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A Guide to the 87th Texas Legislative Session

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A GUIDE TO THE 87TH TEXAS LEGISLATIVE SESSION

SENATOR JOSÉ MENÉNDEZ & PEARL D. CRUZ*

*[W]e will rebuild, reconcile and recover[,]
and every known nook of our nation and[,]
every corner called our country,
our people diverse and beautiful will emerge,
battered and beautiful[.]
When day comes we step out of the shade,
afame and unafraid[.]
The new dawn blooms as we free it.
For there is always light,
if only we're brave enough to see it[.]
If only we're brave enough to be it[.]*¹

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1. Read: *Youth Poet Laureate Amanda Gorman's Inaugural Poem*, CNN (Jan. 20, 2021, 10:22 PM), <https://www.cnn.com/2021/01/20/politics/amanda-gorman-inaugural-poem-transcript/index.html> [<https://perma.cc/QC85-5DT2>] (outlining a transcript of Amanda Gorman's inaugural poem read at President Biden and Vice President Harris's inauguration ceremony).

Now in 2021, our country enters a new era under the President Biden and Vice President Harris Administration.² The new administration faces unprecedented challenges, including a divided nation and the continuing battle against and hopeful recovery from the COVID-19 pandemic.³ Within hours of taking their oaths, President Biden and Madam Vice President Harris issued several executive orders prioritizing our existing needs.⁴ Our country is ready for a new chapter.⁵

Amidst this era, the Texas Legislature began the 87th Legislative Session on Tuesday, January 12, 2021.⁶ The Texas Legislature convenes for 140 days every odd-numbered year to discuss legislative priorities, with each member focusing on the particular needs of their individual

2. See Joseph R. Biden, Jr., President of U.S., Inaugural Address (Jan. 20, 2021) (setting the tone for the new Administration, stating, “My whole soul is in it. Today, on this January day, my whole soul is in this: Bringing America together. Uniting our people. And uniting our nation. I ask every American to join me in this cause. Uniting to fight the common foes we face: Anger, resentment, hatred. Extremism, lawlessness, violence. Disease, joblessness, hopelessness. With unity we can do great things. Important things. We can right wrongs.”) (transcript available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/20/inaugural-address-by-president-joseph-r-biden-jr/>).

3. See *id.* (“This is a time of testing. We face an attack on democracy and on truth. A raging virus. Growing inequities. The sting of systemic racism.”).

4. See Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021) (advancing racial equity and support for underserved communities through the federal government); see also Exec. Order No. 13986, 86 Fed. Reg. 7015 (Jan. 20, 2021) (ensuring a lawful and accurate enumeration and apportionment pursuant to the decennial census); see also Exec. Order No. 13987, 86 Fed. Reg. 7019 (Jan. 20, 2021) (organizing and mobilizing the United States government to provide a more unified and effective response to combat COVID-19 and provide United States leadership on global health and security); see also Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 20, 2021) (preventing and combating discrimination on the basis of gender identity or sexual orientation); see also Exec. Order No. 13989, 86 Fed. Reg. 7029 (Jan. 20, 2021) (promulgating ethics commitments by executive branch personnel); see also Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 20, 2021) (protecting public health and the environment and restoring science to tackle the climate crisis); see also Exec. Order No. 13991, 86 Fed. Reg. 7045 (Jan. 20, 2021) (protecting the federal workforce and requiring mask-wearing); see also Exec. Order No. 13992, 86 Fed. Reg. 7049 (Jan. 20, 2021) (revocation of certain executive orders concerning federal regulation); see also Exec. Order No. 13993, 86 Fed. Reg. 7051 (Jan. 20, 2021) (revision of civil immigration enforcement policies and priorities).

5. See Biden, *supra* note 2 (signaling the need for a new chapter by proclaiming, “. . . unity is the path forward. And, we must meet this moment as the United States of America. If we do that, I guarantee you, we will not fail . . . And so today, at this time and in this place, let us start afresh.”).

6. See Tex. Const. art. III, § 5(a) (requiring the Legislature to convene every two years).

districts and constituencies.⁷ Thirty-one Senators and one hundred fifty members of the House of Representatives comprise the Texas Legislature.⁸ Ultimately, however, the Legislature need only pass one piece of legislation—the following biennium budget.⁹

The Texas Legislature falls into a particularly difficult position, conducting this session during a global pandemic.¹⁰ In writing this article, we outline the expected challenges our Legislature will face and offer solutions to combat these challenges.¹¹ Our government was created for the people, by the people, and we intend on ensuring all voices are heard.¹²

I. CHALLENGES

During the first day of the Legislative Session, the respective chambers discussed their upcoming session rules.¹³ These rules encompassed how

7. *See id.* art III, § 5(b), § 24(b) (articulating the order of business for meetings and specifying the maximum length of days for a regular session).

8. *See id.* art. III, § 2 (outlining the membership of the Texas Senate and Texas House of Representatives).

9. *See The Texas Budget Process: A Primer*, TEX. COMPTROLLER'S OFF., <https://comptroller.texas.gov/transparency/budget/primer.php> [<https://perma.cc/GKW7-8WUZ>] (explaining the process for solidifying the Texas budget and drawing attention to how Texas agencies depend on the passage of their appropriations requests in order to accomplish their goals for the next two years).

10. *See* Cassandra Pollock, *The Texas Legislature Meet in Less Than 100 Days. Nobody Knows How the Session Will Look.*, TEX. TRIB. (Oct. 6, 2020, 5:00 AM), <https://www.texastribune.org/2020/10/06/texas-legislature-coronavirus/> [<https://perma.cc/E99S-6NWZ>] (identifying both the expected and unexpected difficulties the Legislature will face when convening during a global pandemic, as the pandemic has resulted in many changes from the last session).

11. *See id.* (identifying particular challenges caused by the pandemic, such as dealing with the aftermath of high-dollar shortfalls, redrawing the state's political maps, and addressing issues directly impacting healthcare and public education).

12. *See* Tex. Const. art. I, § 2 (referring to the Texas Bill of Rights, stating, “[a]ll political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit.”).

13. *See* Tex. S. Res. 1, 87th Leg., R.S. (2021) (reviewing the first day of the 87th Legislative Session and implementing rules including, but not limited to, leave policy, work hours, and outside employment); *see also* Tex. S. Res. 2, 87th Leg., R.S. (2021) (detailing the temporary rule and modifications the 87th Legislative Session implemented due to COVID-19, such as having a designated press area rather than allowing people to congregate on the floor of the Senate).

the Legislature would conduct business.¹⁴ Typically, the first day of the session is standard and discusses matters such as how to handle legislative concerns and newly elected members are sworn-in.¹⁵ In this session, however, the chambers were quite stark in comparison, forcing members to decide how they would conduct business during a global pandemic.¹⁶ We would be remiss if we failed to mention the threats of domestic terrorism that loomed over the Texas Capitol on opening day.¹⁷ With COVID-19 safety protocols encouraging social distancing, avoiding large crowds, and wearing masks, conducting a legislative session in its midst seems like an oxymoron.¹⁸ The respective members

14. See Tex. S. Res. 2 (modifying legislative session procedures to increase safe practices during COVID-19. Some modifications include changing voting with five-ninths vote of members present rather than the usual three-fifths).

15. See *Week in Review: A Digest of What Happened this Week at the Capitol*, TEX. ASS'N OF COUNTIES (Jan. 15, 2021), <https://www.county.org/News/County-Issues/2021/January/Week-in-Review-Jan-15> [<https://perma.cc/2647-Y5F9>] (discussing the first day of the 87th Legislative Session and how they were able to complete business, the procedures implemented for the safeguard of members, and newly elected representatives); see also Tex. S. Res. 1 (overviewing how each senator is allowed to have only one staff member on the floor while the Senate is in session).

16. See TEX. ASS'N OF COUNTIES, *supra* note 15 (addressing how the pandemic and siege of the U.S. Capitol on January 6, 2021 created unprecedented conditions for opening day); see also Tex. S. Res. 1, 87th Leg., R.S. (2021) (detailing the new protocols enacted in response to COVID-19 to ensure the safety of the members, including demonstrating a negative COVID-19 test to enter the gallery).

17. See Letter from Senator José Menéndez et al. to Governor Abbott et al. (Jan. 8, 2021) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) (addressing the concerns of Senator Menéndez, Senator Alvarado, and Senator Eckhardt on the eve of opening day to the attack on the United States Capitol occurring on January 6, 2021); see also Patrick Svitek, *Texas Legislative Session Begins with Heavy Security Presence Following U.S. Capitol Riot*, TEX. TRIB. (Jan. 12, 2021, 3:00 PM), <https://www.texastribune.org/2021/01/12/texas-legislature-first-day/> [<https://perma.cc/62JC-P2CC>] (demonstrating Texas Legislature's concern over increasing security at the biennial session following the attack on the U.S. Capitol); cf. Lisa N. Sacco, *Domestic Terrorism and the Attack on the U.S. Capitol*, CONG. RSCH. SERV. (Jan. 13, 2021), <https://crsreports.congress.gov/product/pdf/IN/IN11573> [<https://perma.cc/XZ3H-JPGY>] (discussing the definition of domestic terrorism, including whether or not the participants of breach of the United States Capitol are considered domestic terrorists).

18. See *Return to Work Criteria for Healthcare Personnel with SARS-CoV-2 Infection (Interim Guidance)*, CDC (Feb. 16, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html> [<https://perma.cc/8AUN-YKF2>] (setting CDC guidelines for work precautions during the COVID-19 pandemic through a symptom-based strategy).

in each chamber discussed the rules and ultimately made their decisions.¹⁹

In addition to the global pandemic, both chambers discussed the Legislature's rules on the House and Senate Redistricting committees.²⁰ Redistricting, which takes place once every ten years, has been the subject of much litigation.²¹ In an effort to avoid future litigation, legislation discussed these rules at length.²² These respective rules passed as resolutions.²³

The intricacies of the Legislature unravel only slightly on day one.²⁴ Under the constitutional rules, no committees are allowed to meet during the Legislature for the first thirty days.²⁵ Moreover, during the first sixty

19. See S.J. of Tex., 87th Leg., R.S. 15 (2021) (first day proceedings) (transcribing a continuance of Day One of the 87th Legislative Session in the Texas Senate from January 12, 2021 with the voting of Senate Resolution 2. Senate Resolution 2 amended some rules and procedures due to COVID-19); see also Tex. S. Res. 1 (analyzing procedures that will both help reduce the spread of COVID-19 and allow the 87th Legislative Session to conduct business as usual); see generally Tex. S. Res. 2 (modifying legislative session procedures to better implement COVID-19 safe distancing and minimize virus transmission).

20. See Tex. S. Res. 4, 87th Leg., R.S. (2021) (overviewing the 87th Legislative Session's decisions on redistricting committees and video conferencing testimonies).

21. See *Perry v. Perez*, 565 U.S. 388, 398–99 (2012) (emphasizing the obscurity of Texas' standards regarding redistricting that were implemented for the 2021 elections); see also *Evenwel v. Abbott*, 136 S. Ct. 1120, 1132–133 (2016) (regarding states' ability to use total population to follow the historical precedent of one person one vote); cf. *Bush v. Vera*, 517 U.S. 952, 985–86 (1996) (holding that Texas' redistricting plans violated the Voting Rights Act).

22. See generally Tex. S. Res. 4, 87th Leg., R.S. (2021) (outlining the 87th Legislative Session's decisions on redistricting, brought by the Special Committee on Redistricting).

23. See Tex. S. Res. 4, 87th Leg., R.S. (2021) (stating the rules of the Texas Senate redistricting committee, including the President designating the chair and vice-chair).

24. Compare Ross Ramsey, *Analysis: Not Every Legislative Day in Texas is a Workday*, TEX. TRIB. (Jan. 29, 2021, 4:00AM), <https://www.texastribune.org/2021/01/29/texas-legislature-pandemic/> [<https://perma.cc/9VWC-MDQS>] (“To get their work done, and to serve their constituents, members have to deal with each other across all sorts of differences—party, race, gender, geography, age. That’s much more difficult to do if they don’t have some kind of connection, and many of those connections are either created or renewed in the first weeks of a legislative session.”); with KUT Staff, *Today Was Opening Day of the 2021 Texas Legislative Session. Here’s What Happened.*, KUT 90.5 (Jan. 12, 2021, 8:57 AM), <https://www.kut.org/politics/2021-01-12/its-opening-day-of-the-2021-texas-legislative-session> [<https://perma.cc/HA9V-YJMA>] (highlighting the legislative process of swearing in new senators and representatives, official protocols, and congressional activities).

25. See Tex. Const. art. III, § 5(b) (“When convened in regular Session, the first thirty days thereof shall be devoted to the introduction of bills and resolutions, acting upon emergency appropriations, passing upon the confirmation of the recess appointees of the Governor and such emergency matters as may be submitted by the Governor in special messages to the Legislature.”).

days, the only items discussed are emergency items set by the Governor.²⁶ While the legislative session began January 12th, the Governor did not announce his legislative priorities until February 1st at the State of the State Address.²⁷ Many anticipated the Governor's priorities would include the shift of local police departments encompassed within the Texas Department of Public Safety.²⁸ Moreover, the expected priorities were to include a response to the global pandemic.²⁹

In the Senate, the first thirty filed bills are reserved for the Lieutenant Governor's priorities.³⁰ As of today, however, Senate Bill 11 is the only bill filed.³¹ It is equally important to note that the Lieutenant Governor named the makeup of committee membership in the Senate.³² In doing

26. See Tex. Const. art. III, § 5(b) ("During the succeeding thirty days of the regular session of the Legislature the various committees of each House shall hold hearings to consider . . . such emergency matters as may be submitted by the Governor.").

27. See Greg Abbott, Governor of Tex., State of the State Address (Feb. 1, 2021) (announcing that Texas' legislative priorities include expanding broadband internet access, preventing cities from defunding the police, fixing the bail system, election integrity, and providing civil liability protections to businesses that were open during the pandemic); see also Patrick Svitek, *Gov. Greg Abbott Unveils Legislative Priorities, Including Police Funding, "Election Integrity," Expanding Broadband Access and More*, TEX. TRIB. (Feb. 1, 2021, 9:00 PM), <https://www.texastribune.org/2021/02/01/abbott-state-of-state-2021/> [<https://perma.cc/CUC2-6LY4>] (discussing Governor Abbott's five legislative priorities which were announced during the State of the State address).

28. See generally Greg Abbott (@GregAbbott_TX), TWITTER (Dec. 21, 2020, 12:03 PM), https://twitter.com/GregAbbott_TX/status/1341081930641657856 [<https://perma.cc/H7YY-A9SG>] (hinting to a legislative priority for the upcoming legislative session, Governor Abbott posted: "Just in time for Christmas: The Legislative Council has sent draft language for a proposed law that would transfer control of the Austin Police Department to the Texas Department of Public Safety.").

29. See generally Patrick Svitek & Cassandra Pollock, *Weeks Before the Legislative Session, State Leaders' Policy Priorities and COVID-19 Safety Plans Remain Works in Progress*, TEX. TRIB. (Dec. 23, 2020, 4:00 PM), <https://www.texastribune.org/2020/12/23/texas-covid-19-legislative-session/> [<https://perma.cc/8SFY-XHBP>] (discussing the presumption of COVID-19 protocols consuming a large portion of the legislative agenda, both in providing relief and in preparing for another pandemic).

30. See generally Lt. Gov. Dan Patrick Announces Top 31 Priorities for the 2021 Session, LT. GOV. TEX. DAN PATRICK (Feb. 23, 2021), <https://www.ltgov.texas.gov/2021/02/23/lt-gov-dan-patrick-announces-top-31-priorities-for-the-2021-session/> [<https://perma.cc/VRL3-GRQY>] (expanding on the thirty-one priorities by Lieutenant Governor Dan Patrick and their respective bill numbers).

31. See Tex. S.B. 11, 87th Leg., R.S. (2021) (relating to the composition of the Texas Court of Appeals District Courts to be enacted September 1, 2021).

32. See Lt. Gov. Tex. Dan Patrick, *87th Legislative Session Texas Senate Committees*, STATE TEX. LT. GOV. (2021), <https://www.ltgov.texas.gov/wp-content/uploads/2021/01/2021->

so, some committees were either dissolved or merged into other committees,³³ while additional committees were created.³⁴

As mentioned previously, this session will be historic.³⁵ The nature of the Texas Legislature meeting once every other year for 140 days highlights the importance of the session.³⁶ Our country and the entire globe continues to battle the COVID-19 pandemic.³⁷ We have witnessed

Senate-Committees.pdf [https://perma.cc/Z7SB-UNXY] (designating the 87th Legislative Session Texas Senators into Administration, Business & Commerce, Criminal Justice, Education, Finance, Health & Human Services, Higher Education, Jurisprudence, Local Government, Natural Resources & Economic Development, State Affairs, Transportation, Veteran Affairs & Border Security, Water, Agriculture, & Rural Affairs, Ports, and Redistricting Committees); *see also Lt. Gov. Dan Patrick Announces 2021 Texas Senate Committee Appointments*, STATE TEX. LT. GOV. (Jan. 15, 2021), <https://www.ltgov.texas.gov/2021/01/15/lt-gov-dan-patrick-announces-2021-texas-senate-committee-appointments/> [https://perma.cc/7KZX-QAW7] (“The committee appointments I am making today call on all senators—Republicans and Democrats, freshmen and senior members—to play an integral role in crafting public policy that will ensure our state remains strong and every Texan can prosper.”).

33. *Compare* Lt. Gov. Tex. Dan Patrick, *87th Legislative Session Texas Senate Committees*, STATE TEX. LT. GOV. (2021), <https://www.ltgov.texas.gov/wp-content/uploads/2021/01/2021-Senate-Committees.pdf> [https://perma.cc/Z7SB-UNXY] (delineating committee assignments within the 87th Legislative Session, including the merge of Agriculture Committee with Water & Rural Affairs), *with Committees of the 75th through 86th Legislature*, TEX. SENATE, <https://senate.texas.gov/cmte-archives.php> [https://perma.cc/QG3L-9DVX] (listing the 86th Session Standing Committees to include the separation of Agriculture and Water & Rural Affairs committees).

34. *Cf.* Lt. Gov. Tex. Dan Patrick, *87th Legislative Session Texas Senate Committees*, STATE TEX. LT. GOV. (2021), <https://www.ltgov.texas.gov/wp-content/uploads/2021/01/2021-Senate-Committees.pdf> [https://perma.cc/Z7SB-UNXY] (creating the Senate Committee on Jurisprudence in the Senate Chamber).

35. *Cf. Lt. Gov. Dan Patrick Announces Top 31 Priorities for the 2021 Session*, STATE TEX. LT. GOV. (Feb. 23, 2021), <https://www.ltgov.texas.gov/2021/02/23/lt-gov-dan-patrick-announces-top-31-priorities-for-the-2021-session/> [https://perma.cc/VRL3-GRQY] (announcing a number of bills which are the Lieutenant Governor’s top priority. Such bills include a bill designed to protect taxpayers during the rebuilding of the economy as a result of the pandemic and the February 2021 winter storm in Texas).

36. *See Frequently Asked Questions*, TEX. H.R., <https://house.texas.gov/resources/frequently-asked-questions/> [https://perma.cc/WV2V-NQHH] (describing how the Texas Legislature’s lawmaking process is similar to the U.S. Congress in that the process involves four steps: introduction, committee action, floor action, and enrollment).

37. *E.g., Press Briefing by White House COVID-19 Response Team and Public Health Officials*, WHITE HOUSE (Mar. 31, 2021, 11:19 AM), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/03/31/press-briefing-by-white-house-covid-19-response-team-and-public-health-officials-22/> [https://perma.cc/7DEF-8X9M] (describing how COVID-19 continues to be an ongoing public health issue and maintained vigilance remains necessary. Although vaccination sites have opened to help vaccinate more Americans, the spread of COVID-19 has continued to increase, especially in minority communities).

that minority populations and people of color are experiencing higher rates of infection and death during this time.³⁸ The disproportionate infection rates are attributed to the systemic disparities we face, which highlights our State's lack of healthcare.³⁹ The COVID-19 pandemic revealed the disparities we knew already existed, including the fact that healthcare should be and is a human right.⁴⁰ This is an issue the Legislature must face head on as the pandemic has impacted every single Texan—from the uninsured person, to the undocumented worker, to the small business owner, and the parent who became a teacher overnight.⁴¹ As we continue to battle this pandemic, we have moved into the vaccine distribution stage.⁴² Parties are going back and forth on the current distribution policies.⁴³ The new administration has vowed to vaccinate

38. See *Health Equity Considerations and Racial and Ethnic Minority Groups*, CDC (Apr. 19, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html#print> [<https://perma.cc/7J2V-G66U>] (describing how racial and minority populations are disproportionately affected by the COVID-19, especially due to inequities of healthcare access).

39. See *Health Equity Considerations and Racial and Ethnic Minority Groups*, CDC (Apr. 19, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html#print> [<https://perma.cc/7J2V-G66U>] (explaining why minority populations are more heavily impacted and disproportionately affected by COVID-19, including work settings, housing, and wealth gaps).

40. Cf. Victor J. Dzau et al., *Vital Directions for Health and Health Care: Priorities for 2021*, HEALTH AFFS. (Feb. 2021), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2020.02204> [<https://perma.cc/TT8S-TJMC>] (illustrating the ongoing current healthcare crisis and its exasperation by the COVID-19 pandemic as many Americans struggle to have access to affordable health care).

41. See Tex. S.B. 264, 87th Leg., R.S. (2021) (creating the Texas Research Consortium to Cure Infectious Diseases (TRANSCEND) for the purpose of ensuring a global pandemic, such as COVID-19, does not occur again. TRANSCEND accelerates advancements in treatment and prevention through innovative research and recruitment in established research locations).

42. Cf. *Press Briefing by White House COVID-19 Response Team and Public Health Officials*, WHITE HOUSE (Mar. 31, 2021, 11:19 AM), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/03/31/press-briefing-by-white-house-covid-19-response-team-and-public-health-officials-22/> [<https://perma.cc/7DEF-8X9M>] (discussing the vaccine rollout and estimated timeline. Originally all adults were to be eligible to receive a vaccine in July, but the timeline was accelerated to the beginning of May by President Biden).

43. See *Press Briefing by White House COVID-19 Response Team and Public Health Officials*, WHITE HOUSE (Mar. 31, 2021, 11:19 AM), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/03/31/press-briefing-by-white-house-covid-19-response-team-and-public-health-officials-22/> [<https://perma.cc/7DEF-8X9M>] (emphasizing that once there is an abundance of vaccines, there will be a shift in the allocation of vaccines based on demand rather than population size).

100 million people in the first 100 days.⁴⁴ Similarly, the Texas Legislature will vehemently work to address the COVID-19 pandemic and additional issues that must be resolved.⁴⁵

An additional priority for this session will be to increase access to education.⁴⁶ The pandemic directly and negatively impacted our education system.⁴⁷ Our teachers, support staff, and students became frontline workers who lacked adequate guidance and protection.⁴⁸ The digital divide was only exacerbated, and children were lost.⁴⁹ To keep their staff and students safe, school districts continue to front costs that were not budgeted for.⁵⁰ Last session, the Legislature passed a historic

44. See WHITE HOUSE, NATIONAL STRATEGY FOR THE COVID-19 RESPONSE AND PANDEMIC PREPAREDNESS 37 (Jan. 21, 2021) (illustrating the National response to COVID-19 and the anticipated vaccine schedule).

45. Cf. Greg Abbott, Governor of Tex., State of the State Address (Feb. 1, 2021) (discussing how the COVID-19 pandemic will be a priority during the 87th session to build a “healthier, safer, freer, and more prosperous state.”).

46. E.g., Aliyya Swaby, *Many Texas Families Say Remote Learning Isn’t Working and They Want It Fixed*, TEX. TRIB. (Nov. 20, 2020, 5:00 AM), <https://www.texastribune.org/2020/11/20/texas-schools-remote-learning/> [<https://perma.cc/9CLE-LZKL>] (illuminating the barrier to education that virtual learning has created during the COVID-19 pandemic).

47. See Aliyya Swaby, *Many Texas Families Say Remote Learning Isn’t Working and They Want It Fixed*, TEX. TRIB. (Nov. 20, 2020, 5:00 AM), <https://www.texastribune.org/2020/11/20/texas-schools-remote-learning/> [<https://perma.cc/9CLE-LZKL>] (depicting the disturbing number of students failing classes due to the online learning environment).

48. See generally Aliyya Swaby & Stacy Fernández, *Texas Teachers Caught in the Middle of Political Battles Over Schools Reopening*, TEX. TRIB. (July 10, 2020, 12:00 PM), <https://www.texastribune.org/2020/07/10/texas-reopening-schools-teachers-coronavirus/> [<https://perma.cc/J3FG-GNS4>] (illustrating the frustration teachers had with the State’s push for in-person education. Texas was not providing an option for teachers who felt unsafe to continue distant learning).

49. See Camille Phillips, *San Antonio ISD Has Lost Contact With 25% of Its Elementary Students Since Spring Break*, TEX. PUB. RADIO (Apr. 9, 2020, 6:07 PM) https://www.tpr.org/education/2020-04-09/san-antonio-isd-has-lost-contact-with-25-of-its-elementary-students-since-spring-break?_amp=true [<https://perma.cc/68BQ-WDCF>] (reporting SAISD has lost contact with more than 9,300 students since March 16, 2020); see also Aliyya Swaby, *Texas School Leaders Urge State Not to Cut Funding as They Struggle with Declining Enrollment*, TEX. TRIB. (Dec. 15, 2020, 1:00 PM) <https://www.texastribune.org/2020/12/15/texas-school-funding-enrollment/> [<https://perma.cc/T9M9-7J9S>] (stressing educators’ concerns that some students will be lost forever).

50. See Aliyya Swaby, *Texas School Leaders Urge State Not to Cut Funding as They Struggle with Declining Enrollment*, TEX. TRIB. (Dec. 15, 2020, 1:00 PM), <https://www.texastribune.org/2020/12/15/texas-school-funding-enrollment/> [<https://perma.cc/T9M9-7J9S>] (grappling with the possibility of falling off a funding cliff due to enrollment in Texas schools plummeting as a result of COVID-19); cf. Aliyya Swaby, *Many Texas Families Say Remote Learning Isn’t Working and They Want It Fixed*, TEX. TRIB. (Nov. 20, 2020, 5:00 AM),

school funding bill and educators across the state fear that it will be undone due to the economic implications of COVID-19.⁵¹ The Legislature will grapple with education reform, funding, and protection for our educators, support staff, and students from this pandemic.⁵²

Our Legislature will also discuss criminal justice reform this session.⁵³ Following the deaths of George Floyd, Sandra Bland, Ahmaud Aubrey, Breonna Taylor, and so many others, our community is vocalizing the need for comprehensive criminal justice reform.⁵⁴ The push comes from the federal, state, and local levels.⁵⁵ We witnessed millions of Americans and others across the globe marching for change to address the inequities in our systems.⁵⁶ The Texas Legislative Black Caucus will

<https://www.texastribune.org/2020/11/20/texas-schools-remote-learning/> [<https://perma.cc/9CLE-LZKL>] (“But instead of trying to improve virtual learning, dozens of districts are already bringing all students back in person. Texas recently changed its guidance and allowed districts to require failing students to return in person or find another district.”).

51. See Tex. H.B. 3, 86th Leg., R.S. (2019) (revealing bipartisan, historic education reform and funding to Texas Schools); see, e.g., Aliyya Swaby, *Texas School Leaders Urge State Not to Cut Funding as They Struggle with Declining Enrollment*, TEX. TRIB. (Dec. 15, 2020, 1:00 PM), <https://www.texastribune.org/2020/12/15/texas-school-funding-enrollment/> [<https://perma.cc/T9M9-7J9S>] (reiterating the concern school administrators face regarding cuts in funding).

52. See Letter from Senator José Menéndez to Governor Abbott (Mar. 2, 2021) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) (requesting that school personnel be prioritized as the COVID-19 vaccine is distributed); see also TEX. DEP'T OF STATE HEALTH SERVS., TEXAS COVID-19 VACCINATION PLAN (Oct. 16, 2020) <https://www.dshs.state.tx.us/news/updates/Texas-Vaccine-Plan-10-16-2020-DRAFT-CDC-Submission.pdf> [<https://perma.cc/Y57N-WQVG>] (describing how the COVID-19 vaccines will be distributed in the state of Texas).

53. See Jolie McCullough, *After Defeats in 2019, a Group of Texas Lawmakers is Teaming Up to Push Criminal Justice Reform*, TEX. TRIB. (July 18, 2019, 12:00 PM), <https://www.texastribune.org/2019/07/18/texas-house-criminal-justice-reform-caucus/> [<https://perma.cc/T3HC-WN5B>] (claiming a bipartisan group has banded together to form an uncommon, issue-based caucus focused on criminal justice reform during 2021).

54. See Ashley Westerman et al., *In 2020, Protests Spread Across the Globe with a Similar Message: Black Lives Matter*, NPR (Dec. 30, 2020, 5:04 AM) <https://www.npr.org/2020/12/30/950053607/in-2020-protests-spread-across-the-globe-with-a-similar-message-black-lives-matt> [<https://perma.cc/XUK9-DSYL>] (illustrating the uproar our nation faced due to the murder of multiple unarmed Black people at the hands of police officers).

55. See, e.g., Ashley Westerman et al., *In 2020, Protests Spread Across the Globe with a Similar Message: Black Lives Matter*, NPR (Dec. 30, 2020, 5:04 AM) <https://www.npr.org/2020/12/30/950053607/in-2020-protests-spread-across-the-globe-with-a-similar-message-black-lives-matt> [<https://perma.cc/XUK9-DSYL>] (demonstrating the demand for criminal justice reform after Black Lives Matter protests).

56. See generally Ashley Westerman et al., *In 2020, Protests Spread Across the Globe with a Similar Message: Black Lives Matter*, NPR (Dec. 30, 2020, 5:04 AM) <https://www.npr.org/>

be filing the George Floyd Act in hopes of it becoming law this upcoming session.⁵⁷ There are clear systemic issues that our country faces.⁵⁸ There is also a commonsense solution to these issues, and we will advocate to ensure a bipartisan solution is met.

A large focus of the session will be on voting and access to the polls.⁵⁹ The last presidential election highlighted the importance of not only the value of your vote, but also access to the polls.⁶⁰ Yet again, the pandemic highlighted the disparities our State has in accessing polling locations.⁶¹ We witnessed individuals with disabilities have even greater difficulties casting their vote because of the lack of resources provided to them.⁶² Elderly individuals or persons enduring chronic conditions feared casting

2020/12/30/950053607/in-2020-protests-spread-across-the-globe-with-a-similar-message-black-lives-matt [https://perma.cc/XUK9-DSYL] (demanding a change in our current policing policies).

57. See Cassandra Pollock, *Texas Legislative Black Caucus Unveils the George Floyd Act to Ban Chokeholds and Limit Police Use of Force*, TEX. TRIB. (Aug. 13, 2020, 4:00 PM) <https://www.texastribune.org/2020/08/13/texas-george-floyd-act/> [https://perma.cc/GZK3-TVSL] (introducing the Texas Legislative Black Caucus who unified to lay out the George Floyd Act and articulated their efforts for criminal justice reform during the upcoming 87th Legislative Session).

58. See, e.g., John R. Allen, *Systemic Racism and America Today*, BROOKINGS (June 11, 2020), <https://www.brookings.edu/blog/how-we-rise/2020/06/11/systemic-racism-and-america-today/> [https://perma.cc/2UHM-W7YX] (amplifying the voices of those traditionally underrepresented, or even silenced, throughout society).

59. See Lt. Gov. Dan Patrick Announces Top 31 Priorities for the 2021 Session, STATE TEX. LT. GOV. (Feb. 23, 2021), <https://www.ltgov.texas.gov/2021/02/23/lt-gov-dan-patrick-announces-top-31-priorities-for-the-2021-session/> [https://perma.cc/VRL3-GRQY] (listing top priorities for the 2021 legislative session).

60. See *Texas v. Pennsylvania*, No. 155, 2020 WL 7296814, at *1 (S. Ct. Dec. 11, 2020) (rejecting Texas's challenge on the results of the 2020 election); cf. Letter from Ruth R. Hughs, Secretary of State, to Chris Hollins, Harris County Clerk (Aug. 27, 2020), https://static.texastribune.org/media/files/9078f160593df832d2704969c73628c5/SOSLetter_HarrisCountyVB.M.pdf?_ga=2.44076518.379898940.1611460736-322441775.1611284238 [https://perma.cc/6K8P-SU2N] (requesting Harris County halt plans to allow voters an application to vote by mail).

61. See generally *What Democracy Looks Like: Protecting Voting Rights in the US During the COVID-19 Pandemic*, HUM. RTS. WATCH (Sept. 22, 2020), <https://www.hrw.org/report/2020/09/22/what-democracy-looks/protecting-voting-rights-us-during-covid-19-pandemic#> [https://perma.cc/RN7M-GR36] (highlighting the significant challenges communities in our nation face when casting their ballots, especially in the context of COVID-19); see also *Government Responses to and Political Effects of the Coronavirus Pandemic, 2020 (Texas)*, BALLOTPEDIA, [https://ballotpedia.org/Government_responses_to_and_political_effects_of_the_coronavirus_pandemic,_2020_\(Texas\)](https://ballotpedia.org/Government_responses_to_and_political_effects_of_the_coronavirus_pandemic,_2020_(Texas)) [https://perma.cc/4UGU-45GZ] (acknowledging the government's election rules and operations that will influence the session's focus on voting and access to the polls, especially following consequences stemming from COVID-19).

62. See *In re State*, 602 S.W.3d 549, 561 (Tex. 2020) (holding that lack of immunity to COVID-19 is not a "disability" as defined by the election code).

their vote, for they did not want to be exposed to someone with the COVID-19 virus.⁶³ Moreover, the prior administration engaged in dangerous rhetoric by questioning the integrity of our nation's elections.⁶⁴ Our ballots and access to them will be a focus of debate this session.⁶⁵

Directly connected to voting is the issue of redistricting.⁶⁶ This issue comes up in the Legislature once a decade.⁶⁷ The last time the Texas Legislature covered redistricting, we ended up in nearly ten years of litigation.⁶⁸ As we face this next round of redistricting, it is seemingly clear to every legislator and advocacy group that we should be cognizant of our past to make a better future.⁶⁹ On the first day of the legislative session, members discussed the best possible proposals to conduct

63. See *What Democracy Looks Like: Protecting Voting Rights in the US During the COVID-19 Pandemic*, HUM. RTS. WATCH (Sept. 22, 2020), <https://www.hrw.org/report/2020/09/22/what-democracy-looks/protecting-voting-rights-us-during-covid-19-pandemic#> [<https://perma.cc/RN7M-GR36>] (illustrating obstacles faced by elderly individuals when faced with mile-long lines and inclement weather at voting polls by providing, "Now, she's an elderly lady. She can't take all that. What was she supposed to do? I'm pretty sure she didn't vote.").

64. See generally Alexa Corse, *Election Fraud Claims: A State-by-State Guide*, WALL ST. J. (Jan. 6, 2021, 2:54 PM), <https://www.wsj.com/articles/election-fraud-claims-a-state-by-state-guide-11609962846> [<https://perma.cc/UY8E-D3UU>] (itemizing each election fraud claim by state brought by the Trump Administration).

65. See *Lt. Gov. Dan Patrick Announces Top 31 Priorities for the 2021 Session*, STATE TEX. LT. GOV. (Feb. 23, 2021), <https://www.ltgov.texas.gov/2021/02/23/lt-gov-dan-patrick-announces-top-31-priorities-for-the-2021-session/> [<https://perma.cc/VRL3-GRQY>] (announcing the topics of debate including "Election and Ballot Security.").

66. See *Texas Redistricting*, LEAGUE OF WOMEN VOTERS OF TEX., <https://my.lwv.org/texas/redistricting> [<https://perma.cc/CQ6F-XVKE>] (extending nonpartisan reform efforts and resources aimed at fixing the broken redistricting system in Texas).

67. See *State Redistricting Deadlines*, NAT'L CONF. OF STATE. LEGISLATURES. (Mar. 29, 2021) <https://www.ncsl.org/research/redistricting/state-redistricting-deadlines637224581.aspx> [<https://perma.cc/6UEV-TH7A>] ("Every 10 years following the federal decennial census, all federal, state and local election district boundaries must be redrawn or revised.").

68. See Michael Li, *Breaking Down the Supreme Court's Texas Redistricting Ruling*, BRENNAN CTR. (June 26, 2018) <https://www.brennancenter.org/our-work/analysis-opinion/breaking-down-supreme-courts-texas-redistricting-ruling> [<https://perma.cc/2MLQ-YVT2>] (labeling *Abbott v. Perez* as one of the longest-running and most complicated redistricting sagas involving two sets of state house and congressional maps).

69. See generally *Redistricting History*, TEX. REDISTRICTING, <https://redistricting.capitol.texas.gov/history> [<https://perma.cc/R8EQ-2AT6>] (examining the lawsuits and cases that have occurred since 1980 over redistricting and census discrimination and pointing to the repeated history of discriminatory practices).

redistricting hearings.⁷⁰ With the need to socially distance, while following precedent of the Supreme Court to ensure there is public input, the members had lengthy discussions on how to proceed.⁷¹ As this article is being reviewed, the redistricting hearings have commenced in the Senate.⁷² It is important to note, redistricting maps cannot be drawn without the census count.⁷³ The census count is part of litigation and is prolonged due to the pandemic.⁷⁴ Thus, the redistricting hearings that are conducted will be done prior to having census numbers.⁷⁵

70. See S.J. of Tex., 87th Leg., R.S. 15 (2021) (first day proceedings) (proclaiming rules of procedure to be observed by the Senate for consideration of redistricting during the 87th legislature. The redistricting committee is required to hold regional hearings to solicit public input, including local communities of interest.)

71. See *Visitor's Guide to Oral Argument*, SUP. CT. OF THE U.S., <https://www.supremecourt.gov/visiting/visitorsguidetooralargument.aspx> [<https://perma.cc/4QW8-5S2A>] (“All oral arguments are open to the public, but seating is limited and on a first-come, first-seated basis.”); see generally Katie Pearce, *What Is Social Distancing and How Can It Slow the Spread of COVID-19?*, HUB (Mar. 13, 2020), <https://hub.jhu.edu/2020/03/13/what-is-social-distancing/> [<https://perma.cc/S8AN-JZEF>] (explaining the importance of social distancing and the risks associated if not followed during a pandemic such as COVID-19).

72. See SENATE SPECIAL COMMITTEE ON REDISTRICTING REGIONAL HEARING DATES AND FOCUS AREAS (2021) <https://senate.texas.gov/cmtes/87/c625/Regional-Hearing-Schedule-2021-revised-301.pdf> [<https://perma.cc/ZU27-B7BV>] (providing the Texas Redistricting Committee hearing schedule).

73. Cf. *Redistricting and Use of Census Data*, NAT'L CONF. OF STATE LEGISLATURES (Apr. 1, 2021), <https://www.ncsl.org/research/redistricting/redistricting-and-use-of-census-data.aspx> [<https://perma.cc/4SF3-KQN7>] (noting that although congressional apportionment is to be based on enumeration of the U.S. population, the Constitution is silent on what data is to be used for redistricting. Twenty-one states require the use of census data, seventeen states do not explicitly identify a source for congressional redistricting, and six states allow the census or other datasets for redistricting.)

74. See generally Hansi Lo Wang, *Census End Remains Uncertain After Judge Calls New Schedule 'A Violation'*, NPR (Sept. 29, 2020, 11:25 PM), <https://www.npr.org/2020/09/29/918441166/census-end-remains-uncertain-after-judge-calls-new-schedule-a-violation> [<https://perma.cc/4BU5-TQ8E>] (discussing the issues and litigation that followed the decision by the Trump Administration to end the census earlier than planned).

75. See Hansi Lo Wang, *Census Door Knocking Cut a Month Short Amid Pressure to Finish Count*, NPR (July 30, 2020, 12:29 PM), <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> [<https://perma.cc/RL48-X2FT>] (“‘It’s going to be impossible to complete the county in time,’ said one of the bureau employees, an area manager who oversees local census offices. ‘I’m very fearful we’re going to have a massive undercount.’”); see also SENATE SPECIAL COMMITTEE ON REDISTRICTING REGIONAL HEARING DATES AND FOCUS AREAS, *supra* note 72 (indicating the schedule will begin prior to all individuals being counted in the census due to the COVID-19 pandemic).

The 87th Legislative Session will contain many issues.⁷⁶ This article addresses only a couple in hopes of shedding light on what is to come; in the next section, we propose possible solutions.

II. SOLUTIONS

The public at large has the right to access their Legislature and participate in their government's process.⁷⁷ In particular, the Legislature faces the question of how the public's right can be safely met amid a global pandemic.⁷⁸ Who will be ultimately responsible if political participation at the Capitol becomes a super-spreader event?⁷⁹ To ensure the public has input while simultaneously preventing a super-spreader event, we offer the solution of ensuring public access to committee hearings to assure the public has unfettered access to that testimony.⁸⁰ This means taking unique steps to ensure public input.⁸¹ We face the looming issue of a large digital divide.⁸² Thus, we propose that localities assist in utilizing public libraries and courthouses to ensure access if a

76. See Aisha Ainsworth, *What's to Come in the 87th Legislative Session*, TEX. HOSP. ASS'N, <https://www.tha.org/TexasHospitalsMagazine/NovDec2020/Whats-to-Come-in-the-87th-Legislative-Session> [<https://perma.cc/WFF4-VRMY>] (exploring a few issues that the 87th Legislature will discuss including election outcomes and health care coverage).

77. See generally Tex. S. Res. 2, 87th Leg., R.S. (2021) (allowing public seating during a legislative session).

78. See Tex. S. Res. 2 (creating detailed procedures related to COVID-19 that would allow for the continuation of public access to the legislature while in session).

79. Cf. Ross Ramsey, *Analysis: A Government of, by and for—but Without the People*, TEX. TRIB. (June 19, 2020, 4:00 AM), <https://www.texastribune.org/2020/06/19/texas-capitol-legislature-coronavirus/> [<https://perma.cc/3UBL-TFJX>] (“[Y]ou can’t run a Legislature—a deeply social exercise between lawmakers, the public, interest groups and state agencies—without putting people together somehow.”); see also Alex Samuels et al., *The Texas Legislature Convenes for Its 2021 Session Tuesday. Here Are 5 Things to Watch*, TEX. TRIB. (Jan. 11, 2021, 8:00 PM), <https://www.texastribune.org/2021/01/11/texas-legislature-2021/> [<https://perma.cc/4KSF-THWT>] (revealing that House members stated they would not attend the opening day of the legislative session, referring to the gathering as a “super spreader event”).

80. Cf. S.J. of Tex., 87th Leg., R.S. 15 (2021) (first day proceedings) (amending language to require hearings be held in order to solicit public input).

81. Cf. *id.* (recognizing efforts made by the redistricting committee to ensure public access to hearings).

82. See *Digital Divide*, STAN. UNIV., <https://cs.stanford.edu/people/eroberts/cs181/projects/digital-divide/start.html> [<https://perma.cc/7SA9-ZXAK>] (defining a digital divide as the gap between those who have ready access to computers and the internet and those who do not).

member of the public chooses to testify.⁸³ As of today, the Senate has not decided how they will conduct hearings.⁸⁴

Public access is imperative for all committees, especially the redistricting committee.⁸⁵ As we face a new era of drawing maps for our districts, we must ensure that all constitutional precedents are followed.⁸⁶ This includes the precedent of one person, one vote.⁸⁷ Moreover, we must allow the public to have proper notice to be able to testify.⁸⁸ In addition, we should rely on our advocates and learn from past litigation to prevent a repeat of our mistakes.⁸⁹ When we draw lines, they must be drawn both fairly and accurately.⁹⁰

The biggest contrast between conducting the 87th Legislative Session and the sessions that came before are the barriers exacerbated by the

83. See *Remote Hearing Toolkit*, MD. CTS., <https://www.mdcourts.gov/legalhelp/remote-hearing> [<https://perma.cc/2Q8U-5HKB>] (providing viable alternatives for those who do not have access to the internet or phone and are unable to attend their hearings by suggesting that an individual may be able to borrow a laptop and Wi-Fi through a Maryland public library).

84. See generally *Tex. S. Res. 2* (laying out policies that do not address the format of hearings and do not indicate when such determinations will be made).

85. See Wendy R. Weiser et al., *Congress Must Pass the 'For the People Act'*, BRENNAN CTR. (Mar. 18, 2021), <https://www.brennancenter.org/our-work/policy-solutions/congress-must-pass-people-act> [<https://perma.cc/5VP9-NMCH>] (“[Congress] should . . . make the redistricting process more transparent and participatory.”).

86. See, e.g., *Cooper v. Harris*, 137 S. Ct. 1455, 1463 (2017) (“A State may not use race as the predominant factor in drawing district lines . . .”).

87. See, e.g., *Gray v. Sanders*, 372 U.S. 368, 381 (1963) (“The conception of political equality from the Declaration of Independence to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.”).

88. See Cassandra Pollock, *Texas House Requires Masks for 2021 Legislative Session, Declines to Expand Virtual Testimony*, TEX. TRIB. (Jan. 14, 2021, 5:00 PM), <https://www.texastribune.org/2021/01/14/texas-house-virtual-testimony/> [<https://perma.cc/C9Q8-VQWX>] (alluding to the Texas Legislature’s decision to “not expand its virtual testimony options to allow members of the public . . . to testify at committee hearings remotely” as the new legislative session commenced).

89. See *Abbott v. Perez*, 138 S. Ct. 2305, 2315 (2018) (“Facing this legal obstacle course, the Texas Legislature in 2011 adopted new districting plans, but those plans were immediately tied up in litigation and were never used.”); see generally Michael Li, *supra* note 68 (noting the Texas decade-long, complicated redistricting litigation saga that ensued in 2011).

90. Cf. *7 Things to Know About Redistricting*, BRENNAN CTR. (July 3, 2017), <https://www.brennancenter.org/our-work/analysis-opinion/7-things-know-about-redistricting> [<https://perma.cc/RYE9-XNF7>] (“Redistricting also affects whether the nation’s diverse communities are represented in its legislative bodies. Redistricting, for example, can ensure that communities of color have a fair shot at electing candidates who represent their worldview and will fight for their concerns. Or it can exclude them from having a seat at the table.”).

global pandemic.⁹¹ We must take all steps necessary to ensure public input.⁹² Our government was built by the people and for the people.⁹³ It is up to each of us to ensure democracy is conducted in a fair, equitable, and transparent manner.⁹⁴

91. See Alana Rocha et al., *Watch: How Texas Lawmakers are Conducting a Session During a Pandemic*, TEX. TRIB. (Jan. 27, 2021, 5:00 AM), <https://www.texastribune.org/2021/01/27/texas-legislature-pandemic/> [<https://perma.cc/W35Y-XP7L>] (“The 2021 Texas legislative session will be unlike any other, as lawmakers work to get the people’s business done in the midst of a pandemic Days into the 2021 Legislature, several state lawmakers have already tested positive for COVID-19, forcing a few colleagues into quarantine.”).

92. See Cassandra Pollock, *supra* note 88 (“[S]tate Rep. Erin Zwiener, D-Driftwood, called it ‘a loss,’ saying lawmakers ‘need to hear from our communities who are most vulnerable to COVID-19 this session.’”).

93. See Tex. Const. art. I, § 2 (“[A]ll political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit.”).

94. See Massimo Tommasoli, *Rule of Law and Democracy: Addressing the Gap Between Policies and Practices*, UNITED NATIONS, <https://www.un.org/en/chronicle/article/rule-law-and-democracy-addressing-gap-between-policies-and-practices> [<https://perma.cc/FNF5-9YHD>] (“[G]overnment responsiveness to the interests and needs of the greatest number of citizens is strictly associated with the capacity of democratic institutions and processes to bolster the dimensions of rights, equality and accountability.”).