, down from 53% two decades ago. 69% of Democrats but only 15% of Republicans trust the media.110 Another poll found that 41% of Republicans and 17% of Democrats considered news stories that cast any politician or political group regardless of party affiliation in a negative light as “fake news,” even when the information is accurate.111

One major news outlet, Fox News, largely avoided criticism from the President and generally provided him with favorable coverage. An analysis of media during the 2016 election by Harvard’s Berkman Klein Center found that most media from the center-right to the far-left operated under similar journalistic norms, while far-right media, led by Fox News and Breitbart, operated within their own norms, characterized by repeated false information and hyper-partisan attacks.112

Amidst these controversies, social media have eclipsed traditional media as platforms for speech and information. The rise of social media has transformed the ecosystem in which information and opinion are disseminated. Social media are outpacing television and newspapers as news sources for Americans, with more than half of all adults reporting today that they get their news through Facebook. Social media can democratize speech by eliminating barriers to publishing content, and they can be instruments for civic engagement. According to one survey, a majority of Americans have engaged in some form of civic activity on social media in the previous year through platforms that facilitate large-scale organizing.

By democratizing speech, social media have supplanted the traditional “gatekeeping” function of the press by making it possible to publish information and opinion directly on digital platforms. By refraining from curating or editing what they publish, social media complicate the search for truth and the building of trust on which the integrity of the democratic...
process depends. Social media amplify or suppress content based on the calculations of powerful, proprietary machine-learning algorithms. These algorithms can turn social media platforms into ideological echo chambers, facilitating the spread of false information and providing opportunities for destructive disinformation campaigns.

Unlike traditional publishers who are liable for publishing defamatory material, social media platforms are not legally responsible for the content of speech that their users post or promote. The social media exemption from liability is a result of the Communications Decency Act (CDA 230) of 1996, which encourages social media sites to conduct voluntary content monitoring (e.g. to remove foul language or obscenity) without formal liability. Under this theory, internet platforms are not publishers but serve as hosts for users to post content, thereby making possible its broad distribution and democratization of speech.

Social media companies have largely refrained from content curation, except for removing certain types of speech that violate community standards, such as hate speech and calls for violence. Until recently, they have been reluctant to take on the responsibility of becoming arbiters of truth. In 2019, Facebook announced that the company would exempt speech content posted by political entities from the fact-checking mechanism it applies to other forms of speech, a decision that met with widespread criticism from news outlets, advocacy groups, and politicians. In response, Twitter announced a ban on paid political speech on its platform. While this decision may help minimize the spread of disinformation, it avoids accountability for the Twitter platform, and favors incumbent political candidates over less-established campaigns more likely to benefit from low-cost advertising on social media.

Critics of CDA 230 argue that companies are using the shield as a provision to avoid accountability for the decisions they make about what information is promoted on their platforms, as well as how algorithms enhance the reach of information likely to engage more users. The critics are divided along partisan lines, with conservatives arguing that sites such as Facebook censor conservative content, and liberals arguing for a stronger stand against disinformation and hate speech. Some critics are calling for repeal or modification of CDA 230 to create more accountability for social media platforms. Other analysts caution that CDA 230 plays an important role in protecting free speech online and promoting a forum for the free exchange of ideas.

**How to Reimagine Rights and Responsibilities:**

- **Create a Digital Public Infrastructure.** Enact federal legislation to establish a public interest mandate for for-profit social media platforms, requiring digital platform companies to support the development of digital spaces designated for public use, and requiring these companies to develop standards of interoperability, data portability, and data openness.

- **Provide Funding Mechanism for Public Interest Uses of Social Media.** Through federal and state legislation, subsidize innovation to reinvent public functions that social media have displaced, for example by taxing digital advertising to create a public social media fund to support experimental approaches to public social media platforms and new forms of investigative journalism, as recommended by the American Academy of Arts and Sciences in its 2020 report, Our Common Purpose.

- **Require Social Media Transparency and Accountability.** Enact federal legislation to require social media platforms to operate with transparent procedures in order to allow researchers, oversight officials, regulators, and journalists to understand how and for what purposes social media algorithms are designed, and to establish oversight and accountability measures to require algorithms to be used safely and responsibly to promote freedom of speech and protect against racial, gender, religious, disability, or LGBTQ+ discrimination.

- **Promote Media Literacy.** Develop media literacy education to assist media consumers in evaluating information and navigating the rapidly changing marketplace of ideas. Media literacy is critical for a democratic information system to function effectively under the principles of free speech and media freedom in the midst of technological change.

Unlike traditional publishers who are liable for any defamatory material they publish, social media platforms are not legally responsible for the content of speech that their users post or promote.
The US has struggled since its founding to reconcile the right of religious freedom with the reality of a pluralist democracy with an increasingly diverse population. Today, this struggle is taking place in politics, the court, and across American society, with claims of religious freedom increasingly receiving preferential treatment when coming into conflict with other rights—particularly women’s reproductive rights and the rights of LGBTQ+ people to non-discrimination. At the same time, a controversy has developed over the meaning of the First Amendment clause prohibiting establishment of religion, where recent Supreme Court cases have pitted the prohibition against establishment against the right of religious free exercise. The question is how to balance these competing rights in a way that is consistent and fair for all, and does not privilege religious freedom over other rights.

The First Amendment guarantee of religious freedom states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” These words consist of two independent but interrelated clauses. The ‘establishment’ clause prevents government from supporting the establishment of religion. The ‘free exercise’ clause prohibits the government from interfering with religious beliefs or activities. The battle over when, where, how, and to what degree the government may support or regulate religion has been fought on many fronts, including prayer in public schools, display of religious symbols on public property, and refusal of conscientious objectors to go to war on religious grounds. Since 1963, the Supreme Court has used a "compelling interest test" to resolve free exercise cases in which there is a conflict with other interests. Under this test, the government must prove that interfering with the right to free exercise is a compelling interest of the “highest order” and that there is no less restrictive means to achieve the same outcome. In 1997, Congress passed the Religious Freedom Restoration Act, which requires government to satisfy the compelling interest test for all laws or policies where religious exercise is burdened.

As a result of political pressure from the religious right, the balance for both the establishment and free exercise clauses seems now to be shifting in favor of a preeminent status for religious rights and certain religions over other rights and religions. While it is permissible for people with religious views to advocate for their values, it is constitutionally problematic if they begin to use the tools of government for that purpose. Furthermore, many advocates for free exercise promote protection Christians, but not, for example, for Muslims who are increasingly the targets of religious discrimination. In the past decade, 43 states have enacted laws making the practice of any form of Islamic law (Sharia) illegal, even for its common usage in inter-personal or community arbitration.

The tension between the establishment and free exercise clauses of the First Amendment has emerged on many fronts. Regarding prayer in public schools, the Supreme Court has held that school-sponsored prayer violates the establishment clause, but that students can pray privately on school grounds as long as they do not pressure others to do so.

On government aid to religious institutions, part of the first COVID-19 economic relief package, the Paycheck Protection Program, allowed taxpayer funds to be used directly to pay salaries of clergy. Prominent legal scholars have observed that this direct government funding of religious activity is difficult to distinguish from state support for religion.

In addition to challenging the bar against government support of religion, an increasingly expansive view of religious freedom can have a negative impact on the right to equal protection and non-discrimination, particularly in court cases involving LGBTQ+ rights, employment rights, and women’s reproductive rights. The most prominent example is Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, in which the Supreme Court held in 2018 that a Colorado baker’s refusal to bake a wedding cake for a gay couple because of his religious objection to same-sex marriage was an element of his free exercise. In other words, the baker’s right to free exercise justified denying the gay couple’s right to equal protection and non-discrimination. Following this precedent, more cases are sure to come: innkeepers, restaurant owners, and photographers are all using the free-exercise clause of the First Amendment to justify their refusal to serve gay customers.

Claims of religious free exercise are also challenging women’s reproductive rights. The right of a woman to choose when to bear a child is protected under Roe v. Wade and the Due Process Clause of the 14th Amendment. However, the Supreme Court held in 2014 in Burwell v. Hobby Lobby that a private company may deny contraceptive health coverage to their employees—coverage to which employees would "otherwise have been entitled" by the Affordable Care Act—based on the employer’s religious beliefs. In essence, the Court prioritized the free exercise of the employer over the employee’s right to contraceptive health care. The Court’s 5-4 majority opinion concluded that there was a less restrictive means for a woman to acquire contraceptive care, through a US Department of Health and Human Security program. The dissenting justices took issue with this reasoning, arguing that it placed an unfair burden on employees, and created a precedent under which commercial enterprises would now be able to "opt out of any law (saving only tax laws) they judge incompatible with their sincerely held religious beliefs." In July 2020 the Court upheld a Trump administration regulation permitting employers with religious objections to contraception to limit an employee’s access to birth control coverage in her employment health insurance.
The Biden administration should reexamine regulations and executive orders that affect religion and religious institutions. The goal should be ensuring that the US government lives up to its First Amendment responsibilities: first, to maintain the separation of church and state, and second, to protect free exercise—particularly for vulnerable minority religions—without harming or unfairly burdening other important rights of Americans in the process.

**How to Reimagine Rights and Responsibilities:**

- **Guarantee Equality of Rights.** Confirm through federal legislation or executive order that all constitutional rights must be equally protected and no single constitutional right is privileged over other rights. The legislation or executive order should establish that there is a compelling interest in creating practical methods of providing for equal application of rights and not denying or unfairly burdening the exercise of a right when it comes into conflict with another right, e.g. religious freedom versus freedom from invidious discrimination.

- **Reestablish Balance of Claims of Religious Freedom with Other Constitutional Rights.** Rescind provisions of Executive Order 13831 unreasonably shifting burden of exercising constitutional rights to patients of faith-based health care providers; reinstate Executive Order 13831 requiring faith-based health care providers to refer patients to reasonably accessible comparable-cost alternative providers for reproductive or contraceptive services; and restore Executive Order 11246 protection of LGBTQ+ employees of faith-based government contractors against employment discrimination resulting from employers’ claims of religious freedom.

- **Protect Free Exercise of Religion Equally for All Religions.** Bar religious discrimination against Muslims and the free exercise of their faith in the United States.

- **Encourage Interfaith Partnerships.** Encourage interfaith partnerships against religious discrimination, hate crimes, and discrimination by religious institutions against the exercise of other constitutional rights.

**HATE CRIMES**

Hate crimes are criminal offenses motivated by animus against individuals or groups because of their race, ethnicity, religion, sexual orientation, gender identity, or disability. They carry enhanced penalties because of their broader effect on the communities in which they are committed—as well as on society as a whole—compared to other kinds of crime. Data from the Federal Bureau of Investigation shows that the number of reported hate crimes rose by 17% in 2017 and remained comparably high in 2018, the most recent year for which official reporting is available. Hate crime violence against individuals, rather than property, hit a 16-year high in 2018. According to national advocacy groups, hate crimes are vastly undercounted because many are not reported to the police. The Justice Department’s National Crime Victimization Survey, which relies on a sampling of 95,000 households, estimated that between 2005 and 2014, U.S. residents experienced an average of 250,000 hate crimes annually, half of which were not reported.

On August 3, 2019, a 21-year-old man walked into a crowded Walmart in El Paso, Texas, carrying a high-powered rifle and opened fire on the predominantly Hispanic crowd of shoppers leaving 22 people dead and another 24 wounded. While the mass shooting initially seemed an act of senseless brutality, the perpetrator’s motive was soon revealed in a document which chillingly justified the attack as “a response to the Hispanic invasion of Texas.”

While laws explicitly covering hate crimes have only existed for the last 50 years, hate-motivated crimes have occurred since the founding of the United States, including genocide against Native Americans, slavery, lynching, anti-Chinese violence, and criminal conduct by the Ku Klux Klan.

Hate crimes against Black and Jewish people are the highest percentages of reported hate crimes, at 27% and 12% respectively. Recent reports show increases in hate crimes against nearly all other categories of victims, including Latino, gay, disability, transgender, Sikh, Asian, and white. Offenders are typically not associated with an organized hate group and over 90% do not know their victims.

The recent spike in hate crimes can be attributed in part to a rise in public hate speech, which encourages animus against targeted groups and creates a permissive public environment in which offenders feel free to express their hatred through violent acts. This surge in hate speech took place during the Trump administration. Former President Trump frequently made attacks verbally and on social media against Mexicans, Muslims, Jews, African Americans, and Native Americans. In addition, he condemned white supremacist violence—for example, by saying that “there were very fine people on both sides” of a white supremacist rally in Charlottesville that led to the death of a counter-protestor.

Research indicates there is a relationship between hate speech and hate crimes. Studies showed a rise in hate crimes following the 2016 election in counties where President Trump won by a large margin or recently held a campaign rally. There has also been a surge in hate crimes against Asian Americans in response to the coronavirus, with reports of discrimination, harassment, threats, and violence sparked by the false claim that Asian Americans are to blame for the virus. Right-wing media and the former President exacerbated this trend by characterizing...
the disease as the “China” or “Wuhan” virus, or even “Kung Flu,” despite specific warnings by the FBI of a likely rise in hate crimes against Asian Americans.

Federal hate crime laws cover crimes motivated by animus against individuals or groups because of their race, color, religion, national origin, sexual orientation, gender, gender identity, or disability. There are gaps in federal reporting on hate crimes, resulting in part from the Justice Department’s reliance on voluntary reporting from state and local law enforcement. Most states have hate crime statutes, but these vary widely across jurisdictions, resulting in unequal protection against similar crimes in different jurisdictions. Many state hate crime laws do not include gender, disability, sexual orientation, or gender identity. Four states have no hate crime laws at all.128

Knowing the nature and magnitude of the hate crime problem is essential for resource allocation and crime deterrence. Targeted communities are more likely to report hate crimes and cooperate in investigations if they believe law enforcement authorities are ready and able to respond to hate violence. For this reason, all states should have hate crime statutes that cover all targeted categories.

**How to Reimagine Rights and Responsibilities:**

- **Strengthen Enforcement of Hate Crime Laws.** Increase the capacity and funding of Department of Justice enforcement of federal hate crime statutes covering race, ethnicity, religion, gender, LGBTQ+, and disability hate crimes; strengthen the mandate of federal law enforcement agencies to investigate and prosecute hate crimes; and enact state hate crime statutes to cover all targeted categories.

- **Increase Hate Crime Data Collection.** Centralize hate crime data from federal, state, and local law enforcement agencies in the Department of Justice, train state and local law enforcement agencies to collect and report comprehensive hate crime data to the FBI, and require every state to collect and report hate crime data.

- **Provide Federal Resources for Reporting and Deterring Hate Crimes.** Increase funding for programs to encourage victims to report hate crimes to local law enforcement; provide federal support for programs to strengthen law enforcement trust and relationships with communities of color and immigrant communities; provide federal funding for states to establish hotlines for reporting hate crimes, training on data collection and reporting and coordination among law enforcement agencies; and provide funding to support nongovernmental citizen mobilization programs to address and deter hate crimes.
VI. Privacy

PERSONAL DATA AND SURVEILLANCE

Recent decades have brought dramatic technological change to American society, shifting conceptions of what a “right to privacy” entails and why its protection is urgently needed. Historically, privacy rights in the US have been focused on protecting individuals from government intrusion. Recent trends, however, indicate that privacy protections must target the private sector as well as the government. The severity of privacy violations and the disturbing details of breaches of private information have created a rare area of political common ground.

A December 2019 poll found 79% of Americans favor enacting a law to protect online consumer data, and 65% of Americans identified data privacy as “one of the biggest issues our society faces.” The issue cuts across party lines, with 83% of Democrats and 82% of Republicans favoring stronger data privacy protections. A recent Pew Research poll revealed that four out of five Americans feel they have no control over the data that corporations and government collect about them. The same percentage feel that the risks outweigh the benefits of corporate collection of personal data, and three out of five feel similarly about government collection. Our July 2020 national poll corroborated these findings, with 82% reporting that a right to privacy is “very important,” but only 16% believing that the right is “secure.”

The five most valuable companies in the world at the end of 2019 all collect and monetize data as part of their business model. This includes discrete data directly solicited from customers; behavioral data gathered without conscious awareness by consumers (for example through tracking cookies online); and indefinite data obtained by companies with no relationship to targeted consumers, often through third parties.

Private data brokering is almost completely unregulated. Most legislative protections predate the digital era, and what little regulation exists is inconsistent and decentralized. The unprecedented capability of data brokers to collect, aggregate, and transmit personal data without accountability makes independent consumer awareness and action nearly impossible. Private data is divulged on a regular basis through security breaches, with thousands of breaches exposing hundreds of millions of records each year.

Modern data privacy protections must reach both technology companies and law enforcement agencies. Technology companies have a strong vested interest in obtaining customer data for competitive advantage, and law enforcement agencies see opportunities for invasive surveillance in collaboration with private companies. The lack of regulation of technology company practices has led government agencies to collaborate with companies that can collect personal data and conduct surveillance without oversight.

The National Security Agency and other intelligence agencies now utilize close connections with technology companies to access information and surveil individuals at a level and scale that would have been impossible only a few years ago. Immigration and law enforcement agencies increasingly use social media and Internet data mining to gather information about individuals which is fed into complex algorithms for threat assessments. The current administration’s reduction of protections for non-citizens has accelerated this erosion of rights. Local law enforcement agencies in municipalities across the country have begun to use private sector algorithms to become more predictive in crime prevention. Legal challenges have demonstrated that these algorithms can be racially biased, but in the absence of regulation many discriminatory uses of these new technology programs are going unrecognized. Algorithmic surveillance can increase the likelihood of racial, gender, religious, or other illegal discrimination.

The emergence of the COVID-19 pandemic has emboldened both private and public entities to increase their efforts to collect private personal information in the name of public health. Though the public has been generally supportive of protective measures, contact tracing and other surveillance measures face increasing skepticism, with only 41% of Americans willing to use a contract tracing app, and rights groups expressing concern that such tracing could be misused against marginalized groups. In our July 2020 national poll, 54% of Americans said they would be unwilling to sacrifice their personal privacy for public health protection.

Personal data has emerged as a central deterministic feature of life in the 21st century. Social media algorithms dictate the interpersonal connections that establish the growing hierarchy of social “influencers.” In the post-pandemic economy, employment may be determined by a person’s medical history, behavior in personal time off, and even genetic predispositions. As personal data has become our destiny, individuals have ever-decreasing control over its collection and dissemination throughout the private and public sectors.

Privacy regulation of government entities is outdated, decentralized, and ineffective. The principal federal oversight body, the Privacy and Civil Liberties Board, suffers from a lack of resources and internal turnover, and is limited to performing an advisory role with little authority. Private sector personal data collection is regulated by the Federal Trade Commission, whose principal means of enforcement is to enter into consent agreements to penalize companies for violating privacy agreements. The rapid pace of growth and development within
the data market suggest that large penalties will not change social media practices that undermine the right to privacy without new laws and regulations that prescribe standards for the collection, storage, and sale of personal information.

The European Union (EU) has begun to respond to privacy violations by private entities that collect consumers’ information. The most sweeping regulation was the EU’s recent passage of the General Data Protection Regulation (GDPR), but the legislation has yet to result in any major fines against companies for privacy violations. California became the first American state to pass comprehensive data privacy legislation, the California Consumer Privacy Act of 2018. The law bears similarities to GDPR, but is still in its early implementation stages.

How to Reimagine Rights and Responsibilities:

- **Require Transparency and Security.** Enact federal legislation to require the subject’s “conscious consent and opt-in” to any personal data that companies collect, mandate strict standards for maintaining data security, and provide remedies to data subjects for breaches of data security.

- **Establish National Privacy Policies and Standards.** Require all government and private sector organizations and entities to state in clear and understandable terms what personal data they collect, how it is used, when and how it is disseminated, how long it will be retained, and what rights individuals have to change or opt out of collection or sharing following their initial conscious consent.

- **Protect Agency of Personal Data Subjects.** Prohibit indefinite data collection by companies with no relationship to targeted personal data subjects, establish a central data registry and a single process by which individuals can de-list information, and limit collection and sale of specific forms of data, such as personal health and financial information.

- **Create Government Accountability Agency for Personal Data Collection and Distribution.** Establish Federal Privacy and Data Commission based on regulatory model of Securities Exchange Commission with broad authority to promulgate and enforce privacy standards for personal data collection by government and private sector organizations and entities.

**Conclusion**

As this report has shown in a range of domains, our country is currently in the midst of a retrenchment of many of the rights supporting Americans’ equality and freedom. In area after area—including democratic process, equal protection, due process of law, free speech, and privacy—rights have been rolled back in the past several years. In some cases, these rollbacks have been the result of a lack of balance between freedom and equality.

In others, they have been caused by the politics of division that seek to privilege one group of Americans over others. In many areas of American life, it is the most historically marginalized groups—people of color, women, LGBTQ+ individuals, and people with disabilities—that have borne the brunt of this retreat on rights, a reality that has only become clearer in the context of the coronavirus pandemic that has both highlighted and increased inequality in our nation.

As the results of our national poll have shown, Americans are well aware that their rights are under attack, with bipartisan supermajorities expressing profound worry over the state of rights in our nation in all areas. In every area, Americans express profound beliefs in the importance of these rights, even while they say rights are increasingly fragile and insecure. That very awareness presents an unprecedented opportunity to expand and support rights. Following the recommendations laid out in each of this report’s issue areas would restore rights in some areas and reimagine them in others. That would bring about a transformation toward a more equal liberty for all Americans today and future generations.
Endnotes


4 There is a debate about whether “White” should be capitalized when used in relation to “Black” or other racial designations when these are capitalized. See Kwame Anthony Appiah, “The Case for Capitalizing the B in Black,” *The Atlantic*, June 18, 2020. Recognizing that both “White” and “Black” as racial designations include a similarly wide diversity of people, we have chosen to capitalize both terms.


9 Ibid.


23. Ibid.


53. Ibid.


65. Ibid.


67. Ibid.


77. Ibid.


91. Ibid.


99. Ibid.


102. Ibid.


104. Ibid.


106. States where universal background checks are enacted: WA, OR, CA, CO, MA, NY, CT, RI, DE, IL, HI, NJ; states with only partial background checks: NE, IA, MI, NC, PA, MD.


116. In Tennessee, a bill (SB 1028) created a 15-year prison sentence for, “anyone who helped a ‘Sharia organization,’ which was defined as two or more people acting to ‘support’ Sharia.” http://www.capitol.tn.gov/Bills/107/Bill/SB1028.pdf.


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