

BACKGROUND: **JOHN LEWIS VOTING RIGHTS ADVANCEMENT ACT**

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#RestoretheVRA

Whatever our color, background, or zip code, in America we value our freedom. And most of us believe that voters pick our leaders — our leaders do not get to pick their voters. When it comes to our elections, we want a transparent process we can trust, where Americans have equal freedom to vote, whether we live in a small town or big city, the south or the north. It is time to restore and strengthen our freedom to vote by eliminating racial discrimination at the ballot box.

This document provides key background information about the Voting Rights Act, and the U.S. Supreme Court cases, *Shelby County v. Holder* and *Brnovich v. Democratic National Committee*, which together significantly damaged the law.

The Voting Rights Act

The Voting Rights Act (VRA), first enacted in 1965 with large bipartisan support, is a landmark law prohibiting discriminatory voting practices that for decades denied people of color and people who speak a language other than English as their primary (or first) language their most fundamental right as a citizen: the right to vote. This law — the most effective piece of civil rights legislation enacted to date — was responsible for much of the progress made to outlaw discriminatory voting practices in America over the last 55 years and ensure every voter, whatever their color or background, could freely and fairly cast a ballot.

The heart of the VRA, known as “Section 5”, requires certain states and localities to get federal review and approval of any voting changes to ensure that those changes do not infringe on people of color’s freedom to vote. Congress created this “preclearance” process in the original VRA to ensure that all Americans have equal freedom to vote.

Congress has strong, recognized authority under the U.S. Constitution to protect the voting rights of all Americans. Since 1965, each of the four reauthorizations of the VRA passed with overwhelming support from Congress and was signed into law by a Republican president, buttressed with extensive legislative records documenting ongoing state and local attempts to discriminate against voters of color.

In 2006, President George W. Bush signed the last VRA reauthorization after both the House of Representatives (390-33) and the Senate (98-0) approved the measure following an exhaustive review of evidence and testimony demonstrating both its effectiveness and its continued need. Congress had conducted more than 20 hearings, heard from more than 90 expert witnesses, and collected more than 15,000 pages of testimony documenting the continued need for, and constitutionality of, the VRA.

This evidence demonstrated that, even decades after the VRA was enacted, state and local leaders continued trying to impose barriers to silence the voices of communities of color. And the VRA, through its preclearance provision, stopped these voting changes from ever seeing the light of day.

Shelby County v. Holder

In 2010, Shelby County, a largely White suburb of Birmingham, Alabama, filed suit in federal court in Washington, D.C., seeking to have Section 5 declared unconstitutional. On June 25, 2013, the U.S. Supreme Court ruled by 5-4 that the “coverage formula” in Section 4(b) was unconstitutional. That formula contains the criteria for identifying which states and localities are subject to Section 5’s requirement for federal review of any voting changes those states and localities want to make. This review and approval process had long ensured that states and local jurisdictions do not infringe on people of color’s freedom to vote.

The *Shelby County* ruling made it impossible for the federal government to be able to review state and local voting changes because it invalidated the criteria the federal government uses to identify those states and localities subject to Section 5. The Court, however, did state in its decision that Congress could develop new criteria for identifying which states and local jurisdictions would be required to seek federal review and approval.

Brnovich v Democratic National Committee

Almost exactly eight years later, the U.S. Supreme Court issued another decision – *Brnovich v. Democratic National Committee (DNC)* – that did further damage to the VRA.

The case concerns a challenge to two Arizona policies that were ruled racially discriminatory by lower courts. The first is a regulation requiring ballots that were cast outside of a voter’s precinct to be entirely discarded. The second is a law barring anyone other than a voter’s family member or caregiver from returning early ballots for another person. The Ninth Circuit Court of Appeals held that both policies violated the VRA because they resulted in discrimination against Native American, Latino and Black voters in Arizona.

On July 1, 2021, the U.S. Supreme Court reversed that decision and ruled that two Arizona voting laws were constitutional – and went a step further by also significantly undermining claims under Section 2 of the VRA by creating new obstacles to challenging discriminatory policies. As a result, it is now harder than ever for voters to bring cases challenging racial discrimination in voting.

Responding to Shelby County and Brnovich

On February 26, 2019, Congressman John Lewis introduced the Voting Rights Advancement Act (H.R. 4), a bill that was later renamed to honor the late Georgian statesman who devoted his life to making the promise of democracy real for us all. The bill was updated to address the *Brnovich* decision and reintroduced in the U.S. House of Representatives on August 17, 2021. It would restore and strengthen our freedom to vote by making sure that any changes to voting rules that could discriminate against voters based on our race or background are federally reviewed, so we all have an equal say in our future and our rights are protected.

This is critical. The *Shelby County* decision unleashed a torrent of discrimination in voting that is pervasive and persistent and takes multiple forms. Just this year, there is a tremendous surge of state legislation restricting access to the ballot box. As of July 22, 2021, **state lawmakers have introduced more than 400 bills and enacted 30 laws** that create barriers to voters' freedom to vote in 48 states. Georgia, a state boasting historically high turnout among Black voters in 2020, is disappointingly – but not surprisingly – one of the states to enact the highest number of suppressive bills. Restoring the Voting Rights Act to its full strength would prevent future bills such as these from discriminating against voters of color.

The John Lewis Voting Rights Advancement Act will reinvigorate and strengthen the VRA by:

- Establishing new review and approval criteria for preventing racial discrimination in voting;
- Requiring federal review of specific voting practices known to have been used to discriminate against voters of color;
- Mandating greater nationwide transparency of voting law and policy changes;
- Restoring voters' ability to challenge racial discrimination in court;
- Allowing voters of color to challenge voting changes that worsen their position;
- Expanding federal courts' "bail-in" authority;
- Updating the law's "bail-out" framework;
- Allowing U.S. Department of Justice to compel jurisdictions to produce documents to investigate voting rights violation;
- Expanding the federal observer program; and
- Pausing discriminatory voting changes during judicial review.