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As we begin to experience the 2024 United States presidential election, likely a Biden-Trump rematch, it helps to reflect on American democracy considering the extraordinary political events set in motion by the last presidential election cycle. By assessing the impact this momentous election has had on democratic values, constitutional rights, voting behavior, and electoral institutions, this special issue takes steps toward understanding some—but by no means all—of the implications surrounding this watershed election. As media outlets broadcast stories about foreign and domestic attempts at election interference in the United States, the rise of artificial intelligent (AI) generated campaign ads, and Donald Trump’s unsubstantiated claims of election fraud, government institutions are experiencing what appears to be democratic backsliding. Attempts to limit ballot access by state legislatures, intimidation of election workers, and challenges to presidential power are entwined in ongoing criminal and civil cases against Donald Trump. As the legal and political fallout from violence at the Capitol on January 6th aimed at undercutting the results of the 2020 election continues to unfold, Americans are broadly dissatisfied with the way democracy is working in America.¹ This special issue brings into focus a few of the myriad ways democracy is changing considering the 2020 United States Election.

The authors’ research examines the status of key First Amendment rights, voting rights, and American political values as they emerge from the 2020 United States Election. The three articles comprising this special issue assess the impact of the 2020 election cycle on American democracy by focusing on free speech, electoral institutions, and democratic values. They are all linked by their admonitions regarding legal and institutional reforms, but they differ in the aspects of democracy they scrutinize. In the first article, George Klay Kieh, Jr. investigates key events just before, during, and since the 2020 election to understand how these political occurrences influence American political values. He argues that some of these events, such as the “Big Lie,” are ongoing. Others, such as the January 6th insurrection, are ripe to repeat themselves in some fashion. He then discusses how these poignant political events have either set in motion or exacerbated existing trends, and their implications for American democracy.

In the second article, Scott Hofer draws attention to the impact of pervasive election misinformation on free speech limits. Specifically, he investigates whether profit incentives, the threat of lawsuits, and judicial institutions influence political actors’ willingness to make false statements. Analyzing data from Dominion Voting Systems’ lawsuits against several conservative media outlets and filings by the Trump legal team disputing the outcome of the 2020 election, he finds that media outlets whose audiences are Trump supporters promoted misinformation, but outlets were eventually deterred to a degree by defamation lawsuits. He also finds that the Trump legal team’s willingness to make false statements is constrained by courts’ institutional requirements to speak truth under oath. He discusses political and scholarly implications these findings have for the future of free speech in American democracy.

¹ Gallup reported a new record low of 18% approval in its measure of satisfaction with the way U.S. democracy is working. See: <https://news.gallup.com/poll/548120/record-low-satisfied-democracy-working.aspx#:~:text=Satisfaction%20has%20dropped%20since%20then,democracy%20nine%20times%20since%201984>

The third article is an investigation of racially biased voter suppression efforts and its historically cumulative effects on Black voters' ability to overcome barriers to voting and do so without fear of reprisal. Tiffany Henley, Samuel Brown, Norou Diawara, Md Iqbal Hossain, and Gregory Rivera utilize 2020 Cooperative Election Survey data to analyze levels of individual voter turnout from a Public Choice Perspective. Their analysis predicts voter turnout in terms of several types of costs to voters: voter identification, wait lines, registration, transportation, absentee ballot, polling location, qualifications, and unique costs presented by COVID-19. They generally find Black voters susceptible to heightened voting costs, compared to white voters. The authors argue that continuing down the path of race-based voter suppression, including some additional barriers in the 2020 election created by the COVID-19 pandemic, may result in further democratic backsliding when it comes to exercising equal voting rights for Black Americans.

The conclusions drawn by the authors are contextualized by ongoing partisanship across political institutions, eroding confidence in democratic institutions, and continuing failures to promote racial equity in political influence. As Levitsky and Ziblatt (2018) show, democracies often fail after a period of incremental deterioration brought about by irresponsible and polarized parties and the emergence of "norm breakers" willing to exercise executive authority over other democratic institutions. Responsible parties are those who, when in power, prove capable of following through on advertised policy positions. In the current hyper-partisan political environment, responsible parties have found this increasingly difficult. It is precisely in this environment that the "norm breaker" engages in constitution-challenging actions that are beyond the norms of political tactics typically used to assert influence over checks to authority (i.e. opposing parties, legislative and judicial institutions, media, and economic interests). For example, the Trump Administration's attempts to pressure foreign (Ukrainian president) and domestic (Georgia secretary of state) officials to bend to his political will and the profuse use of acting secretaries to circumvent Senate approval are incremental challenges to the accepted democratic order that precede his actions on January 6th. As these norm-breaking trends take hold, Democrats have ramped up discussions of expanding federal courts and eliminating the Senate filibuster. While these are not executive actions, they would be done in concert with a Democratic president and challenge existing norms, and therefore, may exemplify the types of political maneuvering that inadvertently legitimize Trump's norm-breaking actions. The cumulative effect of incremental challenges to existing democratic norms, according to Levitsky and Ziblatt, results in breakdowns of democracy from within and the rise of authoritarian leaders who cling to power, as have occurred in Germany, Italy, Venezuela, Chile, Turkey, Hungary, and other countries. The consequences of the 2020 election for American democracy are best understood against the backdrop of the ongoing trends associated with democratic backsliding.

While placing narrow self-interest above democratic values is not new nor limited to the American experience (see Kieh and Henley et al), recent events incited by Trump and his supporters' reactions to the 2020 election appear to have catalyzed anti-democratic tendencies across the American political landscape. For instance, Senate Republicans failed to convict Donald Trump in his second impeachment over having encouraged an insurrection on January 6th, 2021. Sidestepping its institutional responsibility to hold actors hostile to democracy accountable in favor of maintaining his own party's unity, Republican chamber leader Mitch McConnell said that while Trump is guilty criminal and civil justice systems should decide his case rather than in Congress. Besides the violent attempt to stop official election proceedings, the partisan

unwillingness to hold political leaders accountable is disturbing. For example, Bright Line Watch data show that about two-thirds of Republicans believe Trump committed no crimes across any of the cases against him, including hush money payments, classified documents, attempts to overturn the 2020 election, and January 6th related actions. While these cases are still ongoing, much of the evidence is public information or was witnessed on live television, such as Trump's directive to march to the Capitol and "fight like hell" on January 6th. Perhaps a conviction would move more Republicans to believe that Trump committed crimes, as they did after the release of evidence in the documents case (Bright Line Watch), but a lot of movement in the current hyper-partisan political environment seems unlikely.

Anti-democratic tendencies can also be observed in Trump's statements that election fraud provides grounds for suspending the Constitution. Disconcerted experts place this event amongst the most important and abnormal developments; others include storming the Capitol on January 6th, the fake electors' scheme, and pressuring state election officials to "find" votes (Bright Line Watch). These events, among many others, have been widely broadcast in the media as one would expect in a healthy democracy. However, while covering these political events, election misinformation is spread through media targeted at Trump supporters (see Hofer). But also, regular coverage of political speech, such as "The Big Lie," by other media outlets (see Kieh) provides credence to these anti-democratic tendencies. Most experts, as well as a bipartisan public, say the media should cover Trump like other candidates (Bright Line Watch), in the spirit of democracy. These data suggest that experts and the public alike view journalism and the media's role as critical to upholding democracy. Yet, as Hofer argues, defamation suits and judicial checks on the limits of free speech are effective only in the courtroom setting. Very few constraints on election misinformation appear to be effective in the public sphere, which may be troublesome for American democracy in terms of quality of political information and trust in elections support democratic health.

Democratic values held by Americans may not be as vigorous as what political scientists gauged for decades as robust support for democracy. American democratic stability could be susceptible to tendencies associated with partisanship and polarization. The American public's apparent prioritization of political preferences over democratic principles may lead to an inability to check authoritarianism via elections (Graham & Svulik 2020). As intense partisanship continues to pervade American politics, understanding the contours of American democracy against a backdrop of partisanship and polarization in light of the 2020 election will be crucial to ascertaining ways to guard against authoritarianism.

Partisanship in government brings about gridlock and anti-democratic decisions in the name of political expediency. Political choices often ignore the priorities of Black and brown communities as well. For example, Democrats decided to spend political capital on infrastructure and green energy investments over the John Lewis Voting Rights Act and other voting rights legislation, vexing many Black leaders in 2021. Henly et al. show that states continue to enact barriers to participation that disproportionately affect Black Americans. They discuss the importance of addressing political inequalities that overlap with race because 1) empowering Black and Brown voices in the political system bolsters democratic legitimacy and 2) authoritarians often exploit and scapegoat vulnerable populations. By decreasing racial inequities and improving democratic functionality, the United States would also be guarding against the rise of authoritarianism, which

Kieh points to as a major threat to American democracy amid the ongoing development of anti-democratic forces. He argues that January 6th, the “Big Lie,” Trumps authoritarian rhetoric, the scapegoating of racial minorities, and partisan otherism all set an example for what American political values entail and what is acceptable in American politics. The politics of polarization and racial and ethnic discrimination (and far worse) are hallmarks of authoritarian leaders who arose from democratic breakdowns in the cases analyzed by Levitsky and Ziblatt (2018). Hofer makes the case that profit incentives and broad free speech protections, combined with the incentives brought about by partisan political expediency, create the conditions necessary for election misinformation and other conspiratorial claims to proliferate. He argues that the judiciary does check media outlets to a degree but are incapable of fully checking the promulgation of misinformation using only legal consequences. Collectively, authors in this issue caution readers about how these troubling trends are likely to result in norm erosion, anti-democratic values, institutional deterioration, and democratic backsliding in the United States.

As observers continue to express concerns about the health of American democracy, another perspective suggests American democracy may be capable of resilience to heightened threat levels on its path toward political equality. Experts rate U.S. democracy a 70 out of 100, which is about 10 points higher than it was at the time of the 2020 election. Nonetheless, 90% of these experts say a Trump nomination in 2024 is a threat to democracy, with more than half of them saying it is an “extraordinary threat” (Bright Line Watch). However, Claassen (2020) demonstrates how public support for democracy tends to oscillate in contrast to democratic backsliding. Thus, if democracy is eroding in America, then we might expect public opinion to increasingly support it going forward. Furthermore, examples of political institutions repudiating Trump and his supporters’ efforts provide at least some reason for optimism. As all three articles in this issue point out, judicial institutions are actively pursuing dozens of charges against Trump and his co-conspirators for various forms of election interference and abuses of office.

As we move through this election cycle and beyond, policy making institutions remain mired in partisan gridlock. In particular cases, such as implementing simple majority votes for Senate judicial confirmations, some institutional reforms have been implemented to get the machinery of government working. Considering further institutional changes may help scholars and government officials improve democratic legitimacy and the performance of American democracy in the future. While Levitsky and Ziblatt (2018) warn that too much institutional reconfiguration risks legitimizing authoritarian uses of the same, it is worth considering what set of institutional reforms might stabilize democracy in the United States. First, full filibuster reform in the Senate would pave the way for elected majorities and issue coalitions to translate public opinion into policy. Term limits are a popular solution for many political problems, but political science warns against them in legislative settings, as research demonstrates they sever the electoral connection (Clark and Williams 2014) and contribute to polarization (Olson and Rogowski 2020). However, limiting the current lifetime appointments on the Supreme Court and federal judges may help keep judicial decisions more generally aligned with public opinion by increasing their turnover on a regular predictable basis while maintaining judicial independence. A constitutional amendment affirming the right to vote, would help stabilize American democracy by mitigating partisan fights over policy and litigation and bolster public confidence in elections (Hasen 2024). Another institutional change that Terry Smith (1996) argues is constitutionally permissible on textual, equal protection, Seventeenth Amendment, and *stare decisis* grounds, is districted U.S. Senate seats. That is, two single-member districts for each state’s representation in the Senate. This

reform may possess the potential to remedy some racial biases embedded in political institutions as well as further democratize the U.S. Senate.

While certainly not an exhaustive list of potential democratizing reforms, scholars and reformers should consider these and others in pursuit of stabilizing democracy in America and ensuring equal political access across oppressed groups. Doing so will require careful consideration of potentially legitimizing authoritarian tendencies, but Trump may have already been legitimized. Many of these institutional solutions may appear self-serving for the party that leads the political process in the short run, but they are more democratic and therefore may have the capacity to stabilize American democracy.

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