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### Those Who Can Vote Are Duty-Bound to Do So

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COLUMN

COLUMNS &amp; GUEST COMMENTARY

OPINION &amp; COMMENTARY

# Opinion: Those who can vote are duty-bound to do so

By A. BENJAMIN SPENCER  
FOR THE VIRGINIAN-PILOT | OCT 24, 2020



Voters cast their ballot at Kiln Creek Elementary School in Newport News during Super Tuesday March 3, 2020. (Jonathon Gruenke / The Virginian-Pilot)

As Election Day nears — in an election season in which millions have already voted — and as President Donald Trump and the U.S. Senate rush to fill a Supreme Court

vacancy before Nov. 3, it is time for a reminder of the importance of making our voices heard at the ballot box.

We live in a democratic republic that distributes electoral power in a way that is counter-majoritarian. Because the Senate is composed of equal representation by state, today a majority of the Senate represents a minority of the U.S. population.

Combine this with our Electoral College system of presidential elections — which permits those who fail to garner the most popular votes to become president — with our practice of partisan gerrymandering of congressional districts, and you have a system in which the will of the people has become disconnected from electoral outcomes.

If that were not enough, there are ongoing efforts to frustrate the ability of citizens to have their vote count. Voter integrity measures that ensure that only those entitled to vote are able to vote need to be in place. But voting restrictions enacted in the past decade in the wake of *Shelby County v. Holder* — in which the Supreme Court struck down the preclearance requirements of the Voting Rights Act of 1965 — have likely done more harm than good. Erecting obstacles to voter registration, engaging in purges of voter rolls on dubious grounds, making it more difficult to vote other than on Election Day, and other measures detract from our ability to discern the will of the governed.

The advent of COVID-19 has only created more challenges. But as public officials have responded by expanding early voting and voting by mail, we have seen numerous legal challenges to these reforms, as well as efforts to sow confusion. Questions such as whether ballots must be received by or postmarked by Election Day, whether a voter must have the signature of a witness on their ballot, whether a ballot can be challenged based on a perceived signature mismatch, and whether



new dean of the Law School, A. Benjamin Spencer. User Upload  
Caption: A. Benjamin Spencer is dean of William & Mary Law  
School. - Original Credit: Stephen Salpukas/ William &  
Mary (Stephen Salpukas / HANDOUT)

voters can use certain drop boxes to submit ballots are all the subject of intense debate and likely to be the subject of litigation after the election.

Inevitably, the courts will have to resolve these disputes, and how they rule could — as was the case in 2000 — determine the outcome of the 2020 presidential race.

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It is against this backdrop that those of us who have the privilege of voting must take full advantage of that opportunity. Those who are able should vote early and in person, using the method available that is least susceptible to challenge. At a minimum, we have to vote. When there are structural or partisan barriers to electing a government that reflects the popular will, declining to vote only exacerbates the problems.

If we want a government that is responsive, we have to vote. If we want to have a say in who appoints our federal judges, we have to vote. If we want to reform the law in ways

that give more people access to the ballot box and ensure that all Americans have a say in who governs them, we have to vote.

Dr. Martin Luther King said it best: “Give us the ballot, and we will no longer have to worry the federal government about our basic rights. ... Give us the ballot, and we will transform the salient misdeeds of bloodthirsty mobs into the calculated good deeds of orderly citizens. Give us the ballot, and we will fill our legislative halls with men of goodwill. ... Give us the ballot, and we will place judges on the benches of the South who will do justly and love mercy ...”

Because of King's ultimate sacrifice and those of countless others, we have the ballot. It is up to us to use it.

**A. Benjamin Spencer** is dean of William & Mary Law School.

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