



BY ROBERT A. LEVY

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## CHAIRMAN’S MESSAGE

# Voting Reforms: Setting Priorities

In key battleground states, beleaguered election officials are considering retirement. Some Republican officeholders who resisted Donald Trump’s grab for an extended presidency will be facing primary challengers. Apparently the endgame is to replace those officials with loyal Trump acolytes who might be persuaded to substitute Republican for Democratic electors if a tight 2024 statewide race goes the wrong way. If that sounds like scaremongering, some polls indicate that more than 70 percent of Republican voters have swallowed the ex-president’s false claims of significant election fraud.

So how have federal and state governments reacted to the risk of election sabotage? Predictably, political messaging has trumped, and the focus has been on voting rights—a distinct and less urgent issue. In Congress, two major bills failed. The first, the Freedom to Vote Act, consisted mainly of voter-access provisions that Republicans declined to support. Many of those provisions were unconstitutional. Even if a state were to inhibit voting, the remedy (usually via the judiciary) should target the specific violation, not unsubstantiated offenses across the country.

The second, also partisan, bill—the John R. Lewis Voting Rights Advancement Act—was designed to restore preclearance rules, which the Supreme Court invalidated in 2013, for changes in voting practices by designated states, mostly in the South. Chief Justice John Roberts wrote that the formula was obsolete and questioned its selective application. He also noted that black voter turnout had “come to exceed white voter turnout in five of the six states originally covered.”

Nonetheless, Democrats were intent on imposing federal remedies for what they perceived as discriminatory and politicized voter restrictions at the state level. President Biden demagogued Georgia’s new law as “Jim Crow on steroids.” He called the Texas law “un-American” and an “assault on democracy.” But a dispassionate examination of the contents of these laws suggests otherwise. Yes, some COVID-19 emergency measures were rolled back. But the rules going forward are, on balance, less restrictive than pre-COVID-19 rules. If those rules were “un-American,” why no objection until now? And if Republican legislatures are imposing burdensome restrictions, why so little angst over more draconian regulations in Delaware, Maryland, New York, and other Democratic states?

That’s not to say Republican-controlled states haven’t occasionally altered the rules to win elections rather than promote democracy. In too many instances, unproven assertions of election fraud have been a pretext for unnecessary voter impediments. But here’s the good news: turnout is setting records, there are more ways to vote, registration is easier, and fraud is minimal. The task, therefore, is to find the right balance between voting rights and election integrity—state by state, not a nationwide, one-size-fits-all solution.

Separately, there are bigger fish to fry in pursuit of voting reform. Preventing postelection mischief that could subvert the process of vote counting and certification is a more pressing problem. Election experts have suggested several state-based improvements: bar harassment of election workers, prohibit arbitrary removal of election administrators, establish an audit process and objective standards for finalizing results, codify the role of election monitors, and ban faithless electors who won’t honor their candidate commitments.

Federally, Republicans have signaled their willingness to amend the Electoral Count Act, which prescribes Congress’s role in resolving disputes. That role, essentially, should be to count the electoral votes. The vice president’s duties are purely ministerial, and Congress must follow narrowly defined technical requirements for canvassing the Electoral College. To the extent that the Electoral Count Act expands those duties, it is arguably unconstitutional.

Suppose, however, different officials within state government have submitted conflicting slates of electors, and state courts haven’t settled the controversy. In that situation, the Electoral Count Act could specify which state entity controls. Perhaps the act could also stipulate how to handle other concerns, such as invalid signatures, the wrong number of electors, or misdated votes. The goals should be definitive procedures along with diminished congressional latitude.

Despite the partisan divide over voting rights, today’s mandate is to assemble a coalition that will reaffirm the rule of law and “Stop the Steal”—not the steal that didn’t occur in 2020 but the one that might occur in 2024 or later.

*Robert A. Levy*