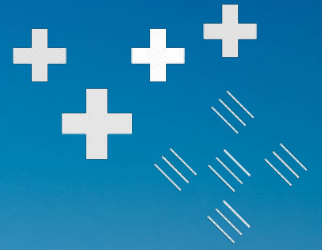




The Leadership Conference
Education Fund



Ten Years After

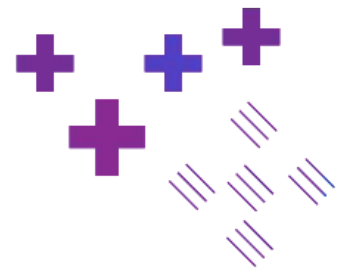
Shelby County v. Holder.

Charting the Path Forward

for Our Democracy

June 2023





Ten Years After *Shelby County v. Holder*: Charting the Path Forward for Our Democracy

is a project of The Leadership Conference Education Fund. The Education Fund was founded in 1969 as the education and research arm of The Leadership Conference on Civil and Human Rights, the nation’s oldest and largest civil and human rights coalition of more than 250 national organizations.

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Ten Years After *Shelby County v. Holder*: Charting the Path Forward for Our Democracy

builds on the work that the civil rights community has long engaged in to document the pervasiveness and persistence of racial discrimination in voting. This has been particularly necessary to demonstrate the continued need for Section 5 of the Voting Rights Act (VRA), which requires jurisdictions with a history of voting discrimination to preclear voting changes with the U.S. Department of Justice or a federal court to ensure they are not discriminatory. Collecting this information is especially critical after the Supreme Court’s ruling in *Shelby County v. Holder* — decided 10 years ago — gutted the VRA’s preclearance provision. The Court ruled that the formula Congress used to determine which jurisdictions are required to preclear voting changes was outdated and invited Congress to update the VRA to address current conditions in voting.

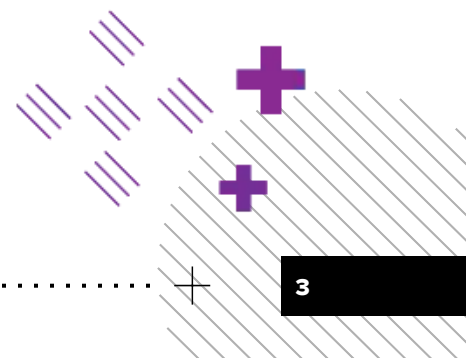
This report provides an overview of those current conditions, including the breadth and depth of the harms caused by the Supreme Court 10 years into the *Shelby County* ruling. It underscores the immediate and cumulative harm imposed on voters of color that continues to this day. It also stresses the urgency of restoring and strengthening voting rights laws to protect voters. Importantly, it highlights the need to double down on efforts to engage, educate, and empower voters of color in the face of intense efforts to stifle their voices and exclude them from participating in democracy.

We hope our colleagues across the country and our nation’s policymakers benefit from this report as we work toward an America as good as its ideals, which includes a federal government that is in the business of vigorously defending the right to vote.

The author and publisher are solely responsible for the accuracy of statements and interpretations contained in this publication.

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Executive Summary

On March 7, 1965, brave foot soldiers in Selma, Alabama marched across the Edmund Pettus bridge and risked everything for the right to vote. They were beaten. They were tear-gassed. Congressman John Lewis, then a young civil rights activist, had his skull fractured at the hands of Alabama state troopers. Images of what became known as Bloody Sunday horrified the nation.

It took only eight days for President Lyndon Johnson to address a joint session of Congress, call for passage of federal voting rights legislation, and powerfully state that “It is wrong — deadly wrong — to deny any of your fellow Americans the right to vote in this country.” Five months later, he signed the Voting Rights Act (VRA) into law. With the single stroke of a pen, President Johnson made good on a promise that this country had failed to fulfill for more than a century. Millions of Black Americans could finally cast a ballot, moving our nation closer to its true promise: democracy of, by, and for the people.

Throughout its history, the VRA required local and state policymakers and administrators to notify federal officials of proposed voting changes and gave those officials the power to block proposals that were discriminatory. That power came from a recognition that is still relatively rare in America — that our nation’s legacy of white supremacy and its deep history of discrimination, particularly in the South, require the federal government to pay closer attention to how local and state officials manage voting practices.

For decades, this preclearance process — through which jurisdictions with a history of voting discrimination had their voting changes approved by the Department of Justice (DOJ) or a federal court in Washington, D.C. — was strongly supported by both parties. The original VRA, which created preclearance, passed with broad bipartisan support. Congress was required to periodically reauthorize the preclearance provision. And at each juncture, it did: This section of the VRA — Section 5 — has been reauthorized four times and signed in each instance by a Republican president (by Presidents Richard Nixon, Gerald Ford, Ronald Reagan, and George W. Bush). Most recently, in 2006, Congress reauthorized Section 5 of the VRA for 25 years by an overwhelming majority in the House and by a unanimous vote in the Senate.

But on June 25, 2013, five justices of the U.S. Supreme Court, in an opinion authored by Chief Justice John Roberts, determined that the preclearance process was no longer necessary — and that voting discrimination was no longer the same kind of problem it had been in decades past. In doing so, the Court ignored a vast legislative record demonstrating that racial discrimination in voting was alive and well. States and localities, freed from federal oversight, acted immediately to restrict the vote and implement discriminatory policies that had previously been blocked under preclearance.

“States and localities, freed from federal oversight, acted immediately to restrict the vote and implement discriminatory policies that had previously been blocked under preclearance.”

After nearly 50 years of strong enforcement of the Voting Rights Act, the *Shelby County* decision represented an abrupt halt to our nation’s slow but steady progress toward achieving full political participation for all Americans and, with a single ruling, changed the face of our democracy. The decision signaled a dangerous retreat of federal enforcement of voting rights, which has emboldened state and local officials in their efforts to restrict the right to vote — including the intentional targeting of voters on the basis of race, ethnicity, and language ability.

This report details the immediate assault on voting rights as well as the shapeshifting nature of anti-voter tactics and schemes in the years since *Shelby County*. The voting discrimination unleashed by *Shelby County* looks different than it once did — poll taxes and literacy tests of an earlier era are today embodied in voter purges, the imposition of identification or documentary proof of citizenship to vote, the stripping of power from local election officials, election interference, the criminalization of voters, and other pernicious tactics to suppress the vote.

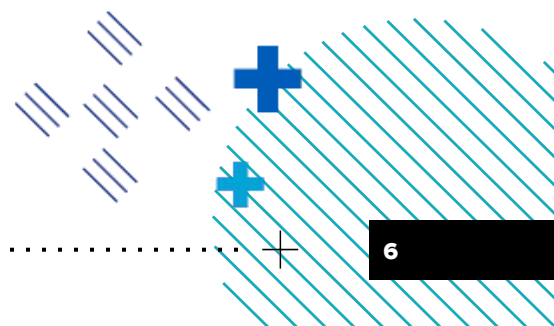
It also illustrates the overwhelming and cumulative harm to communities of color over the past decade. Individually, each of the new laws enacted across the country has made it harder for voters to exercise their right to participate in the political process. But taken together, the cumulative harm caused by those laws is exponentially greater, as the burdens caused by them feed off each other to deter Americans from exercising their right to vote. Any single restriction or obstacle to the ballot can be a burden. Together, they can be insurmountable.

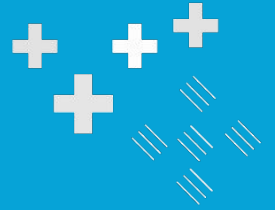
Section 5 of the VRA also provided a critical check against discriminatory redistricting plans — turning back racist maps prior to their enactment. But in the wake of *Shelby County*, states are now free to adopt racially gerrymandered redistricting plans without seeking preclearance. And in the most recent redistricting cycle — the first without the full protections of the Voting Rights Act — many states and localities have taken full advantage of the opportunity.

Without the power of Section 5 to detect and prevent discrimination in voting before it occurs, the tools we now possess to fight back against these efforts to restrict the vote are limited. In *Shelby County*, the Court suggested that Section 2 of the VRA might provide a mechanism to challenge voter restriction efforts. But in its *Brnovich v. DNC* decision in 2021, the Court considerably weakened Section 2. And while the Court’s recent decision in *Allen v. Milligan* importantly reaffirmed decades of Section 2 precedent, it did nothing to erase the devastating harm caused by *Shelby County* and a decade of voting restrictions that are now in effect across the country.

Ten years in, our country is plagued with the most severe anti-voter efforts since Jim Crow. But the civil rights community remains determined to restore and strengthen critical voting rights protections and to defend our democracy. Civil rights advocates fought for the protections of the Voting Rights Act leading up to its enactment in 1965 — and for every subsequent reauthorization. Nearly six decades later, the civil rights community's fierce commitment to voting rights lives on.

Everyone has a role to play in charting a path forward to protect our democracy. Together, we will continue to fight — our democracy requires it.





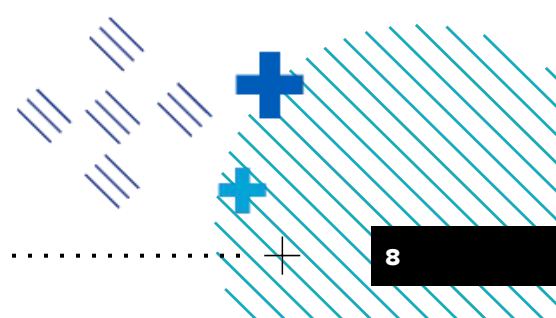
Preclearance Was the Heart of the Voting Rights Act

Signed in 1965, the Voting Rights Act, one of the most effective pieces of civil rights legislation ever enacted in this nation, stood as a bulwark against racial discrimination in voting for decades. The law, in effect, broke down barriers to political participation for people of color by prohibiting any election practice that denied a citizen's right to vote on account of their race. Nearly 100 years after the Fifteenth Amendment promised that voting in America could no longer be marred by racial discrimination, the VRA represented a meaningful commitment to an enforceable multiracial inclusion principle in American democracy.

Prior to enactment of the VRA, federal civil rights laws fell far short of defending the right to vote for voters of colors. With the Civil Rights Acts of 1957 and 1960, Congress tried to address deep-rooted voting discrimination by expanding DOJ's authority to challenge discriminatory practices by bringing lawsuits.¹ But Congress learned that even with an empowered DOJ, case-by-case litigation could not keep pace with the persistent spate of discriminatory laws that certain states were passing to restrict voting rights.² Lawsuits could only be filed after a statute was enacted, and lengthy litigation could mean that years would pass while discriminatory laws remained in effect.³ And when the government did succeed, states would simply change tactics, enact new laws, or ignore court decisions all together. As the Senate Committee on the Judiciary noted in 1982 in its discussion of pre-VRA voting rights violations, "[t]he enforcement of the law could not keep up with the violations of the law."⁴

Once enacted, the VRA provided a powerful tool to fight back against persistent discriminatory practices. Although other sections of the VRA brought necessary, strong protections to voting rights in other arenas, Section 5 of the VRA proved to be the most effective to challenge voting discrimination — responding to more than a century of disenfranchisement with precision.

Through a jurisdiction coverage definition set out in Section 4, the VRA identified those areas with the most pervasive histories of disenfranchising voters of color.⁵ Then, Section 5 established an anti-backsliding legal shield in those jurisdictions (called "covered" jurisdictions), requiring them to obtain approval of any voting changes from either the DOJ or a federal court in Washington, D.C. *before the laws went into effect.*⁶ This process is known as "preclearance" — or in the words of Congressman John Lewis, the "heart of the Voting Rights Act."⁷ Crucially, that jurisdictions had to submit changes for approval prior to implementation meant that Section 5 would halt discriminatory laws *before* they took effect. This preemptive approach placed the burden on jurisdictions to demonstrate that proposed changes would not discriminate against communities of color — rather than placing that burden on disenfranchised voters.⁸



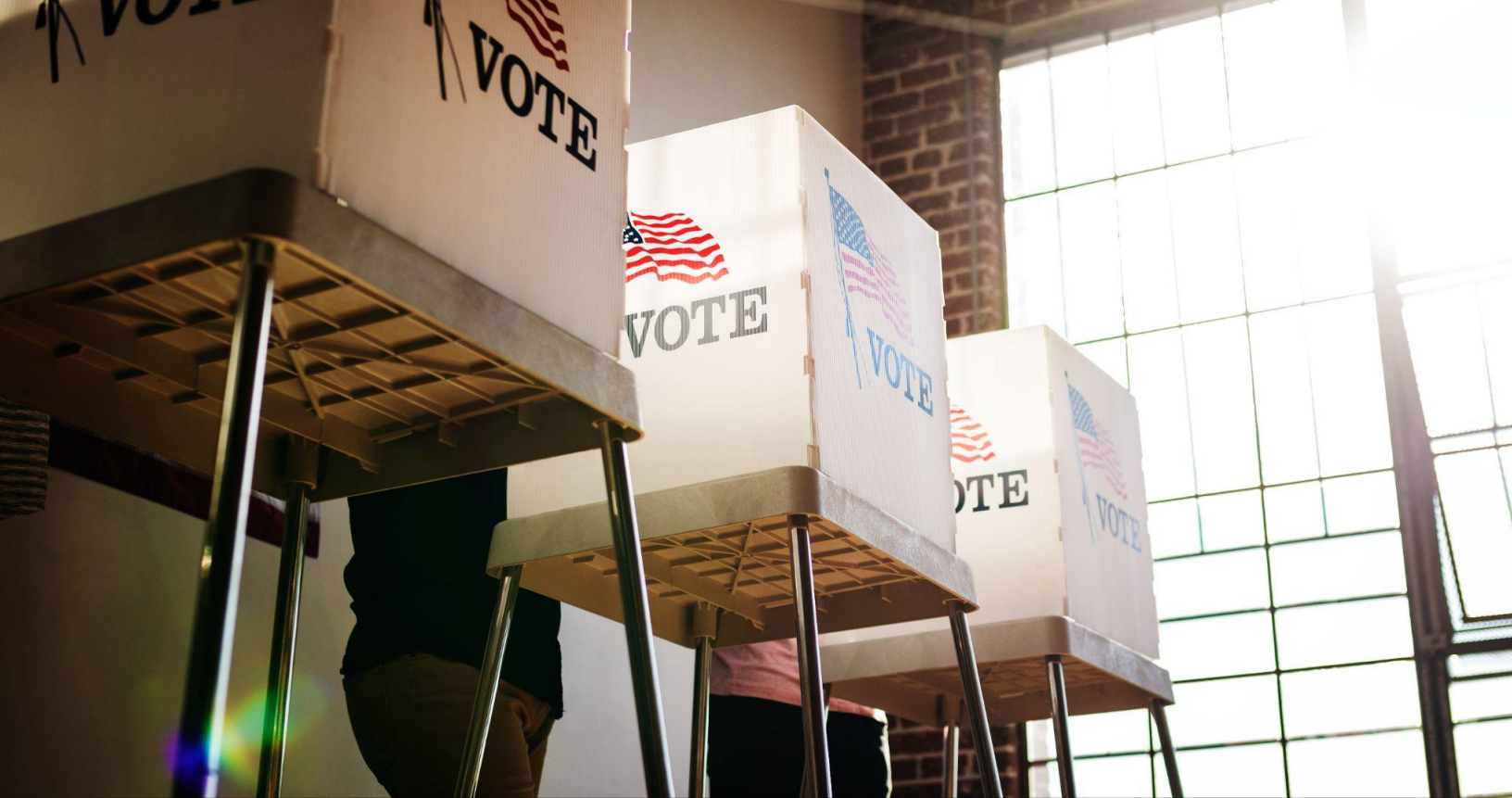
“This preemptive approach placed the burden on jurisdictions to demonstrate that proposed changes would not discriminate against communities of color — rather than placing that burden on disenfranchised voters.”

Preclearance served several important purposes. It weakened covered jurisdictions’ ability to suppress the power of voters of color by requiring preclearance, and it sent a powerful signaling effect that the federal government and the courts took voting rights seriously. When enacting and reauthorizing the VRA, Congress made detailed legislative findings justifying the need for the measures.⁹ It found that time and time again, covered jurisdictions saw severe racial disparities when it came to both voter registration and turnout rates. That was no accident. Congress also found that officials in those jurisdictions intended those results — and were ready to enact policies to entrench those disparities. At the same time, Congress kept track of how well the statute was working when it reauthorized the VRA. Simply put, the statute worked: African American voter registration and turnout rates rose significantly, and while not perfect, the preclearance system kept covered jurisdictions in check.

For decades, the preclearance process was strongly supported by both parties. The original VRA, which created preclearance, passed with broad bipartisan support.¹⁰ Congress at that time placed a time limit on preclearance and required future Congresses to determine whether the process was still necessary. At each juncture, Congress determined that it was. Section 5 of the VRA has been reauthorized four times — signed in each instance by a Republican president (by Presidents Richard Nixon, Gerald Ford, Ronald Reagan, and George W. Bush).¹¹ When President Reagan became the first president to sign a 25-year extension of the VRA in 1982, he stated at the time that the “right to vote is the crown jewel of American liberties, and we will not see its luster diminished.”¹²

Most recently, in 2006, Congress reauthorized Section 5 of the VRA for another 25 years by an overwhelming majority in the House and a unanimous vote in the Senate.¹³ It concluded that, despite significant progress towards achieving political equality for voters of color in covered jurisdictions, the 40 years of the VRA’s existence was “not . . . a sufficient amount of time to eliminate the vestiges of discrimination.”¹⁴ It specifically found that voters of color were likely to be deprived of their voting rights, or have their votes diluted, “undermining the significant gains made” by these communities since the VRA’s enactment if Section 5 were to end.

Congress amassed a substantial legislative record — comprising almost 15,000 pages — to support these conclusions and to demonstrate the “continued need for federal oversight.”¹⁵ As one federal judge noted, the 2006 VRA reauthorization “result[ed] from the development of one of the most extensive legislative records in the Committee on the Judiciary’s history.”¹⁶

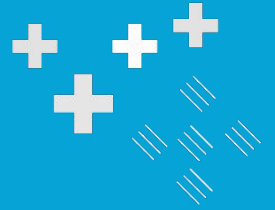


Congress undertook extensive factfinding, including holding dozens of legislative hearings, featuring testimony from witnesses ranging from elected officials, attorneys and scholars, and civil rights advocates. Among other things, Congress relied on the painstaking work of civil rights organizations who highlighted first-hand accounts of discrimination, academics and political scientists who amassed considerable data and statistics justifying the need for the VRA, and findings by the courts and the Department of Justice.¹⁷

But in 2013, the Supreme Court rejected that voluminous record and struck down the preclearance requirement in *Shelby County v. Holder*. In Chief Justice Roberts' opinion, the Court largely ignored the overwhelming and

compelling evidence of ongoing voting discrimination compiled by Congress, and it found that the geographic coverage rule was based on “decades-old data and eradicated practices.”¹⁸

Ironically, Chief Justice Roberts cited the VRA's great success in promoting the franchise for voters of color as a key reason for why it was no longer necessary — all the while ignoring the vast legislative record demonstrating that voting discrimination was alive and well.¹⁹ As then-Justice Ruth Bader Ginsburg famously noted, “[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”²⁰



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After nearly 50 years of strong enforcement of the VRA, the *Shelby County* decision represented an abrupt halt to our nation’s slow but steady progress toward achieving full political participation for all Americans and, with a single ruling, changed the face of our democracy.

Not only did *Shelby County* immediately foreclose the detection and prevention of voting discrimination before it occurred, but it also signaled a retreat of federal enforcement of voting rights, which has only emboldened state officials in their efforts to restrict the right to vote. Many of those officials have found new ways to achieve their aims, whether by imposing more onerous restrictions on voting that disproportionately affect voters of color, by intimidating voters or election officials, or by spreading spurious and false rumors of voter fraud as a way of justifying ever more severe methods of election manipulation and anti-voter efforts. Congress predicted this would happen: When reauthorizing the VRA in 2006, it found that “[d]iscrimination today is more subtle than the visible methods used in 1965.”²¹ That record was before the Court in *Shelby County*, and five justices ignored it.

Without preclearance, voters have limited tools to fight back against these new and more subtle forms of anti-voter restrictions. Litigation is slow and expensive, and voting rights litigation is especially so. Section 2 of the VRA (the VRA’s anti-discrimination provision) — which the Court in *Shelby County* proposed was an alternative — has proven unable to defend against many election officials’ worst sins. Some of that can be traced to the Supreme Court itself, which in the decade since *Shelby County* has weakened Section 2 by making it harder to prove a violation of the

statute, and only very recently upheld Section 2 to address vote dilution.²² Specifically, in 2021, the Supreme Court’s decision in *Brnovich v. Democratic National Committee* introduced a narrow “guideposts” test to determine whether a law has a discriminatory impact, further weakening Section 2.²³ Accordingly, Section 2 claims rarely prevail. As the Supreme Court recently acknowledged, since 2010, “plaintiffs nationwide have apparently succeeded in fewer than 10 Section 2 suits.”²⁴

To make matters worse, courts have been reluctant to intervene to block discriminatory voting practices violating Section 2 when it is most necessary to do so: in the immediate lead up to an election. With preclearance in place in jurisdictions with a history of voting discrimination, measures that had that purpose or effect of worsening the position of voters of color were stopped before they could harm voters.

“Without preclearance, voters have limited tools to fight back against these new and more subtle forms of anti-voter restrictions.”

In contrast, in the past decade, the Supreme Court has invoked the so-called *Purcell* principle — the idea that, to prevent voter confusion, courts should not issue orders that change election rules in the period immediately before an election — to reverse lower court orders enjoining discriminatory voting laws from taking effect prior to an election.²⁵ Federal courts — bound by this principle — have failed to block voting restrictions in the immediate lead up to an election even when they have found that the restrictions are likely to be discriminatory and illegal.²⁶

For nearly five decades, the preclearance requirement — and the VRA at large — represented a national commitment, borne out of efforts from lawmakers of all ideological stripes, to utilize the might of the federal government to bolster a principle of inclusion. Preclearance became embedded in the fabric of this country's electoral system, with hundreds of localities and several states coming under its auspices. The preclearance process validated the effectiveness and fairness of the electoral process. Officials relied on a stamp of approval from the federal government to demonstrate to local communities of color that their proposed changes would not disempower their voices. But the Supreme Court's elimination of preclearance upended this system and signaled that the federal government was in retreat from its robust defense of voting rights.

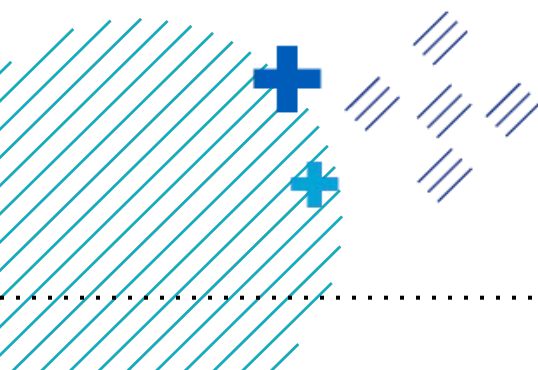
American history makes clear that, without a showing of clear authority and vigorous resolve from the federal government to stand against invidious discrimination, those who seek to win elections through illegitimate means will be empowered to bar access to the

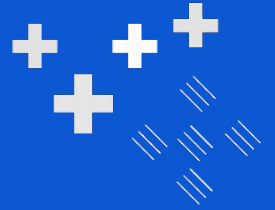
polls, often in ways that primarily disenfranchise voters of color.²⁷ The Court's rejection of the voluminous legislative record, and its dismissal of the will of a democratically elected Congress, could not have sent a stronger signal about the change of course the federal government would now take.

The impact of *Shelby County* has extended beyond the jurisdictions formerly subjected to preclearance. Beyond disabling the preclearance provision, the ruling sent a signal to other states that voting discrimination was no longer a significant problem and enabled the rise in anti-voter legislation that has occurred all over the country. This is most powerfully reflected in a new study by the Brennan Center for Justice showing that, since *Shelby County*, states around the country have enacted nearly 100 restrictive voting laws — 94 laws in 29 states.²⁸ The states previously covered by Section 5 have fared the worst; 29 of the laws were passed in 11 states subject to preclearance.²⁹ In other words, nearly one-third of the restrictive laws passed in the last decade would have been subject to preclearance and potentially halted before they were implemented.

The Supreme Court ruling also sent a strong signal that federal courts would no longer serve as a backstop in instances of state and local overreach, especially since it resoundingly rejected the voluminous congressional record that had powerfully documented voting discrimination in the impacted states. Congress's failure to respond to the decimation of the hobbled VRA in the decade since *Shelby County* only further underscores the federal government's hasty retreat from the hard-fought battle to expand the franchise.

The Supreme Court's *Shelby County* decision is corrosive. Against careful legislative findings and a strong and important national mission, the Court imposed on the country its own views of the facts and disregarded the many consequences that were obvious and predictable at the time. Ten years in, our country is plagued with the most severe anti-voter efforts since Jim Crow. Voting discrimination never disappeared — it has only mutated, adapted to the times, and metastasized over the last decade.





***Shelby County*
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Voters of color experienced the devastating effects of the *Shelby County* decision immediately. Without the preclearance requirement, states instantly felt emboldened and wasted no time in enacting suppressive voting policies that had been previously blocked by the federal government. The speed at which these measures were enacted only underlined the detrimental signaling effect of *Shelby County*.

Before the ink was dry on the *Shelby County* opinion, then-Texas Attorney General Greg Abbott announced that its strict voter ID law “will take effect immediately.”³⁰ The same law had been blocked by DOJ under the preclearance process on a finding that it would disproportionately bar Latino and Black voters from voting.³¹

On the same day, then-Alabama Attorney General Luther Strange announced plans to implement a voter ID law that had been passed by the Alabama legislature in 2011, but had not gone into effect because the state had delayed seeking preclearance.³²

North Carolina also seized upon the ruling to announce legislation to impose severe voting restrictions,³³ and within two months it enacted one of the strictest regimes in the country, known as the “monster voter suppression” law.³⁴ It expanded voter ID requirements, limited early voting and out-of-precinct voting, eliminated same-day registration, and scaled back the authority of local officials to keep polls open for an additional hour. That law largely remained in effect until a federal appellate court struck it down in 2016, finding that legislators’ justification for the bill “targeted African Americans with almost surgical precision.”³⁵

On the local level, just four days after *Shelby County*, election officials in Augusta-Richmond County, Georgia, announced a plan to move the dates of municipal elections from the standing November date to the following May³⁶ — a decision the DOJ had blocked in 2012 under the preclearance process, finding that it disproportionately affected Black voter turnout.³⁷ And similarly, just days after the decision, officials in Galveston County, Texas, revived a redistricting plan for electing justices of the peace that the DOJ had rejected two years prior, based on a finding that it would reduce the number of districts where voters of color would be able to elect the candidates of their choice.³⁸

Efforts at the state and local level to undermine the voting rights of communities of color have only intensified over the last decade, with recent years showing a veritable deluge of new proposals to curb access to the ballot. In 2021 alone, 49 state legislatures considered 440 bills that would make it more difficult for residents to register, remain on the voter rolls, or vote.³⁹ That year, 19 states passed 34 restrictive voting laws — a number higher than any year since at least 2011 and representing a third of all restrictive voter laws enacted since 2011.⁴⁰ And in January 2023 alone, at least 32 state legislatures were considering 150 pre-filed bills that would further restrict access to the ballot, representing an increase from the number of such bills introduced at the same time in 2021 and 2022.⁴¹

As of June 2023, 322 restrictive bills have been introduced in 45 states and 13 have been enacted — surpassing the total number of any year in the last decade except 2021.⁴²

These anti-voter tactics have taken multiple and even more pernicious forms over the decade. Many of the restrictions deployed immediately in the aftermath of *Shelby County*, such as photo ID requirements, are still in frequent use. Between January and February 2023, 22 states proposed 51 bills to impose new, or more stringent, voter ID requirements for both registration and in-person voting.⁴³ Today, at least 36 states have laws requiring voters to show some form of identification at the polls.⁴⁴

Voter purge rates also surged dramatically nationwide following *Shelby County*, but particularly in those areas that were previously subject to preclearance.⁴⁵ One study by the Brennan Center found that voter purge rates had increased by 33 percent between 2014 and 2016 — the first two years after *Shelby County* — as compared to a prior period between 2006 and 2008, a rate that far outpaced the growth in total registered voters.⁴⁶ It also found that for the two election cycles between 2012 and 2016, jurisdictions no longer subject to federal preclearance had “significantly higher purge rates” than jurisdictions that were not previously subject to preclearance.⁴⁷ Voter purges have only grown more severe. A Bloomberg report from 2021 found that nationally at least 50 bills were proposed “that would trim voter rolls more vigorously than in previous legislative sessions,” with several ultimately being signed into law “spurred by record turnout in the 2020 election and allegations, led by former President Donald Trump, that the outcome was somehow rigged.”⁴⁸

Our nation is also contending with “old poison in new bottles” in the form of new and dangerous twists on a legislative agenda to thwart access to the polls. In the aftermath of the 2020 election, there was an alarming trend in the form of state legislatures attempting to wrest power away from other branches and instead consolidate the power to administer elections and certify results within the legislative branch itself — enabling partisan interference in election results.

For example, bills introduced in Arizona, Missouri, and Nevada would grant powers to the state legislature to certify both state and federal election results, bypassing courts or the executive branch and enabling those legislatures to override results of the popular vote where they disagree with the outcome.⁴⁹ Georgia has passed multiple measures allowing partisan actors to remove election officials and seize control of election administration in specific jurisdictions, leading to the removal of local Black election officials.⁵⁰

“Our nation is also contending with ‘old poison in new bottles’ in the form of new and dangerous twists on a legislative agenda to thwart access to the polls.”

One law removed the secretary of state from the state election board and empowered the legislature to select a chairperson to take their place — increasing the likelihood of partisan appointments to that body.⁵¹ It also empowered the state election board to suspend county election officials if they find “nonfeasance, malfeasance, or gross negligence” — a vague standard.⁵² At least 10 other states have introduced similar measures, giving partisan officials powers to seize control of election administration processes.⁵³

This year alone, at least four states passed five election interference laws.⁵⁴ One law in Arkansas made it a crime for election officials to send unsolicited mail ballots, while another allowed the partisan state board of elections to conduct an additional “audit” of voter registration and mail ballot “fraud” — despite the fact that Arkansas counties already conduct independent audits.⁵⁵ And South Dakota passed a law that risks imposing an impossible choice on poll workers: either be subject to criminal penalties for not allowing poll watchers to observe the process of canvassing ballots closely enough, or face criminal penalties for not keeping poll watchers far away enough from ballots that contain personally identifying information.⁵⁶

More pernicious laws criminalize plainly harmless activities — such as Georgia’s notorious law making it a misdemeanor to provide food or drinks to voters waiting in line within 150 feet of a polling place, punishable with steep fines and up to a year in jail.⁵⁷ Lawmakers have justified such laws with exaggerated claims of voter fraud — which studies have found is not only exceedingly rare,⁵⁸ but occurs at a rate that is unlikely to make any difference in the outcome of

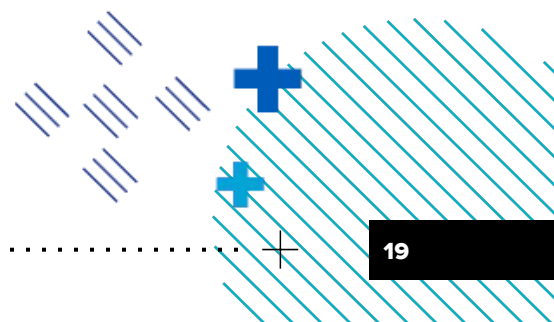
elections.⁵⁹ These laws serve only to intimidate election officials, election workers, and voters themselves, amplifying the risk that election administrators may become more concerned with avoiding criminal liability than protecting the vote — and that voters will be deterred from exercising their rights out of fear of either criminal or civil liability.

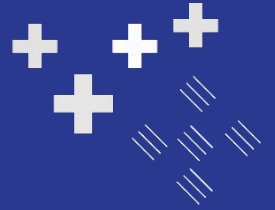
One of the most troubling trends began in Florida and involves the creation of law enforcement units dedicated to investigating and prosecuting purported cases of voter fraud. In 2022, Florida created a new Office of Election Crimes and Security, a special police force to investigate election crimes. In August of that year, it arrested more than 20 formerly convicted people for allegedly voting illegally — many of whom were led to believe by a government actor that they were eligible to vote.⁶⁰ Texas lawmakers replicated the legislation to create a voting law enforcement unit, led by state “election marshals,” who would be empowered to issue warrants and file criminal charges in cases involving allegations of violations of election and voting laws.⁶¹

These trends make clear that voting discrimination no longer stops at restricting the vote alone — it has slowly shifted into measures that directly subvert the democratic election process and the resulting distortion of election outcomes on a partisan basis. Preclearance would have halted many of these measures at the outset — and without its shield, communities of color are left with few tools to challenge the multi-pronged assault on their right to participate in the democratic process.

Despite the phenomenal efforts by communities of color to overcome the panoply of voting barriers erected in their path over the last decade and to turn out in large numbers, there is clear evidence that these laws and policies are having their intended effect to exclude large segments of the population from political participation. Since the *Shelby County* ruling, the racial gap in voter turnout has only widened. Although the gap had narrowed immediately prior to *Shelby County*, Black turnout in 2020 was lower than white turnout in many of the states formerly covered by preclearance.⁶² Louisiana, South Carolina, and Texas had a wider Black-white turnout gap in 2020 than at any time in the past 24 years.⁶³ A similar trend was evident in the gap between white and all non-white voters: In 2020, 70.9 percent of white voters participated, while only 58.4 percent of non-white voters did so.⁶⁴

Data from the 2022 elections demonstrate a racial turnout gap that is still growing and most prominent in states formerly subject to preclearance under the VRA.⁶⁵ For example, a Brennan Center study recently revealed that in 2022, the white-Black gap in voter turnout in Alabama was 9 points — triple the size of the gap from a decade ago.⁶⁶ And the gap between white and all non-white voters in Alabama was even greater at 13 percentage points.⁶⁷ Additionally, despite Georgia's impressive turnout overall in 2022, the racial gap in turnout was higher than at any point in the past decade.⁶⁸ In North Carolina, 43 percent of Black voters participated compared with 59 percent of white voters — doubling the difference from 2018 and tripling the racial turnout gap from 2014.⁶⁹





A Decade of Cumulative Harm to Voters of Color

Suppression of the right to vote is in some ways a mosaic; its import turns not just on the harm of any single restrictive policy but, more fundamentally, on how those policies build off each other and operate together to dramatically restrict voting access from a number of directions.

To fully understand the aftermath of *Shelby County*, it is not enough to look at different bills in isolation. Instead, we must look at how the full spectrum of restrictions burden an individual voter. Consider the many ways a potential voter may be stymied: They may have been unable to register to vote; their name may have been unlawfully purged from the voter rolls; their nearby polling place may have been shut down and they are unable to afford to travel a much longer distance on Election Day; restrictions on vote-by-mail may have taken away their ability to vote absentee; they may have arrived at the polling place without the right form of ID; they may have faced intimidation once they arrived at the polls. And perhaps they overcome all of those hurdles, only to find that their vote has been diluted by an unlawful racial gerrymander. Any single one of those restrictions can be a burden. Together, they can be insurmountable. Since *Shelby County*, states have been relentless in adding restrictions and burdens — all at the expense of voters of color.

Consider Texas, which in the last decade has led the way in enacting increasingly aggressive, punitive, and burdensome restrictions on the right to vote. As already discussed, the Lone Star State moved quickly after *Shelby County*, announcing that its strict voter ID law would go into effect immediately. After that law was struck down on the basis that it disproportionately impacted voters of color, Texas re-enacted a substantially identical

voter ID law in 2017. Texas has also made it harder to register to vote. Among other things, it now requires those who register online to submit applications with a “wet-ink” signature no later than four days after the electronic application is submitted.⁷⁰

The state has also ramped up efforts to make it harder to vote by mail. Recent legislation prohibits election officials from sending mail ballot applications to eligible voters unless specifically requested, and election officials can now face criminal penalties for encouraging voters to request an application to vote by mail.⁷¹ And it has made voting in person much harder for millions of Texans: It limited mobile polling sites for early voting — a policy that disproportionately impacts young voters and old or disabled voters⁷² — while eliminating 24-hour early voting and prohibiting drive-through voting.⁷³ Meanwhile, it has been relentless in closing down polling places over the last 10 years — particularly in areas with high concentrations of voters of color.⁷⁴ The result, as one report concluded, is that it’s harder to cast a ballot in Texas than in any other state in the country.⁷⁵

Arizona’s barrage of anti-voting legislation in the last decade mirrors Texas’s. Like Texas, Arizona has used the last decade to make voter registration much harder, including by requiring documentary proof of citizenship to vote in presidential elections or vote by mail in federal elections.⁷⁶ It has also implemented worse and worse restrictions on the right to vote by mail or through drop boxes — both of which are disproportionately popular among Arizonans, and especially Arizonans of color. Several years after *Shelby County*, Arizona severely restricted the collection and drop-off of voted ballots by third parties — a law that disproportionately impacts voters of color, who are much more

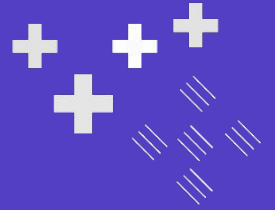
likely to rely on third parties to collect and deliver their early ballots.⁷⁷ As part of a similar strategy, Arizona also criminalized forwarding a mail-in ballot to a voter who may be registered in another state.⁷⁸ And to burden Arizonans who prefer to vote by mail even more, Arizona has also put in place a process for a massive vote-by-mail purge — including a mechanism to remove voters from a permanent vote-by-mail list if the voter is registered to vote elsewhere and by requiring election officials to notify voters who have not voted by mail in two consecutive election cycles that they will be removed from the list unless they respond within 90 days indicating they want to be kept on the list.⁷⁹

Florida has also ramped up its anti-voter efforts over the last decade. It has erected ever-increasing barriers to absentee voting by limiting the use of drop boxes where voters can deposit absentee ballots and by requiring voters to request an absentee ballot for each two-year election cycle, rather than every four years (as was the case before).⁸⁰ Like Arizona, it has enacted criminal penalties aimed at limiting ballot collection, including by making it a first-degree misdemeanor to possess or deliver more than two mail-in ballots per election — other than a voter’s own ballot and the ballots of “immediate” family members.⁸¹ And to deter nonprofits and other community organizers from trying to fight against these anti-voter efforts, the state has raised the costs of organizing voter registration efforts by adding new regulatory burdens.⁸²

“Any single one of those restrictions can be a burden. Together, they can be insurmountable. Since *Shelby County*, states have been relentless in adding restrictions and burdens — all at the expense of voters of color.”

Texas, Arizona, and Florida are not outliers. Rather, they represent much of what we have seen over the last decade: States relentlessly enacting new anti-voting legislation, year after year, targeting all parts of the political process — from registration to having one’s ballot counted. Individually, each of those laws make it harder for voters to exercise their right to participate in the political process. But taken together, the cumulative harm caused by those laws is exponentially greater, as the burdens caused by them feed off each other to deter Americans from exercising their right to vote.

It is this cumulative harm to voters of color — and to our democracy — that has been particularly devastating in the decade since *Shelby County*, and it remains an urgent concern heading into next year’s election — our nation’s sixth federal election without the full protections of the VRA.



Targeting Voters of Color

Swift and effective efforts by states to enact restrictive voting laws and policies implemented after *Shelby County* often made little pretense of their intent to target and bar voters of color — as evinced by the numerous federal court decisions that found plainly intentional discrimination behind states’ restrictive voting measures.

North Carolina’s notorious actions in the immediate wake of *Shelby County* provide a powerful example. Before the *Shelby County* decision, Black registration and turnout rates were nearly on par with those of white voters in North Carolina. Suddenly released from the restrictions of the preclearance requirement, the state legislature quickly “requested data on the use, by race, of a number of voting practices.”⁸³ That data showed that African Americans disproportionately lacked the most common form of photo ID — licenses issued by the state Department of Motor Vehicles.⁸⁴ The legislature then took steps to ensure that the only acceptable forms of voter identification were those predominantly used by white North Carolinians — and barred the use of the alternative photo IDs primarily used by African Americans.⁸⁵

Similarly, the data showed that Black voters were more likely to use the first seven days of North Carolina’s 17-day voting period — and lawmakers accordingly eliminated that first week of early voting.⁸⁶ A federal appeals court ultimately found that the legislation had targeted African American voters “with almost surgical precision.” The court noted, moreover, that the state’s justification for certain provisions of the statute “hinge[] explicitly on race — specifically, its concern that African Americans, who had overwhelmingly voted for Democrats, had too much access to the

franchise.”⁸⁷ The court held that the law came “as close to a smoking gun as we are likely to see in modern times.”⁸⁸ Of course, without preclearance, this racist voting law was in effect until courts — years later and after expensive litigation — could strike it down.

Similarly, federal courts concluded that Texas’s enactment of one of the strictest photo ID laws in the nation, SB 14 — which the Department of Justice had previously barred under preclearance requirements — was motivated by discriminatory intent.⁸⁹ SB 14 strictly limited the kinds of photo ID voters could use to cast a ballot and considered fewer forms of identification acceptable than any other state in the nation. At the time, more than 600,000 Texas residents lacked identification adequate to satisfy the law’s exacting requirements. The law depressed turnout primarily among Black and Latino voters.⁹⁰ For example, one study found that the law discouraged about 9 percent of registered voters from casting ballots in a majority-Latino district. A federal district court enjoined the law as violative of Section 2 of the VRA, finding for several reasons that “discriminatory intent was a motivating factor” in its enactment.⁹¹ Among other things, that court noted the “long history of discriminatory voting practices” perpetuated by the Texas legislature, found that the law at issue “involved extraordinary departures” from normal substantive and procedural practices, and credited that the law was proposed in a legislative season that followed “substantial gains by minority populations” — and thus was marked by a “number of measures proposed that exhibited an anti-Hispanic sentiment.”⁹² On appeal, the Fifth Circuit affirmed the district court’s holding that the law violated Section 2 because it produced discriminatory results for African-American and Hispanic voters,⁹³ but it

vacated and remanded the district court’s finding of discriminatory intent for further weighing of the evidence.⁹⁴ Even then, on rehearing *en banc*, however, the Fifth Circuit noted that, even if there was no *direct* evidence of intentional discrimination (which it conceded is increasingly rare in such cases), there “remains evidence to support a finding that the cloak of ballot integrity could be hiding a more invidious purpose” — that is, ample *circumstantial* evidence of intentional discrimination.⁹⁵ On remand, the district court again held that the law “was passed, at least in part, with a discriminatory intent,” in violation of the VRA, among other things, citing numerous measures rejected by the Texas legislature that would have “softened the racial impact” of the law, and concluding that these efforts “revealed a pattern of conduct unexplainable on nonracial grounds, to suppress minority voting.”⁹⁶

States have also engaged in intentional discrimination in the redistricting process. Prior to *Shelby County*, Texas was twice found to have intentionally discriminated against voters of color in drawing its congressional districts.⁹⁷ Following *Shelby County*, a federal court concluded, in 2017, that this discriminatory purpose was unchanged — and that Texas “map drawers acted with an impermissible intent to dilute minority voting strength” in the redistricting process.⁹⁸ And this trend continues unchecked. Although the 2020 Census showed that Texas’s population growth was 95 percent in communities of color,⁹⁹ Texas redistricted such that the proportion of white representation increased.¹⁰⁰ In response, the DOJ sued Texas under Section 2 of the VRA, alleging that the state had “creat[ed] redistricting plans that deny or abridge the rights of Latino and Black voters to vote on account of their race, color or membership in a language minority group.”¹⁰¹

“A federal appeals court ultimately found that the legislation had targeted African American voters ‘with almost surgical precision.’”

Along similar lines, a federal court found that South Carolina’s congressional map reflected an impermissible racial gerrymander that had effectively “bleach[ed]” Black voters out of the congressional district and “made a mockery of the traditional districting principle of constituent consistency.”¹⁰²

Intentional discrimination against voters of color is equally pervasive — if more difficult to detect — at the local level. In one example, just as its growing Latino population was poised to elect preferred candidates in five of the eight single-member city council districts, the city of Pasadena, Texas, changed its eight-member single-district structure to a hybrid system that replaced two single districts with at-large seats. A federal court found that the city diluted Latino voting power in violation of the Constitution and the Voting Rights Act and ordered the city to obtain preclearance approval from DOJ before implementing any future election changes.¹⁰³





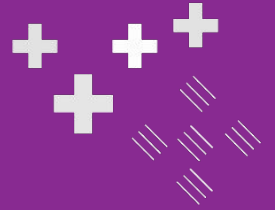
Vote Vote

Indeed, around the country states have adopted voter restrictions specifically targeting the kinds of voting practices that voters of color prefer — again in an effort to tamp down electoral participation from communities of color. The recent slate of voter restrictions targeting how voters may cast a ballot shows this. Georgia’s restrictions on ballot drop box access had a disproportionate effect on Black voters, who tend to live in areas with low vehicle ownership and for whom the longer travel times imposes a greater burden.¹⁰⁴ The same thing happened in Florida.¹⁰⁵ Arizona passed a voter purge statute that experts believe will disproportionately impact Native American and Latino voters, removing them from the voter rolls at far higher rates.¹⁰⁶ To take another example, in response to the COVID-19 pandemic, many counties that leaned Democrat instituted new measures to enable citizens to vote safely, only to have states swiftly pass laws to prohibit those practices. For example, in response to Fulton County’s efforts to deploy buses with voting stations in them to allow residents to vote with ease, Georgia passed a law that effectively eliminated mobile voting.¹⁰⁷

Intentional discrimination of this kind is particularly pernicious because it often reaches its zenith at the precise moment when communities of color within that jurisdiction are on the verge of acquiring — and exercising — greater political power. States like Texas,

Georgia, and Florida, in recent years, have passed some of the harshest and most stringent voting restrictions in the country. All three states are increasingly diverse, gerrymandered to an extraordinary extent, and have focused their suppression efforts primarily at voters of color — even as such voters have played a critical role in narrow electoral margins.

For example, in 2020 Georgia’s two Senate seats went to a closely contested runoff, in which Democratic candidates ultimately prevailed — buoyed by the support of primarily Black voters.¹⁰⁸ The following year, the Georgia legislature passed some of the harshest voting restrictions implemented in the state in recent years, requiring more stringent voter ID, curtailing ballot drop boxes, restricting provisional ballots, and making it a crime to offer food or water to waiting voters.¹⁰⁹ Similarly, in 2016, the Democratic North Carolina gubernatorial candidate prevailed by less than a percentage point, owing in part to decades of Democratic legislative efforts to expand ballot access and to “recruit more black voters.”¹¹⁰ A year after the Democratic governor took office, the Republican-controlled legislature passed a restrictive voter ID law that the state supreme court later determined “was enacted with the discriminatory intent to target African-American voters.”¹¹¹ That same year, the legislature introduced a ballot initiative to amend the state constitution to require voter ID.¹¹²



First Redistricting in Decades Without VRA's Full Protections

Shelby County dramatically elevated the presence of race discrimination in the redrawing of new districts for Congress, statehouses, and local election districts after the 2020 Census. Prior to *Shelby County*, Section 5 of the VRA provided a powerful check against discriminatory redistricting plans by mandating that covered jurisdictions affirmatively demonstrate that the change has neither a discriminatory purpose nor will have a discriminatory effect. In this way, Section 5 turned back discriminatory maps prior to their enactment. Without Section 5, states are now free to adopt racially gerrymandered redistricting plans without seeking preclearance, and many have taken full advantage of the opportunity. And while such plans may still be challenged under Section 2, protracted litigation often means that the maps will not be struck down in time for an election.¹¹³

Texas's history of vote dilution through redistricting demonstrates the importance of the preclearance process for safeguarding the power of the vote for communities of color. Since the passage of the Voting Rights Act in 1965, Texas has not gone a single decade without a federal court finding that the state had violated federal protections for voters of color.¹¹⁴ After each decennial census during the period when Texas was required to obtain preclearance of redistricting plans, the state enacted redistricting plans for the Texas House that violated Section 5.¹¹⁵ Yet, discriminatory redistricting plans were kept at bay by Section 5, which forced Texas to prove that its redistricting plans were not discriminatory before they went into effect.

During 2021-2022, states engaged in congressional and state legislative redistricting for the first time without the full protections of the VRA. Following the 2020 Census, Alabama's legislature proposed a new congressional map that was designed to dilute Black Alabamians' votes by retaining only one majority Black district — even though census data showed Black representation in Alabama at 27 percent and longstanding redistricting principles required a second such district.¹¹⁶ After a challenge under the VRA, in *Allen v. Milligan*, a three-judge panel found that, based on an “extremely extensive record,” the congressional districts violated Section 2 of the VRA, enjoined the new map from going into effect for any subsequent elections, and ordered a second district be drawn in which Black voters would comprise a voting-age majority.¹¹⁷ The Supreme Court subsequently affirmed the lower court, paving the way for Alabama to add an additional majority-Black district.¹¹⁸

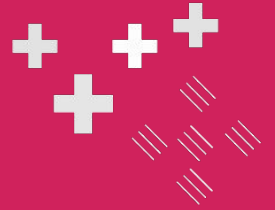
Similarly, lawmakers in Louisiana and South Carolina enacted congressional redistricting plans that deny Black voters equal opportunity to participate in the political process and elect candidates of their choice;¹¹⁹ the fate of the South Carolina maps is still pending before the Supreme Court,¹²⁰ while the Court recently remanded the Louisiana case to the Fifth Circuit based on its ruling in *Allen v. Milligan*.¹²¹

Soon after Texas's Republican-led legislature approved the state's redistricting plan for both its congressional delegation and the Texas House of Representatives, the Justice Department challenged Texas's plan, arguing

that it violated Section 2 of the Voting Rights Act by redrawing the map to dilute the effect of voters of color.¹²² The Justice Department offered several examples where majority-minority districts were eliminated altogether or redrawn in such a way that voters of color in urban areas were newly counted in rural, predominantly white areas.¹²³ But unlike in past decades, Texas — along with Alabama, Louisiana, and South Carolina — did not have to submit its maps for preclearance by the Justice Department under Section 5 of the Voting Rights Act, and DOJ — not Texas — had the burden of proof. The long and protracted litigation that ensued meant that the plan was still in effect when the next congressional election occurred in November 2022.¹²⁴

Discriminatory redistricting practices persisted on the local level as well. After *Shelby County*, many local Texas governments passed election law changes that either were previously denied by the federal government or would have been subject to the preclearance requirement.¹²⁵ For example, two days after *Shelby County*, the mayor of Pasadena, Texas, proposed a redistricting plan — which was subsequently passed — that disproportionately affected the influence of Latino voters in municipal government.¹²⁶ This plan cut two of the eight seats from Pasadena’s city council, creating six single-member districts and two at-large seats (the “6-2 plan”).¹²⁷ The two eliminated districts were predominantly Latino, a population that makes up approximately 50 percent of the voting population in Pasadena.¹²⁸ If Section 5 were in place, Pasadena would have been required to submit this plan to the DOJ.¹²⁹

“Since the passage of the Voting Rights Act in 1965, Texas has not gone a single decade without a federal court finding that the state had violated federal protections for voters of color.”



Despite Extraordinary Headwinds, Voters of Color Have Persisted

To counter the panoply of restrictions that have targeted every aspect of the voting process over the past decade, communities of color — in partnership with advocates, voting rights organizations, and pro-voter officials — have engaged in extraordinary efforts to overcome these barriers and attempt to participate fully in federal, state, and local elections.

The 2022 midterms provide a powerful example. Widely classified as a success in terms of overall turnout, election processes, and security, it is critical to recognize what that success took to achieve. In every state, scores of activists, leaders, and voting rights lawyers showed up and devoted countless hours to educating voters on why their vote matters, how to navigate new voter restrictions, what documents they may need in order to register and vote, how to locate and travel to the polls, and how to correct their ballot in the event of a challenge. The national Election Protection coalition was operating in full force, with a suite of hotlines in many different languages and the provision of legal and grassroots assistance at polling places in 33 states. Other networks established to ensure free and open access to the ballot operated resource hubs and engaged in rapid response to counter disinformation targeting communities of color.

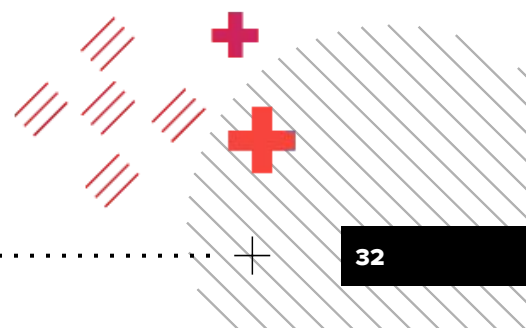
The federal government, including but not limited to the Department of Justice, monitored the elections, sent officials to designated hot spots, and filed immediate legal action in some instances to ensure voters could participate. State and local governments deployed countless officials to ensure the smooth administration of elections and to guard against increasing threats and attacks on election officials, poll workers, and voters. Civil rights organizations from all over the

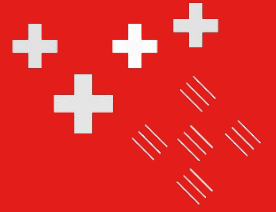
“Civil rights organizations from all over the country stood guard, ready to intervene at a moment’s notice with a phone call, letter, or lawsuit to ensure that no one was deprived of the right to cast a ballot and have that ballot count.”

country stood guard, ready to intervene at a moment’s notice with a phone call, letter, or lawsuit to ensure that no one was deprived of the right to cast a ballot and have that ballot count.

As the Lawyers’ Committee for Civil Rights Under Law recounted in recent testimony before Congress, “The ‘success’ of the 2022 election was built on the shoulders of those who expended time, money, and effort that was needed to overcome unnecessary burdens to voting...A true accounting of the 2022 elections must include not just how many are able to vote, but which people are able to vote, and the barriers they are forced to overcome to do so.”¹³⁰

Senator Raphael Warnock precisely captured the nature of the challenge when he famously remarked in his victory speech after winning his Senate seat in Georgia: “But there are those who look at the outcome of this race and say there is no voter suppression in Georgia. Let me be clear: Just because people endured long lines that wrapped around buildings, some blocks long, just because they endured the rain and the cold and all kinds of tricks in order to vote, doesn’t mean that voter suppression does not exist. It simply means you, the people, have decided your voices will not be silenced.”¹³¹





Charting the Path Forward for Our Democracy

The Leadership Conference Education Fund has been working diligently to engage hard-to-reach women of color voters in 11 priority states — including Arizona, Florida, Georgia, Michigan, Minnesota, Mississippi, North Carolina, Nevada, Pennsylvania, Virginia, and Wisconsin — with national and state-based partners to educate, mobilize, and build power with voters as we meet this moment through our And Still I Vote campaign. This campaign works to build and sustain a multiracial democracy by engaging and educating hard-to-reach voters of color who lack enthusiasm, who endure challenges getting to polling locations due to proximity, who encounter language barriers, and who attempt to navigate the provisions imposed by harmful anti-voting laws that have reduced their access to the ballot and that heighten safety concerns due to political dynamics and widespread disinformation. This work includes engaging with voters prior to national election years.

We will continue to build the population of engaged voters by talking to them about the issues we know they care about — and that we know their families and communities care about. We believe that through sustained issue-based engagement we will see increases in turnout, civic participation, and the building of capacity in grassroots organizations.

The unique focus on women of color and, in particular, those in rural communities is a response to the continuing change in the American landscape — including young people who moved away from cities since the start of the pandemic — and the need to meet voters where they're at. Rural voters make up more than 40 percent of the electorate¹³² in many battleground states, and these communities often have strong civic institutions like

churches, civic engagement organizations, and community centers that provide ample ground for organizing. Metropolitan areas are often saturated with political infrastructure, but by engaging with voters in rural areas, we can reach less engaged constituencies and build trust to yield long-term engagement and increase turnout through a relational framework model.

The Leadership Conference Education Fund, in partnership with The Leadership Conference on Civil and Human Rights, its coalition membership, and a growing network of state partners, has already worked in states to create strategic plans for outreach, held town halls to provide updates on key issues, and convened national leaders in the voting rights and democracy spaces for strategic planning. This vital work will continue.

“We will continue to build the population of engaged voters by talking to them about the issues we know they care about — and that we know their families and communities care about.”



The Urgent Need to Protect All Voters

This report has provided only a taste of the damage that the Supreme Court wrought with its *Shelby County* ruling. Starting almost immediately after the decision, states have persisted in enacting a growing slate of restrictions that disproportionately disenfranchise voters of color. And without Section 5's preclearance requirement, states have adopted new and shapeshifting methods to curtail the right to vote — resulting in a decade of cumulative destruction to our democracy.

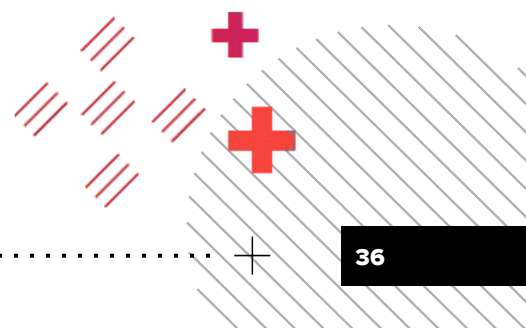
As we enter the second decade of the *Shelby County* decision, we must meet this extraordinary moment and rise up to protect our democracy. We must envision, create, and sustain the multiracial democracy we need and deserve so that all of our communities can thrive and succeed. We must insist on giving voice to every voter so they can participate — free from discrimination and without unnecessary barriers — in the decisions that affect their lives, their families, and their futures.

Policymakers can and must enact reforms to help protect the right to vote, including restoring and strengthening voting rights protections gutted by the *Shelby County* decision and other harmful rulings by the Court diminishing the power of the VRA. This includes updating the preclearance requirement to meet contemporary challenges and strengthening other essential provisions of the VRA to help dismantle the barriers erected to silence communities of color. Policymakers should also address the unique barriers faced by Indigenous voters by protecting Native voting rights and the right to vote on Indian lands. In addition, policymakers could immediately halt many of the worst voter

restrictions adopted by states by setting a basic federal foundation for voting access that includes early voting, mail voting, automatic and same-day registration, and other measures to ensure all Americans can fully participate in the political process.

The Supreme Court's recent decision in *Allen v. Milligan* also provides a promising path forward. In an important victory for democracy, the Court reaffirmed decades of Section 2 precedent prohibiting states from denying voters of color equal opportunity to participate in the political process. It will help protect the ability of voters of color to elect candidates of their choice who can represent their interests — on a host of different issues important to their own communities — at the congressional, state, and local levels.

In a second significant opinion this term, the Supreme Court rejected the radical “independent state legislature” theory pushed by partisan legislators in North Carolina that, if accepted, would have given state legislatures unfettered authority to pass restrictive voting laws and draw new redistricting maps, while divesting powers from state courts and governors to limit or check such developments. In *Moore v. Harper*, Chief Justice Roberts made clear that the Constitution “does not vest exclusive and independent authority in state legislatures to set the rules regarding federal elections,” and that state legislatures must still comply with state constitutional restraints in this area.¹³³





There are other hopeful signs. Just as certain states have doubled down on voter restrictions, others have stepped up for our democracy — in the absence of federal protections — to strengthen provisions against voting discrimination and expand access to voting. Between January and May of this year, 13 states enacted 19 expansive voting laws.¹³⁴ And states such as Virginia, California, Washington, and Oregon have enacted laws modeled at least in part after the federal VRA, with standouts like the New York Voting Rights Act and the recently enacted Connecticut Voting Rights Act, which is now the strongest state voting rights law in the nation.¹³⁵ Moving forward — especially with a divided Congress, and as we await action on federal voting rights protections — more states should play a critical role in protecting civic participation by passing state legislation designed to expand voting access, restore voting rights for people with felony convictions, and protect against all forms of discrimination in voting.

Everyone has a role to play in charting a path forward to protect our democracy. With states taking advantage of a weakened VRA, national, state, and local groups must double down on efforts to educate, engage, and empower our own communities to turn out and fully engage in the political process. We must build upon the work that was done in advance of the 2022 elections in which countless activists, leaders, voting right lawyers, and pro-voter election officials engaged in extraordinary efforts to ensure voters everywhere — including voters of color — could cast their ballots and have them count. Millions of hours were spent educating and informing voters, operating election protection efforts, preventing harassment and intimidation of voters and election workers, and ensuring that the electoral process was safe



and secure from undue interference and partisan influence. Those efforts paid off and were reflected in the high turnout across the country of the very voters who were targeted by those politicians and officials seeking to silence their voices.

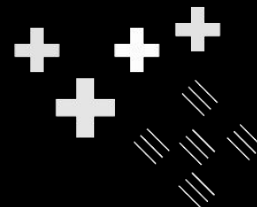
A top priority for the future of our democracy is to increase turnout among voters of color and youth voters by building infrastructure, strengthening capacity, and solidifying relationships between national, state, and local organizations. Another is to ensure that voters of color can participate in our political process without fear of assault on their right to do so and without disinformation or misinformation that hinders or harms their ability to vote. Importantly, we must also ensure that voters of color will know why their vote matters and why their voice is so critically needed to chart an inclusive path for the future.

The right to vote is the foundation of our democracy. It protects all of our freedoms and rights. We must seize upon this intersectional moment to engage across communities and across common interests. Attacks by legislatures and courts on abortion rights, LGBTQ rights, labor rights, and on the ability to teach civil rights history to our children are uniting us — and the central way to overcome these barriers and hurdles is through full participation in the electoral process.

Our democracy does not protect itself. It is up to all of us — and we will.

“Our democracy does not protect itself.

It is up to all of us — and we will.”



Endnotes

[1] Amicus Brief of Reps. F. James Sensenbrenner et al., *Shelby County v. Holder*, No. 12-96, at 7 (Feb. 1, 2013).

[2] *South Carolina v. Katzenbach*, 383 U.S. 301, 313 (1966).

[3] *Id.*

[4] *E.g.*, S. COMM. ON THE JUDICIARY, 1982 VOTING RIGHTS ACT EXTENSION, S. REP. NO. 97-417, at 5 (1982), 1982 U.S.C.C.A.N. 177 (noting that, prior to the Voting Rights Act, “case-by-case litigation proved wholly inadequate. . . By the time a court enjoined one scheme, the election had often taken place, local officials had devised a new scheme, or both had occurred.”).

[5] 52 U.S.C. § 10303(b).

[6] 52 U.S.C. § 10304.

[7] Ari Berman, *John Lewis’ Legacy Is the Right to Vote. And It’s Under Attack*, MOTHER JONES (July 18, 2020), <https://www.motherjones.com/politics/2020/07/john-lewis-legacy-is-the-right-to-vote-and-its-under-attack/>.

[8] *E.g.*, *Georgia v. United States*, 411 U.S. 526 (1973) (noting that Section 5 “places the burden of proof on the submitting jurisdiction to demonstrate that the proposed change does not have a racially discriminatory purpose or effect.” (Stewart, J.)).

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[23] *Id.*

[24] *Allen v. Milligan*, 599 U. S. ____ (2023).

[25] *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) ("This Court has repeatedly stated that federal courts ordinarily should not enjoin a state's election laws in the period close to an election, and this Court in turn has often stayed lower federal court injunctions that contravened that principle.").

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