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Democrats' disastrous 'voting rights' bill is a non-solution to a non-crisis

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H.R. 1 has achieved sacrosanct status on the center-left, such that the nation's democratic future is said to depend on it. If so, it is time to weep for the republic.

H.R. 1 (S. 1 in the Senate), which is known as a voting bill but wanders into all sorts of other areas, is objectively terrible legislation.

It is unfocused, high-handed in its impositions on the states, careless of speech rights and constitutionally dubious. Absent some radical turnabout, the bill is dead in the Senate, and it deserves to be.

The core of the bill forces every state to adopt automatic voter registration, same-day registration, no-excuse absentee balloting and early in-person voting, among other mandates.

The case that the bill will save democracy depends on the myth that voters are being turned aside in droves by onerous restrictions in the states — even though turnout in last year's presidential election was the highest since 1900.

States like Georgia have tightened up their rules since that election, in part in reaction to Donald Trump's ongoing campaign of disinformation, but these provisions are in many cases improvements and certainly don't constitute Jim Crow 2.0.

In short, H.R. 1 is a non-solution to a non-crisis.

Even if you believe that, for instance, same-day registration is the preferable policy, it's not *remotely* plausible that is the difference between democracy and authoritarianism in America. According to the National Conference of State Legislatures, only 20 states and Washington, DC, have same-day registration, and yet we've still had free and fair elections, including in those states — among them, New York, Massachusetts, Rhode Island, New Jersey and Oregon — without it.

There's also no reason to wipe out every voter-ID law in America, when research shows that even strict ID laws have had no effect on turnout.

So long as they aren't actually disenfranchising people (which none is), states should be able to adopt the mix of voting rules that their democratically elected officeholders deem appropriate and that suit their particular political cultures.

If the goal is to increase confidence in the electoral system, by the way, having a narrow partisan majority in Congress make it harder for states to maintain clean, up-to-date voter rolls (as H.R. 1 does) at the same time it wipes out ID requirements is not the way to do it.

Then there are all the other provisions. Do we really need Congress, in its wisdom, to write an ethics code for the Supreme Court? What's the urgency to adopt public financing of congressional elections and make taxpayers fund political candidates they oppose? Why does the composition of the Federal Election Commission need to change to make it *less* bipartisan?

H.R. 1 is a free-speech disaster.

As Bradley Smith, a former chair of the FEC explains, to this point, the definition of electioneering in election law has taken care to provide wide latitude for general policy advocacy. H.R. 1 broadens the definition to treat more ads as election expenditures, crimping the ability of groups to criticize elected officials.

The bill would also make more organizations disclose their donors, opening them up to intimidation.

Walter Olson of the Cato Institute has catalogued the constitutional problems with H.R. 1:

- Congress has the authority under the Constitution to determine the “time, places and manner” of congressional elections, but less power over presidential elections, which H.R. 1 seeks to micro-manage anyway.
- The mandate that all states form election commissions to determine redistricting is constitutionally vulnerable as federal overreach.
- The stipulation that presidential candidates release their tax returns might be impermissible as a qualification on candidates beyond what's in the Constitution.
- The speech restrictions and disclosure requirements could well run afoul of the First Amendment.

Unless Joe Manchin has a sudden change of heart, H.R. 1 is heading to the legislative dustbin. Good riddance.