

The John Lewis Voting Rights Act

"The vote is the most powerful nonviolent change agent you have in a democratic society. You must use it because it is not guaranteed. You can lose it."

**– Congressman
John Lewis ¹**



Today, the right to vote is under attack across the country.

In the last year, 361 proposed bills in 47 states would make it harder to vote.² The bills that have been enacted or are under consideration make it illegal to help people cast mail-in or absentee ballots, limit the use of drop boxes (which allow easier voting), reduce the number of voting locations in communities of color, limit voting by mail, impose stricter voter ID requirements, and purge voter rolls by deleting names from registration lists.

These new laws are like the state laws in the 1950s and 1960s that made it harder to vote, particularly for Black and Latinx Americans. In fact, courts and the U. S. Department of Justice previously recognized that many laws like these new ones had racial bias and disproportionately targeted Black or Latinx Americans. The new proposed laws threaten to return us to those days. For example, the proposed new voter ID laws will have an illegal discriminatory impact because approximately 25% of American voters without a government issued photo ID are Black, while just 8% are White.³ To this end, a Federal appeals court held that a recent North Carolina voter restriction law targeted Black voters “with almost surgical precision.”⁴ Stacey Abrams of Georgia called her state’s new voter law “Jim Crow in a suit and tie.”⁵

We can and must put a stop to this. Congress is considering an important proposal to protect Americans’ right to vote. It is called “the John Lewis Voting Rights Act” or “H.R. 4” (because it originates in the House of Representatives).

The bill is named in honor of the late John Lewis, who devoted his life to securing and expanding the right to vote, both as an activist and then, from 1986 until his passing in 2020, as a Member of Congress.

This brief explains why the John Lewis Voting Rights Act is important, and why it needs your support. Without the support of Americans like you, Congress will not pass this law. Protecting the right to vote is a concern for every American. When one person’s right to vote is threatened, everyone’s right to vote is threatened.

As Dr. Martin Luther King, Jr. said:

“Injustice anywhere is a threat to justice everywhere.”⁶

¹ John Lewis, *Together, You Can Redeem the Soul of Our Nation*, N.Y. TIMES (July 30, 2020), <https://www.nytimes.com/2020/07/30/opinion/john-lewis-civil-rights-america.html>.

² *State Voting Bills Tracker 2021*, THE BRENNAN CENTER FOR JUSTICE, (Feb. 24, 2021), <https://www.brennancenter.org/our-work/research-reports/state-voting-bills-tracker-2021> (last updated Apr. 1, 2021).

³ Theodore R. Johnson & Max Feldman, *The New Voter Suppression*, THE BRENNAN CENTER FOR JUSTICE, (Jan. 16, 2020), <https://www.brennancenter.org/our-work/research-reports/new-voter-suppression>.

⁴ North Carolina State Conference of NAACP v. McCrory, 831 F.3d 204, 2014 (4th Cir. 2016).

⁵ CNN State of the Union (@CNNSotu), TWITTER, (Mar. 14, 2021, 10:00 AM), <https://twitter.com/CNNSotu/status/1371098985340010501>.

⁶ Martin Luther King Jr., *Letter from a Birmingham Jail*, AFRICAN STUDIES CENTER - UNIVERSITY OF PENNSYLVANIA, (Apr. 16, 1963), https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.

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The Struggle for the Right to Vote

We cannot go back. Too much has been sacrificed and too much is at stake to allow states to restrict the right to vote again. Our country’s history has seen repeated struggles by Americans to be able to vote without interference. When the 13 original states declared their independence on July 4, 1776, only white men who owned property could vote. Over the following decades, property ownership requirements gradually were eliminated. In 1870, after the Civil War, the 15th Amendment to the U.S. Constitution guaranteed the right to vote regardless of race or color. In 1920, the 19th Amendment gave women the right to vote. What we learned through our history is that the states will not protect these rights on their own. Constitutional amendments are not enough; Congress needs to pass laws to make those amendments work, and the Federal government needs to enforce those laws.

The Voting Rights Act of 1965 – the “VRA” – is the most important law ever enacted by Congress to protect Americans’ right to vote.

The Civil Rights Movement fought against state laws that restricted or denied the right to vote, and resulted in a Federal law – the Voting Rights Act of 1965 (“VRA”) – that made sure the states followed the Constitution. The VRA is the most important law ever enacted by Congress to protect Americans’ right to vote. Since 1965, Congress renewed the VRA repeatedly and strengthened it – until 2013, when the Supreme Court drastically weakened it. The John Lewis Voting Rights Act would make the VRA strong again.

To understand what is at stake, it is important to understand the VRA, what led to its enactment, and how the Supreme Court weakened it.

Before the VRA, many states used laws and practices to make it hard for Black Americans and other people of color to vote. These practices included poll taxes that made people pay a fee to vote, literacy tests aimed at disqualifying Black Americans from voting, and placing voting locations far from Black communities to discourage voting on Election Day. In many cases, violence and intimidation, including even murder, were used to stop Black Americans from voting.

Before the VRA, lawsuits were filed to combat these efforts to deny the right to vote. But lawsuits are slow and expensive, and typically are filed after someone has been denied the right to vote – in other words, after the damage has already been done. And individual lawsuits did not solve the broader problem of laws and tactics that made it hard for people of color to vote. For example, between 1957 and 1964, 71 separate voting rights lawsuits were filed by the U.S. Department of Justice, yet voter registration among communities of color barely increased.⁷

Leaders of the Civil Rights Movement made a strong new voting rights law one of their primary goals. On March 7, 1965, John Lewis and almost 600 other peaceful marchers left Selma, Alabama, to walk to the State Capitol in Montgomery to protest the denial of the right to vote to Black Americans. When they crossed the Edmund Pettus Bridge outside Selma, they were viciously attacked by state troopers, leading to dozens of injuries and hospitalizations. John Lewis himself suffered a skull fracture.

This event – known as “Bloody Sunday” – was broadcast on national television. It provoked an outcry for Federal action to protect the right to vote. On March 15, 1965, President Lyndon Johnson addressed Congress and the Nation, calling for the enactment of a voting rights bill and telling all Americans that the marchers’ cause “must be our cause too,” because “it is all of us who must overcome the crippling legacy of bigotry and injustice.”⁸

The Voting Rights Act of 1965 became law in August of that year.

⁷ SAMUEL ISSACHAROFF, ET. AL., THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS 514 (4th ed. 2012).

⁸ *President Johnson’s Special Message to the Congress: The American Promise*, LBJ PRESIDENTIAL LIBRARY, (March 15, 1965), <http://www.lbjlibrary.org/lyndon-baines-johnson/speeches-films/president-johnsons-special-message-to-the-congress-the-american-promise>.

The VRA Worked

A key of part of the VRA was a “special provision” that applied to states with a history of voter suppression. It required those states to submit proposed changes to their voting laws to the U.S. Department of Justice for approval before the changes could take effect – what the VRA called a “preclearance” review. This preclearance review ensured that proposed changes would not discriminate against voters of color. By requiring this review before the changes could take effect, the VRA empowered the Federal government to prevent discrimination on a much larger scale than ever before. Between 1982 and 2006, more than 700 proposed voting law changes were blocked by the Department of Justice, based on a determination that they were discriminatory against voters of color.⁹ And over time, Congress expanded the VRA to protect against other forms of voting discrimination. For example, in 1975 the law was amended to add protections for non-English speakers, making voting easier for Latinx Americans, Native Americans and Asian Americans.

The VRA immediately helped more Americans vote. By the end of August 1965, the first month the VRA was in effect, 32,000 Black people had registered to vote in Alabama, Mississippi, Georgia and Louisiana; by October, that number was 110,000.¹⁰ The VRA also led to higher registration rates for White voters, and **increased the level of voter turnout overall.**¹¹ Voter registration in Black communities continued to increase after 1965, most notably in the South.

⁹ *Shelby v. Holder*, 570 U.S. 529, 571 (2013) (Ginsburg, J. dissenting).

¹⁰ Mary Schones, *The Selma-to-Montgomery Marches*, NATIONAL GEOGRAPHIC, (Jan. 21, 2011), <https://www.nationalgeographic.org/article/selma-montgomery-marches-and-1965-voting-rights-act/>.

¹¹ Adriane Fresh, *The Effect of the Voting Rights Act on Enfranchisement: Evidence from North Carolina*, 80 THE JOURNAL OF POLITICS 713 (February 23, 2018).

¹² *Shelby v. Holder*, 570 U.S. at 548.

¹³ KING JR., *supra* note 6.

¹⁴ H. R. REP. NO. 109–478, at 18 (2006).

Percentage of Black Voters Registered in 1965 vs. 2004¹²

State	% Registered in 1965	% Registered in 2004
Alabama	19.3%	72.9%
Georgia	27.4%	64.2%
Louisiana	31.6%	71.1%
Mississippi	6.7%	76.1%
South Carolina	37.3%	71.1%
Virginia	38.3%	57.4%

Percentage of Black Elected Officials Increased Due to the VRA

Dr. Martin Luther King Jr. wrote,

“A law is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law.”¹³

The VRA helped change this, too. By 2006, there was approximately a 1,000% increase in the number of Black elected officials in the six States originally covered by the VRA.¹⁴

The Supreme Court Weakened the Federal Government’s Power under the VRA to Block Discriminatory State Voting Laws and Opened the Door to States to Discriminate

In 2013, in a case called *Shelby County v. Holder*, the U.S. Supreme Court, by vote of 5 to 4, gutted the VRA’s preclearance process. The decision was criticized by civil rights leaders across the country and even by the Court’s dissenting Justices. The Court’s majority wrote that, in the nearly 50 years since the VRA became law, “things have changed dramatically” in terms of voter discrimination, and “the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions.”¹⁵ The Supreme Court majority was immediately proven wrong.

Immediately after the Supreme Court’s decision in *Shelby*, several states passed laws that would have been subject to preclearance review and likely blocked. These kinds of discriminatory laws were why civil rights leaders fought for the VRA in the first place and why the VRA was passed.

For example, on the same day *Shelby* was decided, Texas officials announced their intention to implement a voter ID law that had previously been rejected by the Department of Justice in its preclearance review. Alabama and Mississippi also began to enforce photo ID laws that had previously been barred because of Federal preclearance. Federal courts eventually found the new Texas law to be discriminatory, but only after years of litigation.¹⁶ This delayed response to the Texas law left the right to vote hanging in the balance and was one of the main problems the VRA previously had solved through its preclearance review process.

¹⁵ *Shelby v. Holder*, 570 U.S. at 535 and 547.

The John Lewis Voting Rights Act would restore the ability of the Federal government to prevent discriminatory voting law proposals before they become law.

Based on the erroneous assumption that voting discrimination against people of color is no longer common, the Court’s majority in *Shelby* ruled that the factors for deciding which states were subject to preclearance review had become outdated and no longer were valid. Without these factors to use, preclearance review became impossible as a practical matter, and ceased.

Importantly, however, the Court left open the possibility that Congress could create new and updated factors to restore preclearance review. This is precisely what the John Lewis Voting Rights Act aims to do: update the factors for deciding which states and localities are subject to preclearance review.

¹⁶ *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

The John Lewis Voting Rights Act

The John Lewis Voting Rights Act would:¹⁷

- Reinstatement of the review process for all states and localities found to have suppressed voting rights in the preceding 25 years. By doing that, the Act would replace the fixed year base line that the Supreme Court majority criticized in *Shelby* with a moving base line that should be continuously up-to-date.
- Establish new, objective standards for identifying those states and localities required to submit proposed changes to the Department of Justice for preclearance review.

The Act would also:

- Increase transparency by requiring public notice of proposed changes in voting laws.
- Make it easier for voters to block new laws immediately in court, before they take effect.
- Increase voting accessibility and protections for Native Americans and Alaska Natives.

The stakes are high and we need the John Lewis Voting Rights Act to stop the flood of discriminatory voting rights bills that have been and will be proposed. In just the last year, there have been 361 proposed bills in 47 states to restrict voting rights.¹⁸ Many of these laws are substantially similar to laws that were blocked by the Federal government under the VRA before *Shelby* because they discriminated against voters of color. In addition, many of the bills were proposed in states that were subject to preclearance under the VRA because those states had a history of voter suppression against voters of color.

The John Lewis Voting Rights Act Will Combat Modern Voter Suppression Laws

Proposals blocked by review as a discriminatory are now law after *Shelby*.

Type of Law	Blocked by Review	Enacted After <i>Shelby</i>
Polling Site Reduction	Multiple states including Alabama and Georgia attempted to reduce polling sites and were blocked by preclearance.	Both Alabama and Georgia have closed polling sites in disproportionately Black areas.
Voter Purges	Laws in Alabama attempting to purge voter rolls, which disproportionately impacted Black voters, were rejected by preclearance.	Alabama, Georgia, North Carolina, Virginia, and New York have all purged voters from their rolls.
Voter ID	Restrictive voter registration and identification law in Texas was found to be discriminatory against Latinx voters. Voter ID laws in Mississippi and Alabama were also blocked.	Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Dakota, and Texas have all passed Voter ID laws.

Many of the recent voter suppression bills have been propped up by claims of voter “fraud” in the 2020 election – even though Federal officials, including the U.S. Department of Homeland Security, have declared the 2020 election the most secure in American history.¹⁹ To this end, courts dismissed more than 50 lawsuits alleging fraud in the 2020 election.²⁰

¹⁷ Voting Rights Advancement Act of 2019, H.R. 4, 116th Cong. (1st Sess. 2019).

¹⁸ *State Voting Bills Tracker 2021*, THE BRENNAN CENTER FOR JUSTICE, *supra* note 2.

¹⁹ *Joint Statement From Elections Infrastructure Government Coordinating Council & The Election Infrastructure Sector Coordinating Executive Committees*, CYBERSECURITY & INFRASTRUCTURE SECURITY AGENCY, (Nov. 12, 2020), <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

²⁰ *Fact check: Courts have dismissed multiple lawsuits of alleged electoral fraud presented by Trump campaign*, REUTERS, (Feb. 15, 2021), [reuters.com/article/uk-factcheck-courts-election/fact-check-courts-have-dismissed-multiple-lawsuits-of-alleged-electoral-fraud-presented-by-trump-campaign-idUSKBN2AF1G1](https://www.reuters.com/article/uk-factcheck-courts-election/fact-check-courts-have-dismissed-multiple-lawsuits-of-alleged-electoral-fraud-presented-by-trump-campaign-idUSKBN2AF1G1).

A Call to Action

The VRA, which safeguarded Americans from voting discrimination for decades through its review provisions, was the result of years of struggle. The progress made is now at risk. If Congress passes it, the John Lewis Voting Rights Act will restore and strengthen the safeguards for democracy created by the VRA. Your voice and your vote can make a difference in today's struggle. Amelia Boynton, an organizer of the Selma march, had a saying: "A vote-less people is a hopeless people."²¹ The John Lewis Voting Right Act will restore hope by protecting your right to vote.

²¹ *Amelia Boynton*, SNCC DIGITAL GATEWAY, <https://snccdigital.org/people/amelia-boynton/>, (last visited May, 04, 2021).

We encourage all Americans to use their voices in the fight to restore the Voting Rights Act through the John Lewis Voting Rights Act. This document was designed to empower you with the information you need to be an effective ambassador and advocate for the John Lewis Voting Rights Act – with your communities and your Members of Congress. The future of our democracy is on the line right now. Your voice has the power to save it.

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