Overview

The Dialogue on Voting Resource Guide is designed for use in the classroom and with youth and community groups by lawyers, judges, teachers, and other community leaders.

This Dialogue on Voting Resource Guide is an educational resource for presenting the 2014 Law Day theme of “American Democracy and the Rule of Law: Why Every Vote Matters.” The three topics selected to represent this theme are developed to inform Dialogue participants and to encourage robust and substantive discussions reflecting on the importance of a citizen’s right to vote and the challenges of ensuring opportunities for everyone to participate in our democracy. For more information on the 2014 Law Day theme and voting, including a timeline of significant voting-related legislation and events, please see the 2014 Law Day Guide at www.lawday.org.

PART I: Should Voting Be Required? engages participants in a discussion of compulsory voting policies in countries around the world and considers whether or not people should be required or incentivized to vote.

PART II: Voting in America asks participants to analyze a political cartoon and then discuss how voting laws have changed in the past fifty years and what this means for American democracy.

PART III: Voting in the Future explores voting in the United States and how voting in federal, state, and local elections might work with online applications.

In consultation with the teacher or community group leader, decide which parts of the Dialogue would be most appropriate for your group. The step-by-step directions and discussion prompts throughout this Dialogue Resource Guide are provided to help guide discussion of topics with participants.

THE ABA DIALOGUE PROGRAM

The Dialogue on Voting is the twelfth annual edition of the ABA Dialogue Program. This Resource Guide for Dialogue leaders can be used for Law Day and throughout the year. The ABA Dialogue Program provides lawyers, judges, teachers, and other civic leaders with the resources they need to engage students and community members in discussions about fundamental American legal principles and civic traditions. Supreme Court Justice Anthony Kennedy introduced the first Dialogue program, the Dialogue on Freedom, at the 2002 ABA Midyear Meeting in Philadelphia. Subsequent Dialogues have addressed Brown v. Board of Education, the American jury, separation of powers, youth and justice, the rule of law, Lincoln and the law, law in the 21st century, the legacy of John Adams, the role of courts, and equal justice. All Dialogues and supporting resources are available at www.lawday.org.

At www.lawday.org there are additional resources for conducting the Dialogue. Available for download are ready-to-use PowerPoint® presentations and handouts for each of the three parts of the Dialogue, which include key graphics and text.
Part I: Should Voting Be Required?

Voting is not mandated in the United States, as it is in some other countries. Likewise, there are no formal penalties for not voting or rewards for casting votes. This Dialogue asks participants to consider implementing a compulsory voting policy in America. Participants will also discuss what it might mean to penalize nonvoters or incentivize voters.

**ASK PARTICIPANTS**

- Do you think that voting is a fundamental right?
- Do you think that voting is a fundamental responsibility?
- Should American citizens be required to vote?

Possible responses: Citizens are asked to serve on juries and required to pay taxes; people should have the freedom not to vote.

**Explain:**

Almost all democratic governments consider voting in elections essential to a healthy democracy. Many democratic countries, including Argentina, Australia, Brazil, Greece, Luxembourg, Peru, and Singapore feel so strongly about the importance of voting that they have made it compulsory.

In compulsory voting systems, citizens are required to vote or check in at a polling place on election day. Sanctions for not voting or checking in at a polling place range from fines to barriers in obtaining certain goods and services. While many of these countries can report high voter turnout rates, questions remain as to whether or not these numbers reflect a more informed and civically engaged electorate.

During the 2012 U.S. Presidential Election, an estimated 58 percent of the eligible voting population went to the polls. This means that roughly 93 million eligible citizens did not vote. The low voter turnout in U.S. elections continues to fuel the discussion of whether mandatory voting laws would have an effect on our electoral democracy.

**What might be the advantages of compulsory voting?**

Possible responses: Increased voter turnout, people might be more inclined to seek out information about the candidates, less money spent on get-out-the-vote efforts, closer to universal suffrage.

**What might be the disadvantages?**

Possible responses: could compromise integrity of the vote, infringement on individuals’ personal liberty, difficult and expensive to enforce.

If the United States adopted a compulsory voting system, for which elections would people be required to vote?

Encourage participants to consider voting in all elections or in just federal, state, or local elections.

**ASK PARTICIPANTS TO CONSIDER PENALTIES FOR NOT VOTING**

- How do you think the American public would react to a voting system that enforced penalties for not voting?
- What do you think an appropriate penalty might be for someone who does not vote?

Possible responses: impose monetary fines, model after the Selective Service System’s approach by tying...
voting to government benefits, such as eligibility for student financial aid, job training, and government employment.

**Explain:**
There are roughly a dozen countries around the world that actively enforce compulsory voting. For example, although rarely administered today, Greece’s traditional sanctions include restrictions for obtaining new passports and drivers’ licenses. In Peru, voters receive a stamped card after voting. The card is necessary if Peruvians want to obtain certain goods and services from public offices. Belgium has the oldest compulsory voting system, which began in 1892. Belgians may find it difficult to secure a job in the public sector if they have opted out of voting.

In Australia, after each election, a letter is sent to all apparent nonvoters requesting that they either provide a valid and sufficient reason for failing to vote or pay a $20 penalty. If nonvoters fail to reply within a given time frame, cannot provide a valid reason for not voting, or decline to pay the $20 penalty, then the matter may be referred to a court.

**Part II: Voting in America**

The March on Washington for Jobs and Freedom took place on August 28, 1963, and remains the largest gathering of its kind in American history. While the cartoon on page 5 commemorates the march, it also raises questions about contemporary obstacles to voting in America, and what it means for democracy.

**Refer Participants to the Cartoon**

What is the first thing that captures your attention when you look at this cartoon? Why?
Possible responses: reflecting pool with obstacle course and labels, “Wipe Out Voter Fraud” sign, people at the pool, crowd in the background, Washington Monument, Lincoln Memorial.

- What do you think is happening in the cartoon?
- Where does the cartoon take place? Why might the cartoonist have selected this location?
Possible responses: National Mall, Lincoln Memorial and Washington Monument, in Washington, D.C.

1872
Susan B. Anthony is arrested, tried, and convicted for attempting to vote.

1888
Following the end of Reconstruction, Florida institutes several voting requirements, which make African American male voter turnout plummet from 62% to 11% over the next four years. Other states, predominantly in the South, follow suit. Some states implement poll taxes, literacy tests, and “grandfather clauses”—that is, your grandfather must have been eligible to vote as voting requirements.

1920
Women are granted the national right to vote when the 19th Amendment is ratified by states.

ASK PARTICIPANTS TO CONSIDER INCENTIVES FOR VOTING

- How do you think the American public would react to a voting system that offered incentives for voting?
- What incentives do you think would be appropriate?
Possible responses: commercial goods or discounts, tax deductions.

WRAP UP BY ASKING PARTICIPANTS

If every eligible voter were required to vote, how might that affect the voter experience? voter participation?
Possible responses: increase in uninformed voters, government overexerting its authority, politicians and government possibly becoming less partisan and divisive, voting more balanced reflection of the political spectrum. Increase of voters at the polls, an increase in votes to be counted, increased civic engagement and participation, and increased demand for improved voting processes.
What references to voting do you see in the cartoon?
Possible responses: to voter fraud, early voting curbs, voter ID laws, voter suppression, registration limits.

Why do you think the references to voting are labeled on objects in the pool? What are they supposed to represent?
Possible responses: obstacles to voting or that they represent attempts to prevent voter fraud.

What is the sign held by the man and woman referring to? Why do you think the cartoonist included this sign?
Possible response: frame of reference to compare voting issues today with those from 50 years ago.

If needed, pause here to provide participants with a brief background on the March on Washington: On August 28, 1963, more than 200,000 people came to Washington, D.C., from across the country to highlight the civil rights struggles of African Americans and to call for a passage of the Civil Rights Act (1964) and the subsequent Voting Rights Act (1965) in Congress. The march culminated on the steps of the Lincoln Memorial with Martin Luther King Jr. delivering his now famous “I Have a Dream” speech as he looked out at the crowds surrounding the Reflecting Pool.

What voting obstacles do you think would have been in the reflecting pool in 1963?
Possible responses: 1st generation versus 2nd generation barriers to voting, Jim Crow laws, voter intimidation, literacy tests, poll tax, physical threats and intimidation used to prevent people from voting, voter ID laws, redistricting.

What do you think the cartoonist is trying to say in this cartoon? Do you agree?
Encourage participants to explain the messages that they believe the cartoonist is trying to convey, and whether they agree with those messages.

WRAP UP BY ASKING PARTICIPANTS
Are there other obstacles to voting that haven’t been included in this cartoon?
Possible responses: voter registration process, in-person or mail voting, hours of polling locations, confusing ballots, language barriers.

What could be done to eliminate these types of barriers to voting?
Possible responses: automatic or electronic voter registration, more opportunities—e.g., voting methods, polling locations, hours—for voting in elections, identification processes, multilingual ballots. Encourage participants to think broadly about the electoral process.

In Smith v. Allwright, the U.S. Supreme Court rules that denying African Americans the right to vote in a Democratic Party primary in Texas violated the 15th Amendment.

Indian Citizenship Act declares all noncitizen Native Americans in the United States citizens and gives them the right to vote.
Part III: The Future of Voting

Participants will consider contemporary examples of online voting, whether or not voting in federal, state, and local elections might, or should, occur online, and the advantages and challenges to implementing such a system.

ASK PARTICIPANTS TO THINK ABOUT VOTING IN A VARIETY OF ONLINE ELECTIONS

Have you ever voted for something online?
Encourage participants to think about a variety of contemporary scenarios that include online voting, including with computer tablets or smart phones. Examples might include surveys, contests, polls, crowdsourcing, TV shows, and other nonpolitical elections.

What did you like about that experience? dislike?
Possible responses: a variety of “likes” such as convenience, efficiency, ease of use, ability to vote multiple times, ability to see how others voted, ability to participate using social media, or ability to affect the outcome of the contest. “Dislikes” might include slow websites, jammed phone lines, confusing online forms, or technical glitches that prevent the submission of votes, as well as concerns about fair or representative outcomes.

ASK PARTICIPANTS TO CONSIDER VOTING

If necessary, clarify that you are discussing voting in local, state, and federal elections, or “electoral voting.”

What processes do you go through in order to cast your ballot?
How is this voting process different from the online examples already mentioned?
Possible responses: postal mail, in person at a locally designated polling place, email, early voting, absentee voting, electronic voting. Encourage participants to discuss the differences between voting in local, state, or federal elections and the other types of voting that they discussed earlier. Some of the differences may be related to the methods of voting—electronic, online, via text or social media; but others to the purpose or goals of the election—selecting contest winners, electing student council representatives or local or professional organizational officers, or resolving a group issue.

What do you like about the experience of electoral voting? dislike?
Possible responses: a variety of “likes” such as convenience, efficiency, having a voice, exercising a right or responsibility, ability to select representatives in government, registering their votes, having a sense of civic community, or awaiting results on Election Day.

1964

Congress passes the Civil Rights Act of 1964, making it illegal to discriminate on the basis of race, national origin, religion, and gender in voting, public places, the workplace and schools. Poll taxes are also outlawed with the ratification of the 24th Amendment.

1965

President Lyndon B. Johnson signs the Voting Rights Act, barring direct barriers to political participation by racial and ethnic minorities, including prohibiting any election practice that denies the right to vote on account of race, and requiring jurisdictions with a history of discrimination in voting to get federal approval of changes in their election laws before the changes can take effect. The Act would be subsequently extended by future Congresses.

Addition: Follow-up

• How have voting laws changed in your state in the last five years?
• How do the laws in your state compare with what is happening in the cartoon?
• Do you think any of these changes help or hinder the voting?
   If needed, share information with participants on their state and local voting laws and requirements.
The 26th Amendment lowers the voting age to 18. The change was largely in response to the Vietnam War and the feeling that young people should be able to vote since they serve in the military.

Do you think implementing online electoral voting would make people more likely to vote? less likely? have no effect on voter turnout?

Encourage participants to discuss their ideas about what impact online electoral voting might have on voter turnout. Note that evidence from countries that use online electoral voting, including Estonia, has not been conclusive in determining whether online voting increases voter turnout.

• What security features do you think would need to be included for an online electoral voting system?
• Why would security be important?

Possible responses: the need for identification of voters, ability to vote only once, counting of votes, and safeguarding of ballot secrecy and against hackers or malware.

Encourage participants to think about many of the “likes” and “dislikes” that they listed earlier and how these might affect aspects of voting in an election. Encourage participants to consider the current security of voting in relation to any online voting in the future.

WRAP UP BY ASKING PARTICIPANTS

What should voting in elections be like in the future?

Encourage participants to think broadly and futuristically about the American voting experience.

Possible responses: online electoral voting, including features such as ability to immediately correct mistakes on ballots at no cost, ability to provide ballots in a variety of languages or make use of existing translating tools, increased voter turnout, increased anonymity, automatic counting, voting “apps,” ability to “track” votes, new polling locations, voting holidays.

The 1971 Voting Timeline:

1971

The 26th Amendment lowers the voting age to 18. The change was largely in response to the Vietnam War and the feeling that young people should be able to vote since they serve in the military.

1971

Following the controversial presidential election of 2000, Congress passes the Help America Vote Act. It mandates modernization of outdated punch card and lever voting systems, establishes the Election Assistance Commission, and establishes minimum election administration standards.

2002
How to Do a Dialogue in the Classroom and in the Community

If you are a lawyer, judge, or other leader interested in conducting a Dialogue on Voting at a school in your community, follow these steps to help ensure a meaningful experience for you and the participants alike.

A note to teachers or community group leaders: If you are initiating the program, please review these steps with legal professionals whom you have asked to conduct a Dialogue.

STEP 1. Identify a school or community group. Contact a school where your or a friend’s children are students, a school in your neighborhood, or a school where you know members of the teaching staff. You might also contact community groups, for youth and adults, such as the YMCA, Girl Scouts, Kiwanis Club, or League of Women Voters. Friends and co-workers might also recommend a school or community group that would like to participate in the Dialogue program.

STEP 2. Set up an appointment for your visit. Contact the school principal, department head (social studies, history, government, or civics), or community group leader. Explain the program to your contact and offer a copy of the Dialogue Resource Guide. Ask if the contact would be willing to schedule a date and time to conduct the Dialogue. Your contact should set aside between 45 and 90 minutes for the program.

STEP 3. Discuss your visit with the teacher or community group leader. Discuss the ages and experiences of the participants. Determine what part of the Dialogue you would like to focus on and provide the teacher with a copy of the Resource Guide, focusing on the parts you wish to discuss. In addition, consult with the teacher or community leader about additional background materials that might help participants. Request that name tags or tent cards be printed with the participants’ names. Request equipment you will need (e.g., LCD projector, screen, flip chart, or microphones).

STEP 4. Prepare participants for your visit. Ask the teacher or community leader to distribute any materials or assign any background readings you want participants to discuss at least one day before your visit.

STEP 5. Prepare yourself for your Dialogue. Know your subject. Review the Resource Guide before you go and think of additional follow-up questions that may help participants explore the issues raised by the Dialogue. Using the step-by-step directions and questions in the Resource Guide, map out where you would like the discussion to go, but be prepared to be responsive to participants’ questions and to provide background information, if needed. As appropriate, personalize the topic by referring to your own experiences.

STEP 6. Follow up after the Dialogue. Write a thank-you note to the teacher or community leader. Make yourself available to answer questions that participants may raise following the Dialogue.

In *Shelby County v. Holder*, the U.S. Supreme Court finds portions of the Voting Rights Act outdated and unconstitutional. The Court leaves the door open for Congress to update those parts of law.

Pursuant to Executive Order 13639, the Presidential Commission on Election Administration releases its “Report and Recommendations to the President” after studying and analyzing the American voting experience.