

## **Chapter 7 - Conclusion**

In his January 27, 1838, Lyceum speech, Abraham Lincoln said,

At what point then is the approach of danger to be expected? I answer, if it ever reach us, it must spring up amongst us. It cannot come from abroad. If destruction be our lot, we must ourselves be its author and finisher. As a nation of freemen, we must live through all time, or die by suicide.

If destruction be our lot, we must ourselves be its author and finisher. These words, spoken 184 years ago, are a chilling reminder of where America stands, the fragility of self-governance, and the responsibility on our shoulders to protect. The threats addressed in this analysis converge on a single movement, advancing the breakdown of democracy. The conclusions converge on a single effort as well. Overcome democracy's assassins.

### **7.1 Restore restraint**

The decades-long assault on norms has debased American politics. There is clear history on both ideological sides. This type of breakdown of norms is part of the objective of the modern Republican party, the continued destruction of familiar guardrails of behavior and interaction. The Democrats have engaged in this to some degree as well, moving goal posts and speaking in incendiary rhetoric. Some have observed that Democrats need to respond to Republican norm-breaking and bluster by “fight fire with fire” and not be limited by adherence to standards. Others have disagreed, finding the only way to buttress norms is to stand up for them regardless of the ongoing attacks from the other side. It appears these breakdowns are bad news for both sides as majorities change over time. The only way to maintain the advantage of these broken norms at all

times is to remain in the majority. This reveals the far greater concern that will be addressed below.

All norms are not the same. Some are banal, while others have incredibly significant implications. A President who mocks political opponents and resorts to juvenile name-calling may not destroy checks and balances, but it does weaken the standards of engagement for the entire population. The real conclusion is this, if the electorate is willing to support and even crave these transgressions, they will remain. And if the voters believe norms are a priority, they will support their elected leaders acting with decorum. It is optimistic that the public will vocalize a desire to return to genteel interactions, to more fairness and good faith, and there is no way to ensure it. If the outrage machine churns on long enough, public sentiment will tire and effect change.

On the other hand, continued transgressions could just as quickly alienate people and cause disengagement. This has occurred in the current environment, with some conservative Republican politicians and pundits drawing a line and refusing to cross it. Thus far, when they step out of the party line, their careers abruptly end, or they too find themselves cast as enemies or Republicans in Name Only (RINOs).

Hopefully, some of the significant norms will be restored either by example or by legislation. For example, presidential disclosure of income taxes is being considered on both state and federal levels. But those that cannot be legislated, like cozying up to despots or harassing intelligence departments, maybe a new fixture for some time. Americans get the leadership we elect.

To proactively seek more favorable outcomes, engaging the public in grassroots efforts to reinforce trust in institutions, cultivate moderate politicians, and reduce partisan

polarization is critical. The parties will respond if public pressure demands they reign in the extremes and seek more centrist, moderate candidates. The public can shift this noxious trend and return to a more decent approach. To see the world through the eyes of others, in a word, empathy.

Democrats must resist the urge to fight fire with fire and push Democratic leaders to refrain from the same norm-busting that has characterized many of today's GOP interactions. But cooperation is not without a downside of its own. But being too conciliatory can significantly compromise accomplishing policy advances. Leaders must take care that the spirit of bipartisanship does not return America to the convenient discrimination of centuries past. The stability of the period between the end of Reconstruction and the 1880s was rooted in an original sin: the Compromise of 1877 and its aftermath, which permitted the de-Democratization of the South and the consolidation of Jim Crow. Racial exclusion contributed directly to the partisan civility and cooperation that characterized twentieth-century American politics. Southern Democrats' ideological proximity to conservative Republicans reduced polarization and facilitated bipartisanship. But it did so at the great expense of keeping civil rights off the political agenda.<sup>269</sup>

A 2018 Pew Research Center study found that 81 percent of Americans feel members of Congress act unethically “some” or “all or most of the time.”<sup>270</sup> and 25 percent generally don't think unethical behavior by those in positions of power and responsibility results in serious consequences. The voters have the power to change that if

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<sup>269</sup> Steven Levitsky and Daniel Ziblatt, *How Democracies Die*, (New York: Broadway Books, 2019), 143.

<sup>270</sup> “Why Americans Don’t Fully Trust Many Who Hold Positions of Power and Responsibility,” Pew Research Center, September 19, 2019, <https://www.pewresearch.org/politics/2019/09/19/why-americans-dont-fully-trust-many-who-hold-positions-of-power-and-responsibility/>

they have the collective will. Consequences, as Lincoln put it, are the means to curb “by instances of the perpetrators of such acts going unpunished, the lawless in spirit, are encouraged to become lawless in practice; and having been used to no restraint, but dread of punishment, they thus become, absolutely unrestrained,”<sup>271</sup> furthermore, he provides this ageless gem,

Is it unreasonable then to expect, that some man possessed of the loftiest genius, coupled with ambition sufficient to push it to its utmost stretch, will at some time, spring up among us? And when such a one does, it will require the people to be united with each other, attached to the government and laws, and generally intelligent, to successfully frustrate his designs.

To the questions of who can protect democracy and how it can be protected, the answers are: the people, united to frustrate the designs of unrestrained ambition, and with consequences, at the ballot box.

## **7.2 Restore Public Trust**

This research has demonstrated that the public lacks confidence in politicians, government, and media and is overconfident in their own ability to differentiate between truth and fiction. Social media platforms and mass media contributed to the erosion of trust in their quest for commercial dominance, which has, in turn, negatively impacted public confidence in democracy and government. It would be unfair to suggest the dangers of technology were unknown. They were widely presumed to have negative effects on politics. Even in 1927, in debate before the vote on the Radio Act, Democratic Representative from Texas, Luther Johnson said,

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<sup>271</sup> Abraham Lincoln, Lyceum Address, January 27, 1838. Accessed October 3, 2022. <http://www.abrahamlincolnonline.org/lincoln/speeches/lyceum.htm>

American thought and American politics will be largely at the mercy of those who operate these stations, for publicity is the most powerful weapon that can be wielded in a republic. And when such a weapon is placed in the hands of one person, or a single selfish group is permitted to either tacitly or otherwise acquire ownership or dominate these broadcasting stations throughout the country, then woe be to those who dare to differ with them. It will be impossible to compete with them in reaching the ears of the American people.

The consolidation of media power deployed for partisan benefit was presumed to be dangerous to democracy and, indeed, has proved to have an exceptionally large role in driving public perception. Given the current atmosphere of limited regulation, enhanced digital literacy and civic education are the most effective ways for the public to combat disinformation. Improving education to mitigate the negative impacts of misinformation is a herculean task but has limited immediate or consistent impact and tenuous long-term viability. Any shift in a congressional majority could change the funding of education initiatives. That does not negate the value of addressing education; media literacy is one of many new areas of focus in education that promise to prepare young people for the inhospitable social media environment.

Digital literacy is an important factor in cultivating a public that can discern between disinformation and fact. More robust education, broadly speaking, is a factor that can help combat not only the negative impacts of misinformation but also the abysmal cavern of civic education. Schoolhouse Rock did a better job of preparing young people for the political world they inherit near the completion of high school back in the late 70s by comparison to many states' current civic education. This is by design. Uninformed voters with few tools to wield their electoral franchise help sustain an entrenched power structure. Curriculum must be developed, and states must be

incentivized to include this curriculum with federal funding for civic education and digital literacy as part of the tool chest for protecting democracy.

Those who adhere to group norms do so because they want to identify with the group, have collegiality with its members, and desire to be good group members themselves. People behave how the group behaves; they follow the norms. Humans naturally group in homogeneous ways, which results in the development of trust within the group, lack of cooperation with others, exclusion of others, and echo chamber effect of beliefs. It increases the willingness to help fellow group members but lessens the effort to help wider communities. The cycle needs to be disrupted. It is easy to legitimize power over another group when it seems there is little in common. The unanswerable question is, how, and the only relative answer this research has revealed is to keep trying to develop interactions with empathy.

Tactically, the most effective remedy to combat misinformation and disinformation on social media is to remove the content from circulation. In addition, there are many practical steps that social media companies can take to respond to the growing epidemic of disinformation. Platforms could require users to click on an article and spend some period before being able to share or repost, a prompt that would ask the user to answer if they read the article the same way GPS applications ask if you are driving before giving you access. Another is removing the share button completely or creating a delay window before someone can share content. Users could lose the use of the platform after a determined number of articles flagged misinformation are shared, the

same way a user is locked out of their account after too many attempts to guess a password.

Platforms should identify, differentiate, and demote a publication, organization, or account that is publishing fictitious content and elevate credible sources. Keeping a record and log of problematic sources. These changes would be good for users and the public at large but oppositional to platforms' known, nearly singular priority of increasing users and usage. They would be beneficial in addressing the decay of public trust in political institutions due to the pervasive rise of disinformation. However, as private enterprises, there are few things that can be done to mandate more responsible stewardship. As in democracy and capitalism, the people have great power. Social media platforms and other media companies have responded to public pressure when they believe their profitability is at stake. The public speaks with their feet and wallets, boycotting brands and spokespeople that transgress norms. Organizations also have influence here, pulling advertising dollar from platforms or brands with which they disagree. Accountability is not the same as censorship, though censorship is the primary complaint about removing content, and it is based in a central tenet of democracy, the freedom of speech. But freedom of speech doesn't mean freedom from consequence, nor does it mean all speech. The Supreme Court clearly defined that there are limits to speech. It is a delicate balance.

Governments that have restrictive policies for social and mainstream media to protect the public are also those that lack liberties and are authoritarian in nature. In fact, the current social media environment suggests a movement away from content

moderation and toward an unrestrained environment built on the purist ideal of free speech. This trend toward an even more politically divisive atmosphere and fewer protections to maintain decency would perpetuate the further breakdown of norms discussed previously. The future in that context looks far more chaotic and unstable.

The government still struggles to reform the legal and regulatory frameworks to reflect the current threat environment. In February 2020, the Department of Justice put together a legislative package to reform Section 230 of the Communications Decency Act as part of an ongoing antitrust probe into "big tech" companies. The DOJ issued its four major recommendations to Congress in June 2020 to modify Section 230. These include:

1. Incentivizing platforms to deal with illicit content, including calling out "Bad Samaritans" that solicit illicit activity and remove their immunity, and carve out exemptions in the areas of child abuse, terrorism, and cyberstalking, as well as when platforms have been notified by courts of illicit material;
2. Removing protections from civil lawsuits brought by the federal government;
3. Disallowing Section 230 protections in relationship to antitrust actions on large Internet platforms; and
4. Promoting discourse and transparency by defining existing terms in the statute like "otherwise objectionable" and "good faith" with specific language and requiring platforms to publicly document when they take moderation actions against content unless that may interfere with law enforcement or risk harm to an individual.<sup>272</sup>

Shuman Ghosemajumder, *Global Head of Product for Trust and Safety at Google*, proposed in 2021 that full protections of Section 230 of the Communications Decency Act should only apply to unmonetized content, to align platforms' content moderation

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<sup>272</sup> "Review of Section 230 of the Communications Decency Act of 1996," Department of Justice Archives, Accessed October 15, 2022, <https://www.justice.gov/archives/ag/department-justice-s-review-section-230-communications-decency-act-1996>.



efforts with their financial incentives and to encourage the use of better technology to achieve that necessary scale.<sup>273</sup> A hybrid of these changes to Section 230 of the CDA, along with others in the next section, would make galactic strides toward improving accountability and interrupting the corrosive environment found online.

In their article for the NYU School of Law, Angel Diaz and Laura Hecht-Felella proposed a framework for legally mandated transparency requirements, expanded beyond statistics on the amount of content removed to include more information on the targets of hate speech and harassment, on government involvement in content moderation, and on the application of intermediate penalties such as demonetization.<sup>274</sup> Second, they recommend that Congress establish a commission to consider a privacy-protective framework for facilitating independent research using platform data, as well as protection for the journalists and whistleblowers who play an essential role in exposing how platforms use their power over speech.<sup>275</sup> Of course, these actions would all be for the benefit of humanity. As collective solutions, they would require an unprecedented effort between the public and private sectors and a systematic overhaul of the platform's standards and practices to protect users and the public instead of commoditizing them while also protecting free speech.

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<sup>273</sup> Shuman Ghosemajumder, "Fixing Section 230 – not ending it – would be better for everyone," Fast Company, January 6, 2021, Accessed October 17, 2022, <https://www.fastcompany.com/90590851/dont-end-social-media-section-230-protections-fix-it>

<sup>274</sup> Angel Diaz and Laura Hecht-Felella, *Double Standards in Social Media Content Moderation*, Brennan Center for Justice at New York University School of Law, August 4, 2021.

<sup>275</sup> Ibid.

Similarly, legislative fixation would greatly enhance trust in mainstream media. The Fairness Doctrine went a long way to keeping broadcasters and publishers on good behavior, preventing public airwaves from exploitation for partisan purposes. The Fairness Doctrine was enacted in 1959 but was repealed by Ronald Reagan in 1987, and Congress could not overcome the presidential veto. It's no wonder then that partisan political colloquy filled the airwaves of the 1990s. Again, to fix the indiscriminate chaos that pervades the modern media landscape, the word restraint holds the most real possibility. The Fairness Doctrine had two basic elements: It required broadcasters to devote some of their airtime to discussing controversial matters of public interest and to air contrasting views regarding those matters.<sup>276</sup> Congress should consider bringing it back and, at the very least, test the limits of the First Amendment in this new media environment, although it is doubtful that this has practical applicability to social media platforms. Supreme Court case law suggests that the Doctrine is consistent with the First Amendment in *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), finding that the rights of the listeners supersede the rights of the broadcasters.

Federal laws that govern truth in advertising say that ads must be truthful, not misleading, and, when appropriate, backed by scientific evidence.<sup>277</sup> The Federal Trade Commission enforces these truth-in-advertising laws, and it applies the same standards no matter where an ad appears and looks closely at advertising claims that can affect

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<sup>276</sup> Steve Rendall, "The Fairness Doctrine, How we lost it and why we need it back," Sisyphus, Accessed October 31, 2022, <https://sisyphuslitmag.org/2018/07/the-fairness-doctrine-how-we-lost-it-and-why-we-need-it-back/>.

<sup>277</sup> "Truth in Advertising," Federal Trade Commission, Accessed October 31, 2022, <https://www.ftc.gov/news-events/topics/truth-advertising>

consumers' health or their pocketbooks – claims about food, over-the-counter drugs, dietary supplements, alcohol, and tobacco and on conduct related to high-tech products and the Internet.<sup>278</sup> Social media is a public health crisis, affecting the mental and emotional health of the population. It is addictive like cigarettes or gambling, stimulating the dopamine production in our brains. It ought to be a subject of study for the Department of Health and Human Services or CDC, and Section 230 should be amended to require public warning labels like those for tobacco, alcohol, seatbelts, helmets, and gasoline.

### **7.3 Combat Domestic Terrorism and Political Violence**

Republican congressional leaders have no intention of resigning the rhetoric that incites violence. It works too well. Many of their members continue to spew lies about election security to activate their base to action. The limit of expectations for Congressional action is fair. With the current division, it is unlikely that much of anything can be done bipartisanly. Still, Congress, the Justice Department, and law enforcement must act to address these threats adequately.

Effective instruments against terrorism require the criminalization of offenses stemming from ideology calculated to influence or affect the conduct of a government by intimidation or coercion, provide enhanced sentencing guidelines for domestic terrorism events, provide meaningful data collection and analysis about the spectrum of domestic terror incidents, and require regular reporting of domestic terror incidents nationally on

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<sup>278</sup> Ibid.

the evolving threats to the homeland from domestic extremists including links to politicians, law enforcement and the military.

Congress should amend the Communications Decency Act to prevent its immunity shield from applying in cases under the Anti-Terrorism Act. An amendment to the CDA Section 230 (c)(1) should be added, reading: *(A) This section shall not apply in cases arising under the Anti-Terrorism Act, 18 U.S.C. § 2333.* This change would maintain the freedom of speech guaranteed by the Constitution but remove protections from companies who refuse to moderate their platforms - allowing terrorists of all persuasions to propagate incitement to violence by crime-facilitating speech. It would encourage social media companies to make more significant efforts to combat online terrorist propaganda and threats while also ensuring that platforms can be held accountable for the content they allow on their platforms and for failure to mitigate these threats.<sup>279</sup>

The downside is not without significant effect, though. Law enforcement has said that scrutiny and moderation of social media platforms have driven many bad actors to file sharing and communications platforms that use end-to-end encryption, making it harder for law enforcement to investigate them. Others have noted that the clamp down on this type of speech is persuasively used in recruiting efforts for right-wing anti-government organizations. It is worthwhile to develop a hybrid of these two solutions, requiring a public/private sector partnership that streamlines intelligence gathering,

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<sup>279</sup> Jaime M. Freilich, *Section 230's Liability Shield in the Age of Online Terrorist*, Brooklyn Law Review 83 (2017), <https://brooklynworks.brooklaw.edu/blr/vol83/iss2/16>

shortens the time between detection, reporting, and removal, and enhances the information-sharing environment to facilitate faster law enforcement response to online threats.

The designation of terrorist organizations is a lynchpin of the USA PATRIOT Act. But labeling domestic groups, no matter how foul their beliefs, likely violates the First Amendment. It is imperative for domestic terrorism to be criminalized, but it should not rely on a designation as a terror organization for domestic terrorism statute development. Instead, the provision for “material support” concerning domestic terrorism should prohibit providing support for specific terrorism-related criminal offenses linked to delineated “threats” by the Department of Justice. Several civil rights groups have expressed concern about Americans being targeted unfairly for their ideology, but law enforcement experts have said it is important to be on the same plane as international terrorism. It would be an undeniable statement to the public that political violence no matter the ideology is criminal.

Policymakers at both the State and Federal levels should consider passing legislation that provides funding incentives to State and local law enforcement agencies and the military to help support training that helps identify extremists within their departments and provides countermeasures to radicalization.

The psychology of domestic terrorism and political violence must also be addressed. Former Senior Counterterrorism Intelligence Officer for the CIA, Marc Polymeropoulos, says the propaganda is part of terrorist’s machinery because it can

radicalize individuals remotely. Glorifying violence, and normalizing it, breaks down the resistance humans are naturally inclined to and justifies the need to act. The pillars of American democracy, primarily the First Amendment, protect extremist propaganda in ways that prevent authorities at home from using the same counterterrorism strategies deployed against international adversaries; another example of using democracy to break democracy. The public should demand leaders who can stand up every time and call out violence rather than using it for cheap political points.<sup>280</sup> Rather than clearly repudiate and disavow right-wing political violence, one Republican after another has equivocated, if not jumped into conspiracy theories with both feet. From Trump's 2017 Charlottesville comments about "very fine people, on both sides" after the Unite the Right rally to the kidnapping attempt on Michigan Governor Whitmer, vandalism at Susan Collins' home, threats of violence against the January 6<sup>th</sup> committee members (especially the two Republicans), to Paul Pelosi's attacker, the normalizing of political violence is plain. Democrats have quickly and clearly stated that political violence against any politician is unacceptable, and Republicans have generally either remained silent or perpetuated conspiracy theories and disinformation. The shared ideology of the Pizzagate shooter, hundreds if not thousands of insurrectionists, Ashli Babbitt, conservative radio and television show hosts, pundits, Oathkeepers, social media disinformation sources, and former President Trump himself is violent right-wing nationalism. The apogee of this

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<sup>280</sup> Marc Polymeropoulos, "The GOP needs a counter-radicalization strategy," NBC News, November 6, 2022, <https://www.nbcnews.com/think/opinion/paul-pelosi-break-shows-republican-party-needs-counterradicalization-s-rcna55718>.

violent movement is not Trumpism, is not Republicanism, or conservatism, it is white nationalism.

#### **7.4 Voter Motivation**

There is an ongoing assault on democracy by voter suppression. The history of voter suppression shares an almost identical timeline with white supremacy. These two movements are inextricably tied. As discussed in previous chapters, the power to vote is the most foundational characteristic of representative democracy. Were it not so powerful a tool, there would not be so big an effort to diminish it.

As the nation becomes more diverse and the demographic population growth tips toward minorities, this effort will continue. In 1980 Paul Weyrich, founder of the Heritage Foundation, said, “I don’t want everybody to vote... As a matter of fact, our leverage in the elections quite candidly goes up as the voting populace goes down.” He said the quiet part out loud.

Copious litigation has accompanied voting rights restrictions, and the pendulum of justice has swung from the liberation of access to upholding discriminatory practices without regard for the impact on millions of citizens. The ACLU and NAACP are organizations that regularly join lawsuits to stop overburdensome voter ID laws and fight against discriminatory removal of drop boxes, limited polling places and voting hours, and other voting laws that make it harder for people to vote. The negative impact of these laws is universal; they disproportionately impact voters of color.

Because the Supreme Court is now reliably on the side of voter suppression, efforts to remedy discrimination need to evolve. All recommendations to remedy the democratic

backsliding of voter suppression efforts stand apart from the ongoing legal efforts to blunt suppressive state laws. National and state organizations should find and fund mobilization efforts to get voters without government IDs to the Department of Motor Vehicles and help them through the process. Registration efforts must be ongoing year-round. Transportation to the polls is an important and essential way to overcome the distance placed by legislators. Voting advocacy organizations need to partner with local businesses to sponsor registration events and offer incentives to students who vote.

Election Day should be on the weekend, not a workday (this is one norm that should be discarded) or, at the very least, made a federal holiday. Only eight states have made election day a holiday. Three states who do not observe an election day holiday, Colorado, Oregon, and Washington, conduct all elections all-mail. In 2020 all three were in the top ten states for voter turnout. Many companies and school districts close on election day to encourage voting.

A 2018 Pew Research Center analysis found that 27 of the 36 member countries of the Organization for Economic Cooperation and Development hold their national elections on the weekend, while two others (Israel and South Korea) hold elections on weekdays but make those days national holidays so economic hardship won't be a barrier to electoral participation.<sup>281</sup> The poll also revealed bipartisan majority support for the idea: 71% of Democrats and Democratic-leaning independents and 59% of Republicans and GOP leaders said they would support making Election Day a national holiday.<sup>282</sup>

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<sup>281</sup> Drew Desilver, "Weekday elections set the U.S. apart from many other advanced democracies," Pew Research Center, November 6, 2018, <https://www.pewresearch.org/fact-tank/2018/11/06/weekday-elections-set-the-u-s-apart-from-many-other-advanced-democracies/>

<sup>282</sup> Ibid.



Tuesday election day in November was chosen at a time when our economy was largely agrarian. It was after the harvest, transportation took at least a day to get to polling places, and our population was far more religiously observant. Giving people two full weekend days to vote would overcome monumental hurdles that voters currently face in getting to the polls.

Similar to resolving issues associated with disinformation and domestic terrorism, updating Section 230 of the CDA is an area that can greatly assist the fight against voter suppression disinformation. Facebook and other social media platforms have a dismal record of consistently enforcing community standards in political and issue ads. But in 2020 and again in 2022, Facebook blacked out political and issue ads in the run-up to and immediately after the election as part of their effort to address election integrity on the platform.

In the wake of the electoral count granting the presidency to the candidate who lost the popular vote twice, a National Popular Vote Interstate Compact has emerged in which states pledge their electoral votes to the winner of the popular vote. Fifteen states, plus the District of Columbia, have signed on, accounting for 195 electoral votes. But the Compact only becomes effective once it reaches 270.

Governors, Secretaries of State, and Election Officials determine the fate of millions. Now that the Big Lie has become so pervasive, candidates for these offices are running on election integrity, hoping to overcome the hurdles presented in the 2020 election. These offices hold the key to determining electoral wins and losses and could rewrite how our elections work, handing wins to political allies and corrupting elections

entirely. It's why so many election deniers have become candidates for those offices; they are learning from the failures of past elections and adjusting accordingly.

The Supreme Court must be viewed for what it is, part of the federal political apparatus. With that perspective in mind, the available options must be examined to remediate this imbalance. Congress can shape the jurisdiction of the Court explicitly concerning specific legislation or an entire topic(s). This approach would face significant opposition from most senators and congresspeople as who would benefit from such a shield would change with each majority shift in Congress. Expanding the number of justices is an option that has been used, though not since the civil war. The last time it was attempted, the notion of such a dynamic shift resulted in far more moderated rulings from the Supreme Court. It is not a radical idea; the original Supreme Court was only six justices at its inception and has been as many as ten.

The most straightforward solution is a Constitutional Amendment limiting the term of Supreme Court justices. However, it is unrealistic that such an Amendment would have consensus among the States for ratification, much less support in Congress. The Twenty-Sixth Amendment lowered the voting age from 21 to 18 years old. It took only 100 days for the proposal to be ratified.<sup>283</sup> But the Equal Rights Amendment tells a different tale. It passed the House and Senate on March 22, 1972, and received twenty-two states in support. But opposition organized, slowed the process, and reached a standstill in 1978. Congress approved an extension until June 1982, but that deadline

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<sup>283</sup> The Twenty-Seventh Amendment was ratified in 1992, a full 202 years, 223 days after its proposal, and that was a relatively banal Amendment that delayed laws related to Congressional salary for the House of Representatives until after elections. This was an outlier discovered by a 19-year-old government student in 1982 who started a campaign to get it ratified and set the record for the longest ratification period.

came and went three states short of the required thirty-eight. An Amendment changing the duration of a Supreme Court appointment would surely face an impossible path since twenty-five states that are heavily conservative would be necessary to take action that would restrain their leverage.

Some support the founding principle of lifetime appointments, but the simple fact that life expectancy has nearly doubled since the conception of the Constitution significantly impacts the calculus of that assumption. The median life span in 1860 was 40 years old, double that of today.

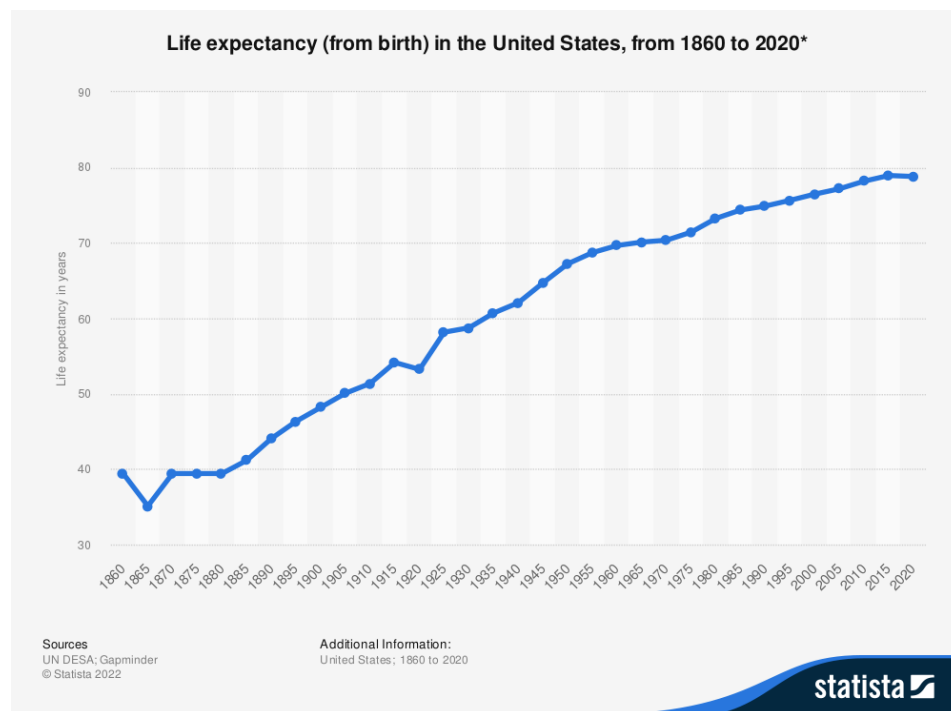


Figure 7 Life Expectancy 1860 – 2020, “Life expectancy (from birth) in the United States, from 1860 to 2020\*,” Statista, June 21, 2022, <https://www.statista.com/statistics/1040079/life-expectancy-united-states-all-time/#:~:text=Over%20the%20past%20160%20years%2C%20life%20expectancy%20%28from,have%20decreased%20by%20so%20much%20during%20this%20time.>

An alternative to changing the lifetime appointment status is a judicial retention election initiative,<sup>284</sup> whereby justices can be voted out after a service period. Immunity from public pressure is a double-edged sword for justices and has more often resulted in being out of touch with the electorate than unaffected by disapproval. Unfortunately, a lack of public influence results in a lack of accountability. Some ideas are fixed terms; others are renewable terms of six or eight years.<sup>285</sup> Staggering terms would ensure every president at least a couple of appointments. Mixing short and long terms would expand diversity.<sup>286</sup> Whatever the form, it is imperative to diffuse the political battlefield of Supreme Court appointments.

The current practice of allowing justices to retire or die and shifting the Court's composition over time created the imbalance American leaders are now trying to remedy. The Electoral College that elects the President who appoints Supreme Court justices no longer reliably reflects the popular majority.

Congress could seek to adopt Amendments to overturn Supreme Court decisions. Still, as mentioned above, historically, Constitutional Amendments in response to unpopular Supreme Court rulings are rare (only five were explicitly adopted to overturn Supreme Court decisions).<sup>287</sup> This would be as difficult to address as an Amendment limiting Supreme Court justices' terms.

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<sup>284</sup> Senator Ted Cruz (R-TX) called for judicial retention elections. Such a change at the federal level would require a constitutional amendment, though it would mimic the practices of some 20 states.

<sup>285</sup> Doug Bandow, "Supreme Court: No More Lifetime Appointments," Cato Institute. Accessed August 13, 2022. <https://www.cato.org/commentary/supreme-court-no-more-lifetime-appointments>.

<sup>286</sup> Ibid.

<sup>287</sup> Ryan Emenaker, PhD Dissertation, Introduction, 13.

One less explored alternative is a hybrid of expanding the Court to 12 or 13 to manage the caseload of the 13 districts; then, each case is assigned to nine justices based on a random lottery creating more balance and less partisanship on the Court, with the other justices acting as alternates like a jury. This option maintains the procedural selection of justices but corrects partisan political tendencies. The Circuit Courts rotate judges at the appellate level. The number of judges in each circuit ranges from six judges in the 1st Circuit to 29 in the 9th Circuit.<sup>288</sup> However, only three of these judges are randomly selected to form the panel that will decide the appeal. On rare occasions, after the three-judge panel decides, a circuit court can rehear a case “en banc,” with the entire slate of judges reviewing the case.<sup>289</sup>

Hopefully, because the ratio of judges would never be predictable, it will provide more stability and moderation in the rulings, not massive shifts of the pendulum. It never allows an unbalanced Court that deadlocks on any decisions but maintains the opportunity for President to appoint new justices as sitting justices retire or pass. Of course, combining this format with election-based judicial retention, renewable term limits, or term limits, in general, would be an even greater equalizer.

## **7.5 Stop American Authoritarianism**

Americans must recognize that the signals are flashing red. The world has seen this playbook before. Riding the tide of economic or cultural inequality, a brash outsider

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<sup>288</sup> “The U.S. Court System Explained,” Democracy Docket, February 10, 2022. Accessed August 14, 2022. <https://www.democracydocket.com/explainers/the-u-s-court-system-explained/>.

<sup>289</sup> Ibid.

risers, giving voice to the grievances of many, and blames the easiest villain, the immigrant. Exploiting common language, religion, culture, and history, this leader directs ire against the ruling class they say failed the people. Using the gears of democracy, the leader is elected to right the perceived wrongs. The population allows itself to be directed to violence and passes off responsibility for the consequences to the person giving the orders. The perception of celebrity, strength, and success is a toxic combination that creates a sense of legitimate authority. The establishment, fearing losing power, aligns with the outsider expecting to control him. Elections are attacked, rules are changed, and it is all done in the name of loyalty – not to the nation or the Constitution – but to the individual.

Trump may not be a fascist leader, and the Trump administration may not have been a purely fascist regime, but Trumpism unquestionably has fascist tendencies.<sup>290</sup> Jason Stanley, a Yale philosopher, said, “you could call legitimately call Trumpism a fascist social and political movement” and that Trump is “using fascist political tactics,” but he is not leading a fascist government.<sup>291</sup> These observations were made before January 6<sup>th</sup>. To be a fascist, one must support the revolutionary, usually violent overthrow of the entire government/Constitution and reject democracy entirely<sup>292</sup>; it stands to reason that summoning an angry mob to the Capitol and trying to violently overthrow the government to prevent the transfer of power may shift the perspective. Robert Paxton, a Columbia University historian of fascism and Vichy France, wrote after the attack, “I

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<sup>290</sup> Dylan Matthews, “Is Donald Trump a fascist? 8 experts weigh in,” *Vox*, October 23, 2020, <https://www.vox.com/policy-and-politics/21521958/what-is-fascism-signs-donald-trump>.

<sup>291</sup> Ibid.

<sup>292</sup> Ibid.

have been reluctant to use the F word for Trumpism, but yesterday's use of violence against democratic institutions crosses the red line."<sup>293</sup> Maybe the fact that Trump loyalists and supporters advocate their actions by claiming to support the Constitution rather than explicitly saying they want to destroy it makes this movement a different beast altogether. They are not advocating for destroying democracy but undermining the pillars that make democracy function. Roger Griffin, professor of history and political theory at Oxford Brookes University, said, "Trump is far too pathologically incoherent and intellectually challenged to be a fascist, and suffers from both Attention Deficiency Disorder, lack of self-knowledge, capacity for denial, narcissism, and sheer ignorance and lack of either culture or education to a degree that precludes the Machiavellian intelligence and voracious curiosity about and knowledge about contemporary history and politics needed to seize power in the manner of Mussolini and Hitler,"<sup>294</sup> while this may be true, he has much assistance in pursuing that goal.

The comparative similarities that have revealed themselves in the four years of the Trump administration demonstrate weakness in our democratic republic, even if the correct label is "fascism light" or authoritarianism, the beliefs exhibit an anti-democracy quality. Democracy is the antidote to authoritarianism. Scholar and Professor of History at the University of Maryland, Jeffrey Herf, notes that while Trump and the current Republican party exhibit many disturbing and worrisome characteristics, he would not categorize their leadership as fascist. In an article written before the 2016 election,

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<sup>293</sup> Dylan Matthews, "The F word", *Vox*, January 14, 2021. <https://www.vox.com/22225472/fascism-definition-trump-fascist-examples>.

<sup>294</sup> Ibid.

Professor Herf notes that Trump made no open denunciation of democracy as is classic for fascist leaders. While he has entertained rhetorical attacks, he has not exactly ordered paramilitary violence, although that last point may be debatable in light of the January 6, 2020, violence at the Capitol. Furthermore, he observes that while Trump has repeatedly attacked the press and threatened litigation against media outlets, he has not explicitly called for rescinding the First Amendment. In addition, Professor Herf discusses the economic policies that Trump supports as starkly antithetical to the pro-government expansion, anti-bourgeois attitude historically demonstrated by fascist leaders, viewing Trump's authoritarianism as "quintessentially American" with an unquenchable hunger for money and materialism as a proxy for freedom.<sup>295</sup> It could certainly be said that Trump and the extreme ranks of the Republican party do not check all the boxes of fascist character. Still, they have demonstrated overlapping anti-democratic similarities that are concerning and threaten democracy. In a follow-up on his original article written a few months before the 2016 election, Professor Herf laid responsibility for the rise and popularity of dictators on the right and the left, fascists, Nazis, and Communists at the feet of political establishments for failing to stop them and repudiate their candidacy. He said,

Merely because Trump is not identical to the dictators of Europe's twentieth century does not mean that the whiff of fascism, the appeals of authoritarianism that were so obvious in March can be dismissed. At its July convention, the whiff became a stench. Trump and his followers together publicly found pleasure in hatred and contempt for those who disagreed...Modern

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<sup>295</sup> Jeffrey Herf, "Is Donald Trump a Fascist?" *The Times of Israel*, March 15, 2016, accessed November 28, 2022.



European history is littered with disasters that could have been prevented if people with power had taken the threat to democracy more seriously.<sup>296</sup>

Professor Bruce Kuklick has a different take, noting many of the same differences that Professor Herf observed, Mr. Kuklick views the fascination and colloquial commonality of the term “fascism” as an American obsession amplified by Hollywood and used to reconcile the conflict between the Founder’s vision of America, and it’s contemporary reality. He also points out other differences that set Trump apart from the classic embodiment of a fascist; that Trump favored isolationist foreign policy and domestic programs that elevated federalism and localism over nationalism.<sup>297</sup> Moreover, the universal public support for Hitler far exceeded the modest electoral support Trump received. But it seems reasonable to assume that if given another shot at leadership, Trump would gladly welcome expanded executive power and engage in more extensive norm-breaking that would less closely resemble American democracy as it is presently understood.

Americans and our elected leaders must prioritize the rule of law, adhere to the checks and balances the founders imagined, and hold leaders accountable when they break the law and violate their oath. The norms, institutions, safeguards, and guardrails of American democracy need reinforcement to defeat the efforts of authoritarian ambition to seize eternal power and bring about a new Christian nationalist America. Democracy will

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<sup>296</sup> Jeffrey Herf, “Postscript to ‘Is Donald Trump a Fascist?’” *The Times of Israel*, August 14, 2016, accessed November 28, 2022.

<sup>297</sup> D.G. Hart, “‘Fascism Comes to America’ Review: It’s always happening here,” *Wall Street Journal*, accessed November 28, 2022, <https://www.wsj.com/articles/fascism-comes-to-america-review-its-always-happening-here-11668981587>

not vanish suddenly but slowly erode. With each norm that falls, there are fewer guards against overreach and more compromised governance.

## **7.6 Final Thoughts**

Trust is “the creator of collective power,” for national unity to thrive, collective trust must exist; conversely, when trust is segmented and only exists within partisan spectrums, the collective power of each “side” may become more powerful but will deepen polarization. The tactics necessary to prevent this polarization must largely be self-imposed, in the words of James Madison,

Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

At every point in our nation’s history, when Americans and our elected leaders have let fear drive decisions, especially fears that otherize whole populations of people, we have come to regret it. Museums and memorials dot the country, documenting the annihilation of Native Americans and the shame of Japanese Internment. The public reads throughout our history books about the treatment of enslaved people, the Chinese and Irish, who helped build this nation. School children read of the fight for civil rights and equality for Black Americans, Jews, and women, yet we find ourselves again at a time when all the fruits of these two centuries of effort can slip away, swept up by the

rising swell of white nationalism. It has overwhelmed social media, surged in traditional media, and become the battle cry of self-proclaimed patriots who justify violence in its name. It has driven democratic norms and institutions into the ground only to be resurrected as something altogether illiberal and undemocratic. The arc of time has seen these changes before, but at no time in the past has America been as vulnerable as it is today, at the confluence of economic, political, social, and institutional crises. America has always been aspirational. The nation's journey has always sought to grow, evolve, and improve, with many missteps along the way. The mistakes of the past do not define the country's history, but neither are all Americans free from the responsibility to remember them and learn from them so that they are not repeated.

The January 6<sup>th</sup> insurrection was not the culmination of the white supremacist effort to overtake the government, it was the first act. That day, a militia-led coup was the goal, overturning a free and fair election to maintain a grip on power, but it has not been extinguished. While traditional democratic governance has been restored since 2020, there is still a smoldering movement of nationalism, growing and readying for another bite at the apple. The undercurrent of democratic erosion is still churning. The forces that fueled the election of the 45<sup>th</sup> President and the appointment of a conservative supermajority on the Supreme Court have been working for decades to undermine the democratic infrastructure that enabled the stability of our government for the last 240 years. The number of anti-democratic actors nationwide have joined efforts and immersed themselves as part of the very machinery that is supposed to defend against authoritarianism. America is at a tipping point where this anti-democratic movement is

changing the foundational structure of our republic. This movement is not new, but its recent explosive expansion is.

The tragic paradox of the electoral route to authoritarianism is that democracy's assassins use the very institutions of democracy – gradually, subtly, and even legally – to kill it.<sup>298</sup> The century-long effort to imbue the American government with extremist nationalist politics is at the cusp of irretrievably changing democracy in America, possibly even jettisoning it. The repetitive rallying against big government is a myth brought to life by politicians who have for years obstructed meaningful legislation that would benefit the public and made a chaotic mess of the regulations that exist, rife with loopholes and vagueness that can be exploited by judicial interpretation. This goes hand in hand with the partisan effort to front-load the judiciary, often with unqualified, inexperienced judges serving lifetime appointments. While there is hope that the judiciary will hold against the tide of partisan adversarial legalism, it is not guaranteed.

The United States is at a confluence. Made vulnerable by a breakdown in norms, a trifecta of threats undermining public trust, normalizing domestic terrorism, political violence, and hate, and active measures to suppress millions of voters, American democracy is receding, and a trend of extremism continues to grow.

The system has been overrun with rhetoric, disinformation, groupthink, and bold attacks on our most potent weapon against authoritarian rule; the power to vote. As the demographic scales shift and the population becomes more diverse, the entrenched power structure has escalated its tactics to maintain its grip on leadership rather than

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<sup>298</sup> Steven Levitsky and Daniel Ziblatt, *How Democracies Die*, (New York: Broadway Books, 2019), 8.

accommodating changing social culture and adopting more appealing policies to a spectrum of voters. It is the refusal to grow, evolve, and include all Americans that this nationalistic membership battles.

To overcome this culture war, the public needs to listen for comprehension, not just to reply. Americans cannot tune out or be overwhelmed. All Americans need to be part of the solution and talk about these challenging issues, including opposing views, rationally and decently. American citizenship requires more active participation and information than it did 30 years ago.

Other countries have successfully resisted electing autocrats and prevented them from gaining power by refusing to align with them. This country failed to do that when Trump was allowed to become the Republican nominee. It was made possible by public animosity and extremism. Trump opened the floodgates, and extremists were brought into the mainstream. Democratic norms make checks and balances work. That's why they need to be strengthened, not further eroded. The survival of our institutions and values of liberal democracy depends on our ability to withstand the degradation of norms. The hurricane of extremism may weaken but cannot be allowed to destroy the rule of law.

A bright spot in an otherwise tenuous outlook for democracy, the mid-term election of 2022 has revealed a population that seems to be pulling back somewhat from the madness. What was expected to be a "bloodbath" was a rejection of many highly partisan election-denying candidates put forward by the GOP. The Republican wins were primarily attributed to those who refused to fully embrace the extremist rhetoric and anti-democratic election denialism in favor of more classic conservative values. Voter turnout appears to have broken records for a midterm election, especially in the Generation Z

population. Though there were some early reports of voter intimidation and at least one investigation of armed drop box “watchers,” there have not been significant accusations of irregularities or voter fraud, and most races drew concessions even from Republican candidates. The customary trend of the opposition party making big gains in a midterm election appears not to have materialized. There was evidence of split-ticket voting in states like Georgia, where the Republican governor Brian Kemp saw far greater numbers than Senate candidate Herschel Walker. States that put abortion on the ballot are seeing results consistent with reproductive freedom being a priority for voters.

Though Florida saw Republicans hold dominance in their newly drawn gerrymandered districts, other recently redrawn gerrymandered congressional maps did not provide the impenetrable obstacle as intended. Several Democrats won highly competitive seats expected to remain in Republican control in Colorado and New Mexico. Michigan’s new congressional maps drawn by an independent commission demonstrate the strength of a fair process to produce competitive races. The Michigan state Senate flipped to Democrat control for the first time in 40 years, along with the House and the Governorship giving control of the state government entirely to Democrats. These outcomes prove that Americans are increasingly engaged and informed. Though media messaging going into election day claimed the economy was the top issue for voters, concerns for democracy ended up claiming to top spot. All indications are that democracy has survived for now.

Democracy’s assassins weaponize institutions, politicize media, encourage political violence, corrupt the justice system, and disenfranchise voters. Their goal is to make America less representative, less fair, less accountable, and less free. Democratic

functioning is signaled by public trust in government, media, and political efficacy. To save democracy, the people must oppose extreme forces, put the country over the party, preserve decency, and show up to vote. In this election, voters proved we could.

## **7.7 Further Research**

Based on the findings of this research, other areas of interest impactful to the strength of democracy deserve attention—specifically economic drivers of division, campaign finance, and the inaction of Democratic leaders that has resulted in the overwhelming loss of working-class support.

Nationalism flourishes when societies feel economically or culturally insecure.<sup>299</sup> But the remedy for increasing economic and cultural security means something different to everyone. The grievance of slow-growing standards of living for the working and middle class and cultural fears related to immigration have yielded growing divisions between diverse metropolitan cities with influential economies and smaller, more rural parts of the country. Geographic sorting has amplified the impact of the undemocratic features of representation in the Senate and the Electoral College. The psychological distress caused by these realities leaves people vulnerable to simplistic blame associations as they “otherize” the perceived source of societal ills. They become overconfident in their beliefs and intolerant of the enemy group, paving the way to political extremism.

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<sup>299</sup> Diane Roberts, “The Great-Granddaddy of White Nationalism.” *Southern Cultures*, Vol. 25, No. 3, (2019), 133-155.

Consequential changes in the global economy – globalization and automation created job insecurity. The most potent driver of change is fear. Failing to meet the economic needs of the people has driven Americans to seek the source of this strife. The middle class has been collapsing for the last 25 years and is the primary driver of these unanswered needs. Eager to find someone to blame for the unanswered needs, parties have made Donald Trump’s catchphrase “rigged system” accurate, but not how he presents it. The potent phrase was exploited, made worse by blaming coastal elites and immigrants. He used their pain, deflected from the outsized benefits derived by the wealthy and corporations, and convinced 70+ million Americans that immigrants were the source of their ills. His policies failed to provide any relief to the middle class. But the rhetoric was successful, and millions of Americans still believe the pablum they were fed over those years.

The income gap between the top 1% and everyone else has tripled since 1979. Polls show a majority of the American people support policies that will help the population, including Medicare to cover dental, vision, and hearing, expansion of Social Security, windfall profits tax, expansion of federal funding for universal pre-K, Medicare for all, a \$15 minimum wage, and tuition-free public colleges.

America has not stopped believing in the public good, and the people still believe in America. The voices of the people have been stifled by the money of corporations and the wealthy in elections. Is democracy capable of delivering shared prosperity? Widening wealth inequality leaves the rich to perpetuate dominance and drive government changes by special interest, lobbyists through dark money, and the courts. *Citizens United v.*



*Federal Elections Commission (2010)* broke the dam of campaign finance reforms flooding dark money into political campaigns and PACs. According to OpenSecrets, the total cost of the 2022 state and federal midterm elections is projected to be more than \$16.7 billion, with federal candidates and political committees expected to spend \$8.9 billion. State candidates, party committees, and ballot measure committees are on track to raise \$7.8 billion.<sup>300</sup>

Is this what the founders envisioned for campaigns and elections? Will electoral breakdown be the straw that breaks democracy's back? To what extent does great wealth concentrated in the hands of a few impact the continuity of democracy?

I look forward to exploring those questions.

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<sup>300</sup> Taylor Giorno and Pete Quist, "Total cost of 2022 state and federal elections projected to exceed \$16.7 billion," OpenSecrets, November 3, 2022, <https://www.opensecrets.org/news/2022/11/total-cost-of-2022-state-and-federal-elections-projected-to-exceed-16-7-billion/>

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## Curriculum Vita

Tristen Walker is a dynamic and motivated professional with a proven record of building teams, managing projects from concept to completion, identifying individuals' strengths, and strategically designing cross-functional teams optimized for success. An adaptable and transformational leader, comfortable making critical decisions, exceptional written and verbal communication skills, broad understanding of change management, social media engagement, and infrastructure optimization, Tristen works well independently and in groups and is adept at establishing and achieving organizational goals.

### WORK EXPERIENCE

Board Member 2018 – 2019 | Vice President 2020-2021

Beverly Hills Unified School District, Board of Education

- Oversaw \$80M annual budget and \$385M facilities modernization bond.
- Successfully executed reconfiguration of a 92-year-old K-8 structure into a K-5, 6-8 format.
- Led the state in first wave district closures due to COVID-19, ensuring districtwide transition to Google Classroom/Meet, and Zoom; implemented live, synchronous instruction and in-person instruction in spring 2021 while continuing to offer remote instruction for families.
- Maintained three years of positive certification from the LA County Office of Education.
- Executed vision, established efficient structure, ensured accountability, and advocated for students and public education.
- Introduced anti-bias and Pride month recognition resolutions to the district.

### President

Dust Bunnies® | 2001 - 2017

- Built a \$2M apparel company from concept to maturity.
- Responsible for product development, procurement of raw materials, staffing, fulfillment, accounts payable and receivable, sales team recruitment, and distribution logistics.
- Developed a private label program and conducted market analysis to identify new opportunities.
- Opened accounts with over 3500 retailers nationwide, including Bloomingdales, Nordstrom, and Neiman Marcus. Dust Bunnies® proudly partnered with select nonprofit organizations donating over \$65,000 in products to families in need.

### EDUCATION

BS, Communication

Boston University

Boston, MA

1995

MA, Government

John Hopkins University

Baltimore, MD

Expected 2022