



SOUTHERN POVERTY LAW CENTER

PRESIDENTIAL TRANSITION PRIORITIES

EXPAND VOTING RIGHTS AND PROMOTE
VOTER ENGAGEMENT

SPLC | ACTION 

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The 2020 election season revealed that Americans deeply value the basic foundations of our democracy, which include the principle of one person, one vote, and the counting of every eligible voter's ballot. This past year, our country enjoyed tremendous voter turnout¹ and increased participation by low-propensity voters who have been historically disenfranchised. This happened despite the suppressive tactics, heightened partisanship, political rhetoric, and rampant misinformation that voters faced during this crucial election year.

Fortunately, a new administration and a renewed congressional commitment to protecting the right to vote and expanding access to the ballot box can ensure that levels of political participation, voter mobilization, and overall civic engagement remain high for decades to come.

In identifying solutions to our country's electoral system, we must first acknowledge the continuing causes of voter disenfranchisement. In February 2020, the Southern Poverty Law Center published the report *Alive and Well: Voter Suppression and Election Mismanagement in Alabama*.² It analyzed the impact of Alabama's ban on early voting, onerous restrictions on absentee voting, confusing felon re-enfranchisement procedures, lack of adequate public education, poorly trained poll workers, and other obstacles and failures.

Alabama is also significant given its history of being at the epicenter in the struggle for voting rights both from the start of the civil rights movement to the U.S. Supreme Court's 2013 *Shelby County v. Holder* decision, which gutted key provisions of the Voting Rights Act. Following the Court's decision, Alabama swiftly instituted voter photo identification procedures despite documented evidence that Black and lower-income voters are less likely to possess an acceptable ID as compared to white voters.³ The state then closed 31 driver's license offices in predominantly Black counties, which made it even more difficult for voters to obtain an acceptable photo ID. The state eventually reopened the offices, but only after intense public pressure to reverse its decision.⁴

During the COVID-19 pandemic, Alabama was one of the few states where election officials refused to modify witnessing requirements for absentee ballots, required people to include a photocopy of their ID with their application, and forbade counties from making curbside voting available for voters with disabilities. The SPLC and its co-counsel represented individuals and partner organizations to challenge Alabama's onerous policies

and secured a tremendous victory in the district court.

Notably, the lower court ruled that the requirements imposed on voters during a pandemic "unduly burden the fundamental Constitutional rights of Alabama's most vulnerable voters and violate federal laws designed to protect America's most marginalized citizens."⁵ Unfortunately, the 11th Circuit and the Supreme Court stayed key parts of the court's decision only weeks before the Nov. 3 election. Voters were left to decide between voting in one of the most important elections of our lifetime and putting their health in danger during a pandemic. The SPLC filed similar lawsuits on behalf of individual voters and membership organizations against Mississippi and Louisiana election officials' failure to make voting safe during the pandemic based on expert reports from health professionals. However, rulings in cases like *Andino v. Middleton* upholding South Carolina's witness requirement⁶ clearly signaled that even if this battle was won in the lower courts, the Supreme Court would simply reinstate the restrictions.

Felony disenfranchisement is also an issue that results in millions of people being unable to vote because of a prior criminal conviction. Many of these citizens committed their offenses decades ago, never served time in prison, and remain actively engaged in their communities. Yet states like Florida and Mississippi have instituted permanent voting bans that were enacted for the purpose of disenfranchising Black people, and that have disproportionately impacted people of color and lower-income people, in large part because of racial and economic disparities in the criminal justice system.

Courts remain reluctant, if not outright hostile, to legal claims challenging such restrictions as a violation of equal protection, due process, and other federal laws. The 11th Circuit's en banc decision in *Jones v. DeSantis* is the most recent example of how people with criminal convictions continue to face severe barriers in getting their rights restored. Following passage of a 2018 ballot initiative in which almost 65% of voters agreed to automatically restore voting rights upon completion of prison, parole, and probation, the Florida Legislature swiftly passed a law redefining "completion of sentence" to include the payment of all fines, fees, restitution, and court costs (also referred to as "legal financial obligations," or "LFOs").

The *Jones* plaintiffs argued that the LFO requirement would deny them the right to vote solely based on their economic status and was irrational because the

state lacked sufficient data to inform people whether they even owed LFOs and, if so, how much. After obtaining a favorable ruling in the district court, the 11th Circuit reversed the lower court's decision and allowed the state's "pay-to-vote" system to go in effect in advance of the Nov. 3 election. It is estimated that hundreds of thousands of people who would have otherwise been eligible to vote were forced to sit on the sidelines as their future and that of their loved ones hung in the balance.

As the Supreme Court has held, "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."⁷ Despite the barriers described above, voters overcame hours in line, malfunctioning machines, voter intimidation, increased police presence even when it was not necessary, and misinformation about their eligibility and correct polling place.

The entire world witnessed how determined our citizens were to have their voices heard. Everyone got a glimpse into how one of the wealthiest countries in the world still lacks the necessary infrastructure to ensure elections run as smoothly as possible. The next administration can advance policies to aid voting, protect voters' rights, and improve upon existing laws that prohibit voting discrimination and voter suppression.

EXECUTIVE ACTION

➔ Create a White House Office for Civil Rights.

Federal agencies, especially the Department of Justice, all have civil rights obligations, legal mandates, and responsibilities. However, bureaucratic realities and competing exigencies can hinder robust and informed civil rights policy and enforcement on issues such as police violence, voting rights, and racial profiling. Establishing a White House office that can bring these issues prominent attention, focus, and immediate presidential action can be a powerful force in aiding needed reforms.

LEGISLATIVE PRIORITIES

➔ Enact the John Lewis Voting Rights Advancement Act (S. 4263).⁸

This legislation would strengthen the Voting Rights Act of 1965 (VRA), one of the most successful civil rights laws in history. Congress passed the VRA in response to direct evidence of significant and pervasive racial discrimination in voting across the country, including the use of literacy tests, poll taxes, intimidation, threats, and violence.

By outlawing the tests and devices that prevented people of color from voting, the VRA and its preclearance formula put teeth into the Fifteenth Amendment's

guarantee that citizens cannot be denied the right to vote because of the color of their skin. "Preclearance" refers to a requirement under the VRA that jurisdictions with a history of racially discriminatory election practices had to get permission from the U.S. Justice Department before implementing any new voting procedures.

The Voting Rights Advancement Act would remedy and reverse the Supreme Court's infamous 2013 decision in *Shelby County v. Holder*, where the Court eviscerated the VRA's preclearance requirement for voting changes. In the Court's decision, Chief Justice John Roberts claimed that, while no one doubts that voting discrimination still exists, "the conditions that originally justified these [preclearance] measures no longer characterize voting in the [VRA preclearance] covered jurisdictions."⁹ However, events since the Court's 2013 decision have proved otherwise. Since *Shelby County*, discriminatory policies have proliferated nationwide and continued in areas formerly covered by the VRA's preclearance requirement.

In states, counties, and cities across the country, public officials have pushed through laws and policies designed to make voting harder for many communities, such as through discriminatory voter ID laws like those in Alabama, Texas, and North Carolina that were passed immediately following the *Shelby County* decision; closing of polling places in Black and Brown communities; and high rejection rates with respect to absentee ballots from voters of color.

Moreover, the 2006 legislative record supporting the VRA's reauthorization contains volumes of evidence showing why states like Georgia and Alabama are still in desperate need of the preclearance requirements because the impact of these states' discriminatory voting practices remains prevalent today. Furthermore, an updated coverage formula is necessary and should be expanded to include all of Florida, not just five of its counties. Enactment of the John Lewis Voting Rights Advancement Act will end such insidious practices and restore the VRA to its historic, originally intended vigor.

➔ Enact the For the People Act (H.R. 1).¹⁰

This legislation would modernize federal voting and election protections, expand access to voter registration, and re-enfranchise the 5.2 million formerly convicted citizens who lost the right to vote under state laws. Notably, some of the key components of H.R. 1 that the SPLC encourages Congress and the Biden administration to support include:

Automatic voter registration Under automatic voter registration, every eligible citizen who interacts with designated government agencies, such as the Department of Motor Vehicles, a public university, or a social service agency, is automatically registered

to vote, unless the person declines to register. This shifts registration from an “opt-in” to an “opt-out” process, aligning with people’s natural propensity to choose the default option presented to them. If fully adopted nationwide, automatic voter registration could register as many as 50 million new eligible voters to the rolls — the largest mass enfranchisement since the Nineteenth Amendment.

Same-day voter registration This allows eligible citizens to register and vote on the same day. It is particularly useful to people who have not interacted with government agencies or whose information has changed since they last did. For the past 50 years, same-day registration has been used successfully in several states. Today, 21 states and the District of Columbia have some form of same-day registration, either on Election Day, during early voting, or both.¹¹

Restore voting rights to people with prior criminal convictions Although disenfranchisement laws vary by state, these laws are rooted in discriminatory practices and disproportionately impact people of color. For example, in 2016, one in 13 voting-age Black citizens could not vote, a disenfranchisement rate more than four times that of non-African Americans.¹² Federal law should now mandate that after a person is no longer incarcerated, that person can vote in federal elections.

In addition, many other reforms can further the goal of making U.S. elections more voter-friendly, such as:

Make Election Day a national holiday In 1848, Congress established the Tuesday after the first Monday in November as the federal general election date. Perhaps this choice suited the largely agrarian nation of the mid-19th century. However, the United States of the early 21st century is a much different nation, with needs and realities far different from those of nearly 170 years ago. Making Election Day a national holiday would be another step to making voting easier in the U.S., while also lining up with France, Germany, Belgium, Australia, Mexico, Japan, Portugal, New Zealand, and many other democracies whose national election days are held on weekends or national holidays.

Abolish the Electoral College and elect the president by national popular vote The Electoral College is an undemocratic and antiquated relic of a bygone era. It “undermines core democratic values by treating votes unequally, giving them more or less weight based on where voters live, encouraging presidential candidates to focus on a handful of contested states, and enabling a candidate who loses the popular vote

to win the presidency,”¹³ says a report by Harvard’s Carr Center for Human Rights Policy. The framers of the Constitution created the Electoral College as a compromise to protect the interest of smaller states — many of which were slavery-supporting states in the South. And the Electoral College has continued to have an adverse impact on Black voters, leading one commentator to call it “the nation’s oldest structural racial entitlement program” and “one of its most consequential.”¹⁴

Institutionalize early voting, vote-by-mail, and other forms of advance voting Creating multiple opportunities and methods to vote gives citizens various options for how and when to cast their ballots. Such alternatives were on full display during the 2020 elections held amid the COVID-19 pandemic, when millions of voters took advantage of early voting, drive-through voting, and expanded voting by mail. While states have substantial legal leeway in choosing their own election methods, the federal government should incentivize states through federal grants to encourage voting by establishing alternative voting methods, such as no excuse vote-by-mail and a mandatory option for early voting.

Redistricting reform Independent citizen commissions for congressional redistricting should be required in all states. Federal law can prohibit partisan gerrymandering by establishing clear criteria for drawing clean, nonpartisan lines between House districts to prevent any party from establishing a “safe” district where it cannot lose to another party.

Additional electoral reforms that will help eliminate widespread voter suppression and disenfranchisement include:

Minority language access programs The VRA, especially Section 203, requires election and voting information to be provided in Spanish, Japanese, Chinese and other Asian languages, Native American, and Alaska Native languages. However, other languages such as Arabic and Haitian Creole are not included. Expanding the VRA’s provisions to encourage the inclusion of more Americans with limited English proficiency will expand the electorate and further facilitate electoral participation.

Reinvigorate the federal observer program For decades, the Office of Personnel Management and the Department of Justice coordinated the assignment of federal observers, authorized by the VRA, to monitor polling place activities to ensure that the VRA’s protections were in place. These observers provided valuable information for future enforcement actions,

while also deterring and preventing myriad discriminatory activities on election days. The DOJ halted the observer program after the *Shelby County* decision. Post-*Shelby* voter disenfranchisement and suppression events provide compelling examples of the need for enhanced involvement by federal observers to enforce the VRA's protections.

EXECUTIVE/CONGRESSIONAL FUNDING PRIORITIES

➡ Provide incentives for states to mandate civics education for all public schools and colleges.

In 2018, a national survey and a series of focus groups studied the causes of weakening confidence in government and difficulties in understanding key pillars of our democracy, such as the rule of law and a free press. One of the four recommendations of the project, undertaken by Freedom House, the George W. Bush Institute, and the Penn Biden Center for Diplomacy and Global Engagement, was to fund and promote “improved and expanded civic education, including the teaching of democracy’s basic concepts.”¹⁵

In 2018, only nine states and the District of Columbia required one year of study in U.S. government and civics. Thirty-one states required only a half-year of civics or U.S. government education, and 10 states had no civics requirement at all.¹⁶ Civic education can help youth gain “an understanding of the processes of government, prevalent political ideologies, civic and constitutional rights, and the history and heritage of the above.”¹⁷

Moderated discussion of hard political issues and sometimes controversial national history “helps students develop the ability to weigh fact-based evidence, consider multiple perspectives, form and articulate their own opinions, and respond to people who disagree,”¹⁸ says the aforementioned report by the Carr Center for Human Rights Policy. The SPLC’s Teaching Tolerance project provides free resources for K-12 educators to help educate children and youth to be active participants in our diverse democracy.¹⁹ Congress and the Biden administration should invest in promoting national service initiatives, civic education and engagement, and teaching our nation’s young people democratic values.

ENDNOTES

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