

The Right to Vote

Concluding Observation 11

The right to vote and participate fully in the democratic electoral process is integral to the foundation of American democracy. The right to be free from discrimination while casting a ballot is protected by the U.S. Constitution and by the Voting Rights Act (VRA) of 1965, which has been reauthorized five times by Congress with strong bipartisan majorities and signed into law by a Republican president on each occasion.

However, this foundational right is under unprecedented attack and VRA protections have been significantly eroded in recent years.

The devastating impact of the Supreme Court’s 2013 ruling in *Shelby County v. Holder* continues to reverberate around the country as states and local jurisdictions adopt discriminatory laws without seeking preclearance by the Department of Justice. In 2021, the Supreme Court substantially weakened Section 2 of the VRA in *Brnovich v. Democratic National Committee*, limiting the ability to litigate voting rights cases. Voting discrimination has only increased in intensity after the 2020 election, which ignited invalid claims of voting fraud and culminated in the violent insurrection at the U.S. Capitol on January 6, 2021.

This attack on democracy was fueled by a deliberate and false narrative and is part of a concerted effort to diminish the voting power of minority voters in the United States. This effort has evolved in new and dangerous forms, as state and local legislatures attempt to partisanize the electoral process, harass and intimidate election officials and voters, and challenge the outcomes of elections. In 2021 alone, state legislatures introduced more than 400 voting bills that restricted the freedom to vote. These laws roll back early voting, restrict mail-in voting, add new hurdles for voter registration, impose harsh voter

identification requirements, increase barriers for voters with disabilities, strip power from state and local election officials, and allow partisan actors to interfere with election processes or even reject election results entirely.

The disenfranchisement of Washington, D.C.’s nearly 700,000 residents and the disenfranchisement of more than 5 million citizens convicted of felony offenses continue to be stains on our democracy. That a majority of D.C. residents are people of color perpetuates an underlying racial animus toward the district’s residents that has existed since its founding. And today, state laws bar more than 5.2 million citizens convicted of felony offenses from casting a ballot. In some states, more than 20 percent of the African-American population is not permitted to vote due to felony convictions, and across the nation, one out of 13 African-American adults cannot vote because of a felony conviction.

Recommendations

- Congress should pass the Freedom to Vote: John R. Lewis Act to strengthen and restore the protections of the Voting Rights Act and provide national standards for voting access in America.
- Congress should also pass the Washington, D.C. Admission Act to grant statehood to D.C. and provide full enfranchisement and representation for its residents.

- The Biden administration should fully enforce and strengthen the executive order on “Promoting Access to Voting” to ensure that federal agencies are fully engaged in promoting the right to vote, combating discrimination, reducing barriers to voting, and expanding access to voter registration and accurate election information.
- The Biden administration should support the Democracy Restoration Act to restore the voting rights of currently and formerly incarcerated citizens and ensure that these individuals are provided with adequate and complete information regarding their eligibility to register to vote and cast their ballot.
- The Biden administration should fully fund the Department of Justice’s Civil Rights Division to ensure the strong and continued enforcement of voting rights laws.
- The Department of Justice should fully enforce the protections of the Voting Rights Act to combat pervasive forms of discrimination at the state and local levels. The Department of Justice should also enforce the Americans with Disabilities Act
- and the Help America Vote Act to ensure that vulnerable voters have full access to voter registration, absentee voting, and in-person voting options.
- The Department of Justice should enforce the Voting Rights Act to protect language minority voters, addressing the barriers and discrimination faced by language minority voters by deploying the protections of Sections 4(e), 203, and 208 of the VRA.
- The Department of Justice should vigorously enforce the National Voter Registration Act and continue to require state agencies to provide voter registration during transactions involving public assistance, services for people with disabilities, and driver’s license constituents.
- States should prohibit prison-based gerrymandering by drawing voting maps using data that count incarcerated people at their home addresses, not where they are confined.

Read the full report, “Holding the Line: Combating Racial Discrimination in a Divided America,” here: civilrights.org/CERD2022.