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RESTORING LOSERS' CONSENT: A NECESSARY STEP TO STABILIZING OUR DEMOCRACY

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INTRODUCTION

Earning the consent of the governed is a foundational principle of American government. In practical terms, the “governed” includes two perspectives: electoral winners and losers. Getting the consent of the latter is essential to maintaining stability and peace, and it is no easy task. And as evidenced by the insurrection at the US Capitol on January 6, 2021, securing losers’ consent has become more tumultuous today than at any point since the Civil War.

This study investigates the way “losers” offer their consent, how they have increasingly withheld consent in recent elections and what can be done to stabilize our democracy by securing greater consent from losing voters.

“LOSERS’ CONSENT” AND WHY IT IS GRANTED

As used in this study, “losers’ consent” refers to the willingness of a losing voter to accept the outcome of an election and thereby recognize the authority of the winner. Such consent

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can be offered both explicitly and implicitly.¹ That losers in a democracy offer their consent at all is remarkable, but it is also a necessary precondition of a free, democratic system.

Perhaps unsurprisingly, winners will gladly hold up their own government as legitimate. This happens not only because they command the levers of power but also because it validates their membership in the majority. Belonging to a majority can be a strong driver of human behavior, so it should come as no surprise that it carries an important weight in politics.² Conversely, losers have strong incentives to argue against the winners’ legitimacy—admitting losing status not only means yielding power to the winners, but it also cements the losers as members of a minority.

Despite these strong incentives for withholding consent, losers will relent to the winners if they feel that “attachment or loyalty to the political system and constitutional order” outweighs their dissatisfaction with the outcome of the election.³ That is to say, the losers must value the institution of the government more than they value control of the government.

It is not clear that losers will continue to value the institution over political power indefinitely, and losers’ consent, even in

1. Nellie Gilles and Joe Richman, “How To Lose An Election: A Brief History Of The Presidential Concession Speech,” NPR, Nov. 2, 2020. <https://www.npr.org/2020/11/02/929085584/how-to-lose-an-election-a-brief-history-of-the-presidential-concession-speech>; Joseph Choi, “Trump has told advisers he’s thinking about running in 2024: report,” *The Hill*, Nov. 9, 2020. <https://thehill.com/homenews/campaign/525144-trump-has-told-advisers-hes-thinking-about-running-in-2024-report>.

2. Jennifer Eck, et al., “Belonging to a Majority Reduces the Immediate Need Threat from Ostracism in Individuals with a High Need to Belong,” *European Journal of Social Psychology* 43:7 (May 2017), pp. 273-288. https://www.researchgate.net/publication/318198259_Belonging_to_a_Majority_Reduces_the_Immediate_Need_Threat_from_Ostracism_in_Individuals_with_a_High_Need_to_Belong.

3. André Blais and Richard Nadeau, “Accepting the election outcome: The effect of participation on loser’s consent,” *British Journal of Political Science* (October 1993), p. 556. https://www.researchgate.net/publication/316674404_Accepting_the_election_outcome_The_effect_of_participation_on_loser's_consent.

the United States, should never be taken for granted. According to one 2005 study on losers' consent:

[I]f democratic procedures are to continue in the long run, then the losers must, somehow, overcome any bitterness and resentment and be willing, first, to accept the decision of the election, and, second, to play again next time.⁴

Offering consent to changes in power has been a feature of the American system since the first presidential transition.⁵ And yet, the willingness to “play again next time” is constantly under pressure from increasing dissatisfaction with electoral outcomes and attacks on the value of the American constitutional order.

INCREASED CANDIDATE ATTACKS ON POLITICAL LEGITIMACY

Former President Donald Trump's refusal to concede the 2020 election was a first for a modern presidential candidate. However, the election cycles leading up to the 2020 presidential election set the stage for his refusal, as losing candidates increasingly undermined election legitimacy.⁶

The first in a chain of increasingly destabilizing moments happened in advance of the 2016 presidential election. Even before voters cast their ballots, Trump began to float the idea that he may not consent to defeat and laid the groundwork for a “rigged election” narrative: “I would like to promise and pledge . . . that I will totally accept the results of this great and historic presidential election *if I win* [emphasis added].”⁷

Presidential candidates represent the top of a large voter bloc, and many voters look to their presidential candidates as avatars of themselves.⁸ If a candidate like Trump suggests that he will not concede, it creates a permission structure for voters to deny legitimacy to the winner as well. As a result, Trump's supporters concerningly encouraged his “rigged

election” claims leading up to Election Day.⁹

Although Trump set aside his legitimacy concerns after winning the election, his opponent, Hillary Clinton, picked up where he left off.¹⁰ Though not as sweeping as Trump's threatened lack of consent (Clinton acknowledged that Trump *was* the president), Clinton's illegitimacy theories provided a permission structure to Democrats, who were already struggling to consent to Trump's victory.¹¹

Building upon Clinton's hesitancy to concede, Georgia Democratic gubernatorial candidate Stacey Abrams explicitly refused to acknowledge her own defeat to Republican Brian Kemp in 2018, claiming: “Concession means to say that the process was fair.”¹² In so doing, Abrams provided a high-profile example of the fundraising and profile-elevating benefits that come from withholding consent.¹³ Ultimately, Abrams' success following her refusal to concede made it easier for Democrats and Republicans alike to proffer claims of election illegitimacy.

By 2020, the stage had been set.

As the results came in, Trump and his supporters put forward dozens of allegations of fraud.¹⁴ Despite a lack of evidence and multiple failed lawsuits attempting to overturn the election, Trump continued to argue that the election had been “stolen.”¹⁵ Then, on Jan. 6, 2021, following a rally during which Trump encouraged his supporters to “fight like

4. Christopher J. Anderson, et al., *Losers' Consent: Elections and Democratic Legitimacy*, (Oxford University Press, 2007), p. 4.

5. Maureen MacDonald, “American Presidential Inaugurations,” *Prologue Magazine* 32:2 (Winter 2000). <https://www.archives.gov/publications/prologue/2000/winter/inaugurations>.

6. Amy McKeever, “No modern presidential candidate has refused to concede. Here's why that matters.” *National Geographic*, Nov. 8, 2020. <https://www.nationalgeographic.com/history/article/no-modern-presidential-candidate-refused-to-concede-heres-why-that-matters>.

7. Sam Sanders, “Donald Trump Says He'll Accept The Results Of The Election ... If He Wins.” NPR, Oct. 20, 2016. <https://www.npr.org/2016/10/20/498713509/donald-trump-says-hell-accept-the-results-of-the-election-if-he-wins>.

8. Rick Hampson, “#TrumpNation: Supporters see themselves in Republican nominee.” *USA Today*, July 17, 2016. <https://www.usatoday.com/story/news/politics/elections/2016/07/17/donald-trump-supporters-republican-nomination-president/87047494>.

9. Chris Cilizza, “Donald Trump is setting the stage to never concede the 2016 election,” *The Washington Post*, Oct. 14, 2016. <https://www.washingtonpost.com/news/the-fix/wp/2016/10/14/donald-trump-is-setting-the-stage-to-never-concede-the-2016-election>.

10. Edward-Isaac Dovere, “Hillary Clinton Says She Was Right All Along,” *The Atlantic*, Oct. 9, 2020. <https://www.theatlantic.com/politics/archive/2020/10/hillary-clinton-doing-now-2020/616668>.

11. Colby Itzkowitz, “Hillary Clinton: Trump is an ‘illegitimate president,’” *The Washington Post*, Sept. 26, 2019. https://www.washingtonpost.com/politics/hillary-clinton-trump-is-an-illegitimate-president/2019/09/26/29195d5a-e099-11e9-b199-f638bf2c340f_story.html; Sean Rossman, et al., “Donald Trump blasts Jimmy Carter as a ‘nice man’ but a ‘terrible president,’” *USA Today*, June 29, 2019. <https://www.usatoday.com/story/news/politics/2019/06/28/jimmy-carter-trump-did-not-win-2016-full-russia-probe-would-show/1594579001>.

12. Rebecca Klar, “Stacey Abrams responds to RNC chairwoman: ‘Concession means to say that the process was fair,’” *The Hill*, Aug. 19, 2019. <https://thehill.com/home-news/campaign/457934-stacey-abrams-responds-to-rnc-chairwoman-concession-means-to-say-that-the>.

13. James Salzer, “Abrams voting rights group tops \$100 million in fundraising since late 2018,” *The Atlanta Journal-Constitution*, July 8, 2021. <https://www.ajc.com/politics/abrams-voting-rights-group-tops-100-million-in-fundraising-since-late-2018/PREUZPFRDJGXFVEMR5K2NVFKY>.

14. Glenn Kessler and Salvador Rizzo, “President Trump's false claims of vote fraud: A chronology,” *The Washington Post*, Nov. 5, 2020. <https://www.washingtonpost.com/politics/2020/11/05/president-trumps-false-claims-vote-fraud-chronology>.

15. Amy Gardner, “How Trump drove the lie that the election was stolen, undermining voter trust in the outcome,” *The Washington Post*, Dec. 20, 2020. https://www.washingtonpost.com/politics/trump-election-voter-trust/2020/12/20/00282aa6-407a-11eb-8db8-395dedaaa036_story.html.

hell,”¹⁶ Trump supporters stormed the U.S. Capitol Building and demanded that Vice President Mike Pence and members of Congress overturn the results of the election.¹⁷

To date, Trump continues to claim that he actually won the 2020 presidential election.¹⁸ Further, he continues to pressure Republicans across the country to ceaselessly and baselessly challenge the election results,¹⁹ and continues to raise hundreds of millions of dollars from supporters to “Stop the Steal.”²⁰ Trump’s reaction to the 2020 election broke a long chain of concessions from presidential candidates, and he is continuing to reap the rewards.

VOTER DISCONTENT INCREASING FOLLOWING A LOSS

Losing voters have followed in the footsteps of their candidates, becoming less convinced of election legitimacy over time. In 2000, in light of the contentious election recount in Florida, 30 percent of losing voters refused to accept the outcome of the election.²¹ Similarly, following Trump’s upset victory in the 2016 election, 23 percent of losing voters believed he was not the legitimate president.²² While both of these figures may seem concerningly high, it should be noted the polls also reflect that a strong majority of losers were willing to accept the opposing candidate as the legitimate winner even after exceptionally divisive and contentious elections.²³

Nevertheless, by 2020, losing voters felt more comfortable withholding consent: Immediately following the 2020 election, as Trump held rallies arguing that the election had been “stolen,” 77 percent of Republicans believed Biden’s victo-

ry was illegitimate.²⁴ Perhaps more worryingly, even after multiple recounts, audits and lawsuits debunked the “stolen election” conspiracy theories, 55 percent of Republicans still believe that Joe Biden is not the legitimate president.²⁵

DEEPENING PARTISANSHIP AMONG VOTERS REDUCES WILLINGNESS TO CONCEDE

Perhaps this increased resistance to concede should not be so surprising. After all, partisan voters are more likely to withhold consent, and the American political landscape has been showing signs of increased partisanship over time.²⁶ Put differently, “[partisanship] amplifies the impact of winning and losing.”²⁷

The substantial nexus between strong partisanship and withholding consent is only magnified by the rising levels of partisanship in the American political landscape. According to a 2014 study, “92 [percent] of Republicans are to the right of the median Democrat, and 94 [percent] of Democrats are to the left of the median Republican.”²⁸ This dynamic is reflected in Congress as well, as representatives separated into two distinct camps in the last 80 years.²⁹

Further, partisans are not only divided on ideology, but they also view their rivals with increasing hostility. In 2004, only 16 percent of Democrats and 17 percent of Republicans held “very unfavorable” attitudes about their partisan opposition. By 2014, these figures had skyrocketed to 38 percent and 43 percent respectively.³⁰ And by 2021, 59 percent of strong Democrats and 66 percent of strong Republicans held a “very unfavorable” attitude about the other.³¹

Rising partisanship and antipathy toward opponents work together to amplify the perceived stakes of winning and losing elections. Add on top the persistent claims that each

16. Brian Naylor, “Read Trump’s Jan. 6 Speech, A Key Part Of Impeachment Trial,” NPR, Feb. 10, 2021. <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>.

17. “Inside the Capitol Riot: An Exclusive Video Investigation,” *The New York Times*, July 12, 2021. <https://www.nytimes.com/2021/06/30/us/ian-6-capitol-attack-take-aways.html>.

18. Donald J. Trump, “Rally on Electoral College Vote Certification,” C-SPAN, Jan. 6, 2020. <https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification>; Donald J. Trump, “Statement by Donald J. Trump, 45th President of the United States of America,” Save America, April 23, 2021. <https://www.donaldjtrump.com/news/statement-by-donald-j-trump-45th-president-of-the-united-states-of-america-4.23.2021>.

19. Donald J. Trump, “Statement by Donald J. Trump, 45th President of the United States of America,” Save America, May 7, 2021. <https://www.donaldjtrump.com/news/statement-by-donald-j-trump-45th-president-of-the-united-states-of-america-05.07.21-3>.

20. Shane Goldmacher and Rachel Shorey, “Trump’s Sleight of Hand: Shouting Fraud, Pocketing Donors’ Cash for Future,” *The New York Times*, April 17, 2021. <https://www.nytimes.com/2021/02/01/us/politics/trump-cash.html>.

21. “The Florida Recount Controversy From the Public’s Perspective: 25 Insights,” Gallup News Service, Dec. 22, 2000. <https://news.gallup.com/poll/2176/florida-recount-controversy-from-publics-perspective-insights.aspx>.

22. Jeffrey M. Jones, “In U.S., 84% Accept Trump as Legitimate President,” Gallup, Nov. 11, 2016. <https://news.gallup.com/poll/197441/accept-trump-legitimate-president.aspx>.

23. Ibid.

24. Monmouth University Poll, “National: More Americans Happy About Trump Loss Than Biden Win,” Monmouth University, Nov. 18, 2020. https://www.monmouth.edu/polling-institute/documents/monmouthpoll_us_111820.pdf.

25. Reuters/Ipsos, “Press Release: Trump’s Coattails,” Press Release, April 2, 2021. https://www.ipsos.com/sites/default/files/ct/news/documents/2021-04/topline_write_up_reuters_ipsos_trump_coattails_poll_-_april_02_2021.pdf.

26. Anderson, et al., p. 82.

27. Anderson, et al., p. 84.

28. “Political Polarization in the American Public,” Pew Research Center, June 12, 2014. <https://www.pewresearch.org/politics/2014/06/12/political-polarization-in-the-american-public>.

29. Andrew Prokop, “See Congress polarize over the past 60 years, in one beautiful chart,” Vox, Oct. 27, 2016. <https://www.vox.com/2015/4/23/8485443/polarization-congress-visualization>.

30. “Political Polarization in the American Public,” Pew Research Center, June 12, 2014. <https://www.pewresearch.org/politics/2014/06/12/political-polarization-in-the-american-public>.

31. “Biden Viewed Positive on Many Issues, but Public Is Less Confident He Can Unify Country,” Pew Research Center, March 11, 2021, p. 15. <https://www.pewresearch.org/politics/2021/03/11/views-of-the-democratic-and-republican-parties>.

election is the “most important of our lifetimes,” it is not surprising that for many voters the bitterness and resentment of losing is starting to outweigh the intrinsic value of our constitutional order.³²

With deepening partisanship and cross-partisan antipathy and with an ongoing campaign to undermine the 2020 election, our democratic institutions are approaching a breaking point. To ensure that our constitutional order survives going forward, we must work to enact reforms that make it easier for losers to concede defeat.

ELECTION REFORMS THAT INCREASE BUY-IN FROM LOSERS

The reforms most valuable to securing losing voters’ consent are those which grant losing voters greater input in their government. This can be achieved through greater political minority representation with ideas like proportional representation or by modifying electoral incentives to promote more broadly supported policies through ideas like Final-Five Voting.

Although uncommon in the United States, the most popular way to grant political minorities a greater voice is through proportional representation.³³ Under proportional representation, winners are determined in such a way as to be proportional to the political divisions within the electorate. For example, New Zealand employs a proportional representation system known as “mixed-member proportional representation” in which voters get two votes: one for a candidate to represent their own parliamentary district and one for a political party more broadly. In the end, the parliament is comprised of both winners of the district elections and additional members that reflect the national party vote.³⁴

Proportional representation reduces the impact of losing a vote by giving losers more influence in the overall composition of their government. This directly encourages losers’ consent by diminishing the number of people who fall squarely in the “loser” category and ensures that political minorities still have a voice in their government. Perhaps it is unsurprising, then, that “[l]osers express less negative views about the political system than winners when electoral rules are more proportional.”³⁵

As an alternative to proportional representation, losers may

also grant consent more easily when elections do not result in substantial shifts in policy outcomes. Broadly speaking, losers prefer slower, more incremental change by winners (if any at all) and are more likely to consent to a loss if they feel like an election will not have a “sweeping” result.³⁶ This type of slower, deliberate change can be encouraged by incentivizing politicians to support broadly acceptable policies—Final-Five Voting does just that.

Under Final-Five Voting, the top five candidates from an open primary compete in a ranked-choice general election.³⁷ As opposed to the traditional “closed primary, first-past-the-post” system, where candidates appeal to a narrow partisan primary electorate before competing in largely uncompetitive general elections, Final-Five Voting minimizes the influence of partisan primaries and encourages politicians to reach out to a broad coalition of voters in an effort to secure majority support. By addressing the rules for how elected leaders are selected, Final-Five Voting nudges politicians toward more stabilizing behavior.

Final-Five Voting has the potential to not only lower the stakes of each election by modifying incentives for politicians, but it also grants losing voters more of a say in the outcome by allowing them to rank candidates in the general election. For instance, a voter’s first choice might be the third-most popular candidate in an election. Under a first-past-the-post system, where the highest vote-getter is the winner, this voter comes out of the election as a loser. Under Final-Five Voting, however, this voter can rank the other candidates. Thus, even though the voter might rank the third-most popular candidate at the top, their second-choice candidate may ultimately win the election. When the votes are tabulated and the third-most popular candidate is eliminated, the vote is transferred to their second-choice candidate, who, thanks to voters like this one, might win the election. In this circumstance, the voter goes from being a loser under first-past-the-post to being a winner under Final-Five Voting. While this circumstance would not address all losing voters, it would give more voice to a greater number of voters than currently experienced under first-past-the-post.

With reforms such as proportional representation or Final-Five Voting in place, elections would better reflect a diverse electorate and politicians would be incentivized to support slow-moving, more broadly approved policies. Accordingly, losers should feel more comfortable offering consent, either because they feel better represented by the eventual winner or because they feel like future elections will provide them another meaningful opportunity to express their voice.

32. Ezra Klein, “It’s the most important election in our lifetime, and it always will be,” *Vox*, Oct. 19, 2020. <https://www.vox.com/21504729/most-important-election-bush-gore-kerry-trump>.

33. “Electoral Systems around the World,” FairVote, last accessed July 23, 2021. https://www.fairvote.org/research_electoral_systems_world.

34. “What is MMP?,” New Zealand Electoral Commission, last accessed July 23, 2021. <https://elections.nz/democracy-in-nz/what-is-new-zealands-system-of-government/what-is-mmp>.

35. Anderson, et al., p. 139

36. *Ibid.*, p. 139.

37. “Final-Five Voting,” The Institute for Political Innovation, last accessed July 23, 2021. <https://political-innovation.org/final-five-voting>.

RE-ESTABLISHING THE CREDIBILITY AND TRUSTWORTHINESS OF ELECTIONS

In order to gain more consent from losing voters, it is imperative that the electoral process be worthy of trust. Voters must believe that even if their preferred candidate did not win, the election itself was conducted fairly, the winner did receive the most votes and that future elections would provide a fair opportunity for the losers to become winners.

Establishing trustworthy elections is a long and arduous process, and various reforms likely need to work in concert to achieve that end. Detailed below, there are numerous reforms that may be able to combat the current election illegitimacy crisis in the United States: reducing partisan election administration; combatting disinformation; dispelling pervasive and destructive election myths; and demanding more virtuous behavior from political candidates, especially following a lost election.

Reduce Partisan Influence in Election Administration

When losers withhold consent, they often attack the institution itself as being too partisan, corrupt or biased.³⁸ To combat this perception, lawmakers and election officials must go out of their way to remove the perception of partisan influence on election administration. In practice, this means enacting election administration rules that ensure meaningful transparency and remove the authority of partisan actors to exert influence on outcomes.

Transparency measures are a necessary step to ward off claims of partisan bias in elections and boost confidence in the legitimacy of elections. Transparency can come in a variety of forms, including establishing clear rules in advance of the election; allowing poll watchers and public-access cameras to monitor ballot tabulation; posting election results quickly; and providing ample notice prior to rule or practice changes.³⁹ Some of these measures are becoming common practice;⁴⁰ yet many jurisdictions would benefit from increased transparency measures, particularly as improvements in technology allow for greater transparency without impeding election workers.⁴¹

38. See, e.g., Michael Wines, "Freed by Court Ruling, Republicans Step Up Effort to Patrol Voting," *The New York Times*, May 18, 2020. <https://www.nytimes.com/2020/05/18/us/Voting-republicans-trump.html>; Brad Brooks, et al., "Why Republican voters say there's 'no way in hell' Trump lost," *Reuters*, Nov. 20, 2020. <https://www.reuters.com/article/us-usa-election-trump-fraud-insight/why-republican-voters-say-theres-no-way-in-hell-trump-lost-idUSKBN2801D4>.

39. "Electoral transparency, participation and accountability," Transparency & Accountability Initiative, 2011, p. 4. <http://www.transparency-initiative.org/archive/wp-content/uploads/2011/11/Electoral-transparency.pdf>.

40. "Policies for Election Observers," NCSL, Oct. 13, 2020. <https://www.ncsl.org/research/elections-and-campaigns/policies-for-election-observers.aspx>.

41. Tanya Basu, "Vote count livestreams are here to stay," *MIT Technology Review*, Nov. 4, 2020. <https://www.technologyreview.com/2020/11/04/1011648/livestream-vote-counts-are-here-to-stay>.

Beyond transparency measures, lawmakers should look to remove partisan influence over election administration. Granted, partisan actors do have a role to play in election oversight, such as through poll watching and litigation. However, election administrators themselves should be shielded from partisan gamesmanship through independent budgets and bipartisan oversight bodies.

Unfortunately, some state legislatures are making changes to transfer greater authority to partisan actors.⁴² These changes are destructive not only because partisans gain the power to commandeer an election, but also because voters are sent the message that foxes will be guarding the henhouses. Instead, lawmakers should seek to increase election transparency and shield election administrators from partisanship.

Combat Disinformation

In addition to greater transparency and reduced partisan influence, trust in the system requires easy access to accurate information about how the election is conducted and strong pushback against disinformation designed to undermine legitimacy.

Disinformation is information that is deliberately false or misleading, and it spreads like wildfire online.⁴³ This was especially apparent amid the confusion over voting practices caused by the COVID-19 pandemic.⁴⁴ The spread of disinformation online can be especially toxic, as the viral-oriented design of social media platforms often results in false information propagating more quickly and being shared more widely than accurate information.⁴⁵

In response to the proliferation of disinformation, election officials should: focus on monitoring for disinformation online and work to quickly disseminate correct information; publicize official sources and protect those sources from hacking and manipulation; and build relationships with the community and media to develop trust.⁴⁶

42. Stephen Fowler, "What Does Georgia's New Voting Law SV 202 Do?" GPB, March 27, 2021. <https://www.gpb.org/news/2021/03/27/what-does-georgias-new-voting-law-sb-202-do>.

43. Caroline Jack, "Lexicon of Lies: Terms for Problematic Information," Data & Society Institute, 2017. https://datasociety.net/pubs/oh/DataAndSociety_LexiconofLies.pdf.

44. Ian Vandewalker, "Digital Disinformation and Vote Suppression," The Brennan Center for Justice, Sept. 2, 2020. <https://www.brennancenter.org/our-work/research-reports/digital-disinformation-and-vote-suppression>; Sinan Aral, et al., "The spread of true and false news online," *Science Magazine*, March 9, 2018. <https://science.sciencemag.org/content/359/6380/1146>.

45. Sinan Aral, et al., "The spread of true and false news online," *Science Magazine*, March 9, 2018. <https://science.sciencemag.org/content/359/6380/1146>.

46. Ian Vandewalker, "Digital Disinformation and Vote Suppression," The Brennan Center for Justice, Sept. 2, 2020. <https://www.brennancenter.org/our-work/research-reports/digital-disinformation-and-vote-suppression>.

These recommendations are a good first step toward reducing the influence of disinformation; however, election officials are not the only ones with a role to play in this effort. Voters, as media consumers, must be vigilant as well.

To reduce falling for disinformation, voters should: check the sources of a news story for trustworthiness and look for confirmation from additional sources; be wary of stories that attempt to create an emotional response—particularly anger—or that seek to confirm a prior-held belief; and be watchful for stories that provide “surprising scientific findings,” as these stories are often hyperbolic or misleading.⁴⁷

Limiting the spread of disinformation about elections may be difficult and requires everyone to play their part, but it is also a necessary step toward restoring the credibility of elections in America.

Dispel Pervasive and Dangerous Election Myths

Additionally, challenges to election legitimacy also may be based on widely believed myths. These myths may even function as the basis for election laws and practice that result in greater distrust in electoral results.

For example, Republicans and Democrats alike largely believe that increased turnout benefits Democrats. This leads Republicans to pass laws attempting to reduce turnout, ostensibly to give themselves an advantage. The truth, however, is that turnout does not in and of itself provide an advantage to Democrats.⁴⁸ By enacting policies based around this unfounded belief that make participating in elections more burdensome, Republicans are sowing distrust in elections among Democrats.

Democrats, in the alternative, may seek policies that make voting easier as they look to maximize their own partisan advantage according to the turnout myth; however, these policies can come at the expense of election integrity.⁴⁹ In response, Republicans may become more distrustful of election results in jurisdictions led by Democrats. In this kind of partisan arms race, no one wins.

47. Danielle Lottridge and Frank R. Bentley, “Let’s Hate Together: How People Share News in Messaging, Social, and Public Networks,” 2018 CHI Conference, April 2018. <http://web.mit.edu/bentley/www/papers/HateTogether.pdf>; Cailin O’Connor and James Owen Weatherall, “Six Tips for Avoiding Misinformation on Social Media,” *Yale University Press Blog*, March 15, 2019. <http://blog.yalebooks.com/2019/03/15/six-tips-for-avoiding-misinformation-on-social-media>.

48. Jeff Gill and Michael D. Martinez, “The Effects of Turnout on Partisan Outcomes in U.S. Presidential Elections 1960-2000,” *The Journal of Politics* 67:4 (November 2005). <https://www.jstor.org/stable/10.1111/j.1468-2>.

49. Pam Fessler, “Supreme Court Rules Pennsylvania Can Count Ballots Received After Election Day,” NPR, Oct. 19, 2020. <https://www.npr.org/2020/10/19/92241176/supreme-court-rules-pennsylvania-can-count-ballots-received-after-election-day>.

Another pernicious and destructive election myth is the commonly held belief that political rivals only win by cheating. Namely, Republicans believe that they only lose elections due to fraud, and Democrats believe they only lose elections due to voter suppression.⁵⁰ The truth is that voter suppression claims are overblown,⁵¹ election fraud is rare,⁵² and by and large candidates win or lose according to the will of the voters.

As an analogue to the “cheating” myth, both Republicans and Democrats argue that elections cannot be trusted unless their preferred election legislation is enacted (principally due to the “fraud” and “suppression” mentioned above).⁵³ This type of claim signals to partisans that American elections are currently untrustworthy, and if the legislation fails to pass—which it often does—elections cannot be trusted.⁵⁴ When the legislation fails to pass, as it often does, the only result is less trust in elections.⁵⁵

Election myths are dangerous precisely because they operate under a faulty premise to undercut public trust. It is therefore imperative to dispel election myths in order to develop more trust in elections for all voters, but particularly for the losers.

Create a Healthier Political Culture Through More Virtuous Behavior

Beyond the concrete reforms to election laws and practice outlined above, our democracy would benefit from a healthier political culture where candidates and voters express humility in defeat and graciousness in victory. This kind of virtuous behavior would help to reduce partisan tensions and encourage losers’ consent.

50. Gary Miller, “Democrats cheated to win the presidential election,” *The Galveston County Daily News*, Jan. 5, 2021. https://www.galvnews.com/opinion/letters_to_editor/article_105baf2a-fa47-5218-90ba-97f5da525804.html; Charles Hammer, “For Republicans to thrive, they must stop the poor, the people of color from voting,” *The Kansas City Star*, July 20, 2021. <https://www.kansascity.com/news/local/community/joco-913/joco-diversions/article252845738.html>.

51. Colleen Jenkins, “Insight: Scant evidence of voter suppression, fraud in states with ID laws,” *Reuters*, Nov. 2, 2012. <https://www.reuters.com/article/us-usa-campaign-voterid/insight-scant-evidence-of-voter-suppression-fraud-in-states-with-id-laws-idUSBRE8A1OUJ20121102>.

52. Andy Sullivan and Joseph Ax, “Explainer: Despite Trump claims, voter fraud is extremely rare. Here is how U.S. states keep it that way,” *Reuters*, Sept. 9, 2020. <https://www.reuters.com/article/us-usa-election-voter-fraud-facts-explai/explainer-despite-trump-claims-voter-fraud-is-extremely-rare-here-is-how-u-s-states-keep-it-that-way-idUSKBN2601HG>.

53. See, e.g., Rep. John Sarbanes, “HR1, the For the People Act,” <https://sarbanes.house.gov/issues/hr-1-the-for-the-people-act>; Alexa Ura, “Gov. Greg Abbott formally opens Texas GOP bid to clamp down on local efforts expanding voting access,” *The Texas Tribune*, March 15, 2021. <https://www.texastribune.org/2021/03/15/texas-voting-greg-abbott>.

54. “Voting Laws Roundup: July 2021,” Brennan Center for Justice, July 22, 2021. <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-july-2021>.

55. Andrew Prokop, “Democrats’ doomed voting bill is too broad to pass – and not broad enough to work,” *Vox*, June 8, 2021. <https://www.vox.com/2021/6/8/22521563/manchin-hr1-s1-for-the-people-act>.

As discussed above, the American political culture is struggling with an amplifying antipathy between partisans and an increasing propensity for losers to challenge the outcome of elections. Candidates like Stacey Abrams and Donald Trump have recognized both the political and fundraising value of refusing to concede, showing that self-interest alone has become insufficient for garnering buy-in from losers. To combat these trends, voters and candidates must work together to create a political culture that encourages losers to humbly admit defeat and offer the winners their consent.

To be clear, this is a problem that cannot be solved by winners demanding consent from losers; however, winners do bear some responsibility for creating a culture that encourages losers' consent. As explained above, acquiescing to the authority of political rivals requires the losing coalition to value the institution of the government more than the control of the government. This can only be accomplished if winners treat losers graciously. Flaunting a win and governing with an "elections have consequences" mindset can exacerbate feelings of despondence in losers and create a vicious cycle of increasing churlishness following each transition of power.⁵⁶ Winners should feel comfortable enacting the policies they were elected to enact, but they also must remember that sore winners beget sore losers. Both sides are responsible for creating and maintaining a healthy political culture.

A reasonable person could look at the previous reform ideas and find them overwhelming or nearly impossible to accomplish. However, when it comes to creating a healthy political culture, everyone has a part to play. Losing voters must demand a commitment to the democratic process, and winning voters must extend grace. While working toward a more virtuous political culture may seem lofty, it is also the first and best step each individual voter can take toward preserving our democracy for future generations.

CONCLUSION

Obtaining consent from losers—both candidates and voters—is imperative for a democratic system to survive. With losers' consent becoming more and more difficult to secure in the United States, policymakers, election officials and voters should look for ways to reduce partisan influence in election administration, ensure correct information is readily available, implement electoral reforms to improve outcomes, and create a more humble and gracious political culture.

A culture in which losers readily offer consent is difficult to develop and may be impossible to restore once it is lost.⁵⁷ Nevertheless, the American experiment relies upon securing losers' consent, and we must do everything we can to ensure it is readily given.

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57. John Adams, "Letter from John Adams to Abigail Adams," Massachusetts Historical Society, July 7, 1775. https://www.masshist.org/digitaladams/archive/doc?id=L17750707ja&bc=%2Fdigitaladams%2Farchive%2Fbrowse%2Fdate%2Fall_1775.php#:~:text=Liberty%20once%20lost%20is%20lost,they%20can%20never%20regain%20it.