



The Rise and Fall of the Voting Rights Act of 1965

(And What We Must Do About It)



Why do States Control Voting?

- Article 1.1 grants federal legislative power to a Congress consisting of a House of Representatives and Senate.
- Article 1.4 grants to each State Legislature the power to set the *times, places and manner* of holding elections for the US Senators and Representatives *but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.*
- **10th Amendment:** Powers not delegated to the United States by the Constitution or prohibited to the States such as customs at state borders) are reserved to the States respectively, OR to the people.



So, who could vote?

- **18thc: White male property owners or tax-payers (fear of loss of land and wealth if majority were non property owners)**
- **1787: Some states allow some blacks, some women to vote ..later taken away (NJ/PA) by 1807**
- **1790: Naturalization Act – Right to apply to be citizens: white males**
- **1843: RI allows any free men to vote, removing property ownership**
- **1848: Mexicans in US declared citizens - but not encouraged to vote**
- **1856: North Carolina: last state to abolish property requirement**
- **1869,1870 Wyoming, Utah give women right to vote, but federal anti-polygamy law ends her right to vote**

Determined by race, wealth, gender, property

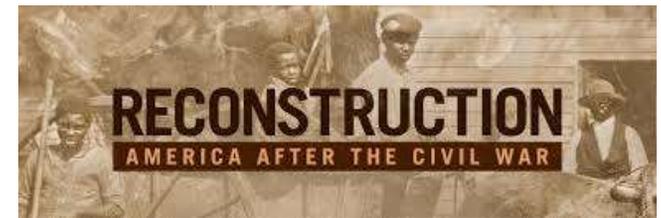
History Behind Voting Rights Amendments



1861 - 1865



1865 - 1877



1840 - 1920



1965-1973





14th Amendment (1868)

Citizenship, Equal Protection

§ 1 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2 Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed.

§ 5 The Congress shall have the power to enforce this article by appropriate legislation.

15th Amendment (1870)

Race, Color & Previous Servitude



§ 1 The **right of citizens** of the United States **to vote** shall not be denied or abridged by the United States or by any State **on account of race, color, or previous condition of servitude.**

Voting Rights Granted and Taken Away



- 1875: US Supreme Court: **Voting is not a right of Citizenship**
- 1876: **Native Americans** declared non-citizens
- 1876: Virginia **adds poll tax to right to vote**
- 1882: **Chinese-Americans** lose right to vote and become citizens
- 1887: Male **Native Americans** can vote - *if* they denounce tribe
- 1887 -1919: Many states pass **some women's right to vote**
- 1901: **Alabama cumulative poll tax; all taxes must be paid to vote**

20th Century Voting Amendments



- **17th Amendment (1913) Popular Election of Senators** by voters eligible to vote for their State's most numerous legislative branch
- **19th Amendment (1920) Sex**
 - "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account **of sex**" after years of protests.
- **23rd Amendment (1961) District of Columbia**
 - Can vote for President, VP and send 3 electors to Electoral College.
- **24th Amendment (1964) Poll tax or other tax eliminated**
 - during Civil Rights movement.
- **26th Amendment (1971) Voting Age**
 - lowered to 18, same as draft registration required during Vietnam war.

Some Key Voting Acts executed under the power of Article 1.4, 14th and 15th Amendments



- 1924 Indian Citizenship Act (though western States fight this until 1970)
- 1952 McCarran-Walter Act (Chinese-American)
- 1957 Civil Rights Act
- 1964 Civil Rights Act
- **1965 Voting Rights Act (VRA)**
- 1982 People with Disabilities Act
- 1986 Uniformed And Overseas Voter Registration Act
- 1993 National Voter Registration Act (NVRA) aka Motor Voter
- 2002 Help Americans Vote Act (HAVA)

Civil Rights Movement: Voting Rights denied after Civil Rights Act 1964 passed.





Voting Rights Act (VRA) of 1965

- §2 - "No voting qualification or prerequisite to voting, or standard, practice, or procedure, shall be imposed or applied by any State or political subdivision **to deny or abridge** the right of any citizen of the United States **to vote on account of race or color.**"
- §4 Formula for discrimination
- §5 Pre-clearance to change voting practices



President Lyndon B. Johnson signs the Voting Rights Act of 1965 in a ceremony in the President's Room near the Senate Chambers on Aug. 6 | AP Photo

<https://www.politico.com/story/2017/08/06/lbj-signs-voting-rights-act-aug-6-1965-241256>

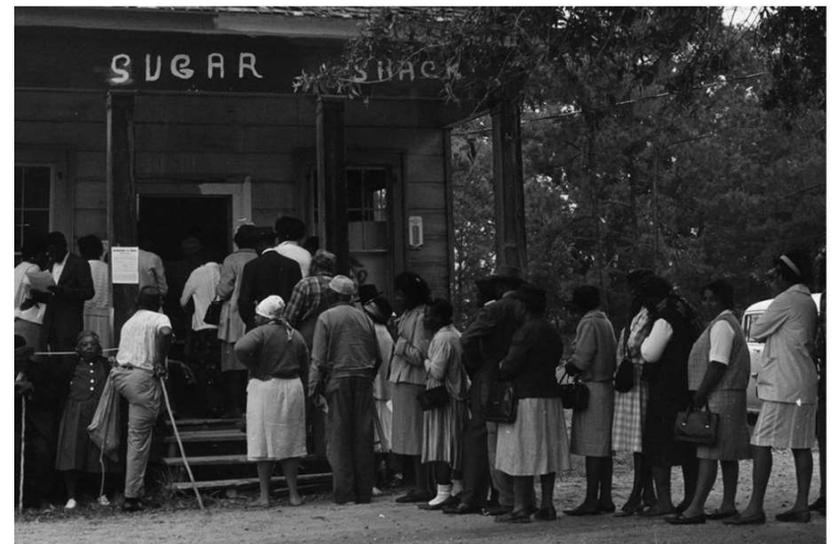
VRA Pre-Clearance Impact Huge!



Pre-Clearance: states, counties and townships under the formula (for historical racial discrimination) must get Federal Court or Justice Dept approval before changing voting rules, processes or procedures.

- Mississippi's black voters up from 6% to 59% by 1969
- Congress: 6 blacks 1965, 13 1971
- No Senators '65, 1 black 1971
- Justice Dept AG
 - reviewed 4500-5000 claims
 - 14,000 to 20,000 voting changes per year!

1965: The Voting Rights Act passes Congress



A group of voters line up outside the polling station in Peachtree, Alabama, a year after the Voting Rights Act was passed. (Photo: MPI/Getty Images)

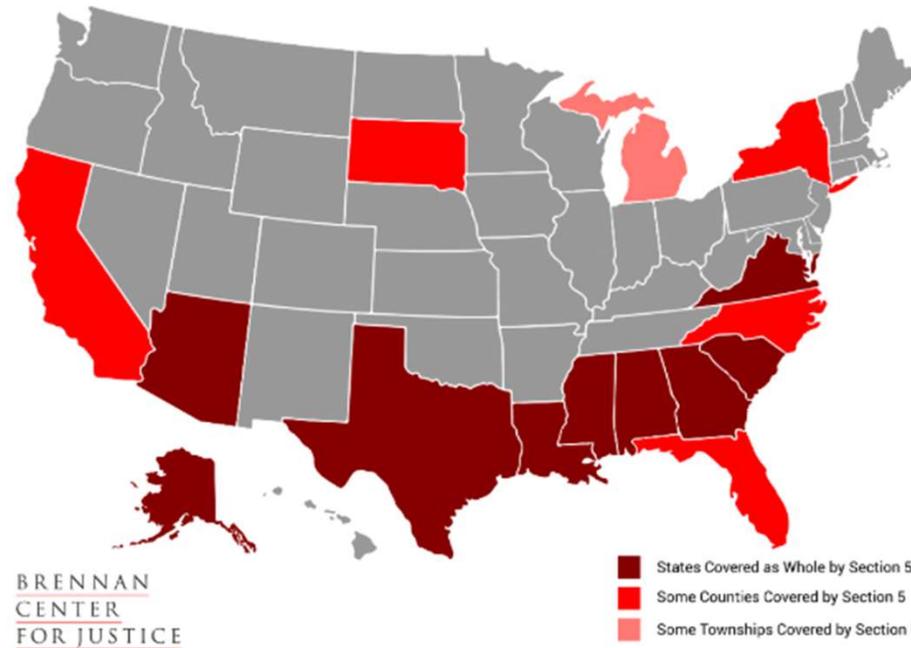


Amendments to the VRA of 1965

Favorable changes!

- **Pre-clearance formula** updates (1970 & 1975)
- **Foreign language ballots, voter assistance and voting rights for people with disabilities** (1975-82)
- **“Motor Voter Law”+ standard federal voter registration law** (1993)
- **VRA extended** for 25 years (2006) with **sunset provisions**

Pre-clearance under VRA in 2013 (by State, County & Township)





VRA Gutted by US Supreme Court : County v Holder 2013

- **Alabama contests VRA Pre-Clearance Sections**
 - VRA §4 (formula) and §5 (pre-clearance)
- **US Supreme Court decides (5 to 4) that the Section 4(b) formula is unconstitutional.**
- **Result:** Without Section 4(b), Section 5 (pre-clearance) was neutralized.



Reasoning in Shelby

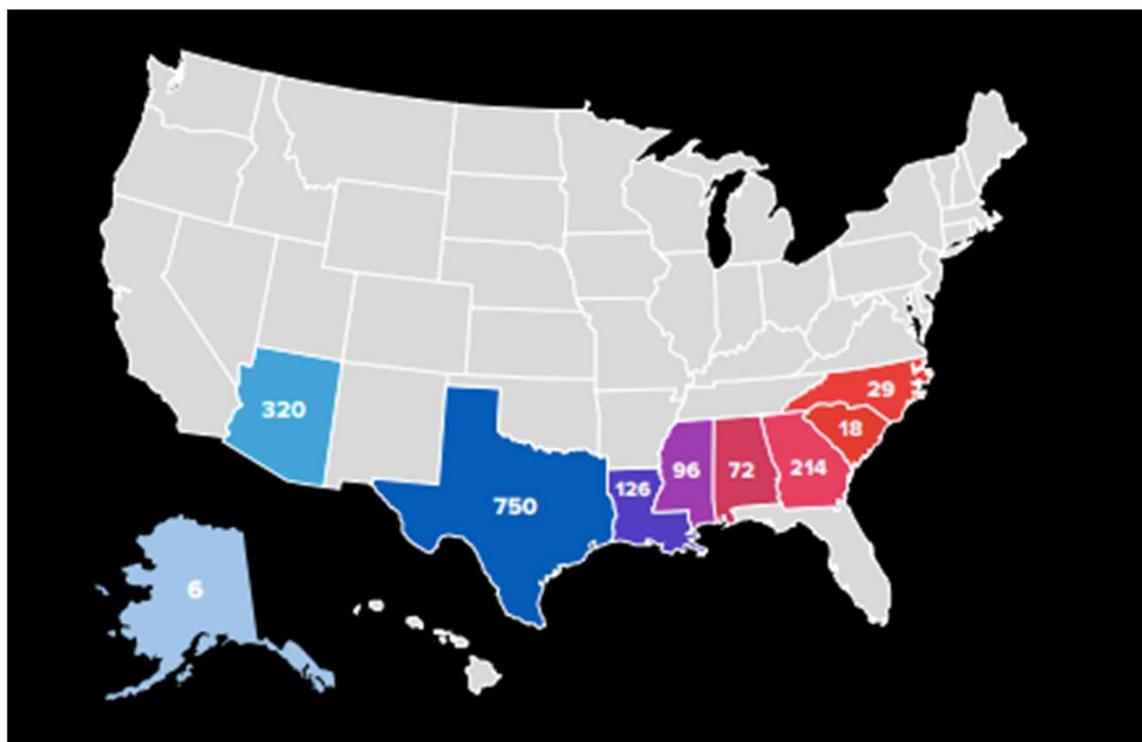
- **Majority Opinion: Chief Justice John Roberts**
 - Coverage formula is based on data over **40** years old, making it no longer responsive to current needs and **therefore an impermissible burden on the constitutional principles of federalism and equal sovereignty of the states.**
 - Justice Thomas - concurring opinion- thought § 5 also unconstitutional.
- **Minority Opinion: Justice Ruth Bader Ginsburg**
 - Argued that evidence gathered by Congress supports continuing the law which enforces the 14th and 15th Amendments.
 - ***"Throwing 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."***



Shelby Impact: 1688 polling places CLOSED in previously covered States

Under Voting Rights Act, these states ***required pre-clearance*** before eliminating these voting locations.

Simply moving polling places can also make it harder to vote – **off college campuses (FL) or away from bus routes (GA).**

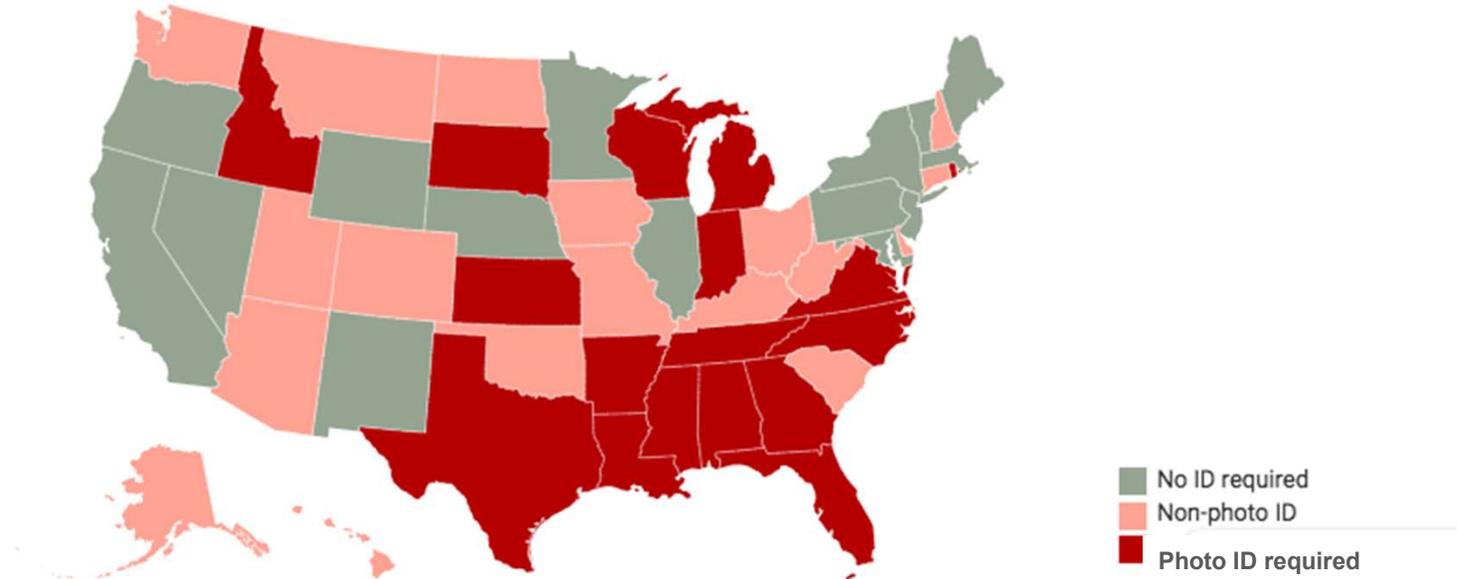


<http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

By 2019, 35 States had added Stricter Voter Identification Requirements

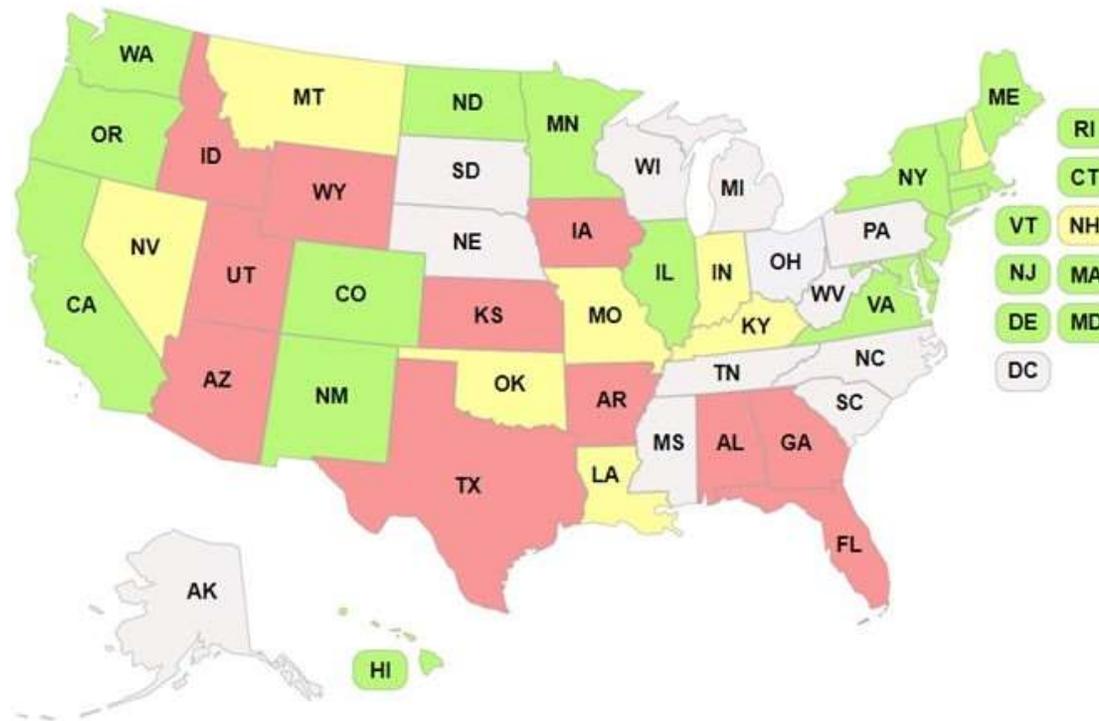


35 States require an approved ID, 17 require photo IDs



https://ballotpedia.org/Voter_identification_laws_by_state

Voting laws enacted in 2021: restricted, expanded, or both



[Brennan Center's Voting Laws Roundup of December 2021](#)



Supreme Court attacks §2 of VRA

- Landmark decision 2021: **Brnovich v DNC** stopped people collecting ballots to deliver to precinct and stopped counting ballots from people who go to wrong precinct
- Alito lays out “guideposts” for future attacks on VRA
- The 9th Circuit en Banc* had ruled 7-4 an unlawful violation of §2 discriminatory impact and effect on Native Americans, Hispanic and African-American voters by the Arizona laws.
- Results: **Dilutes Voting Rights Act** and **AZ continues its long history of discrimination against minority voters**

* when all judges of a particular court hear a case

Supreme Court on Gerrymandering (2015)

AZ State Legislature v. AZ Independent Redistricting Commission



GINSBURG MAJORITY (5)

“The people of Arizona turned to the initiative to curb the practice of gerrymanderingArizona voters sought to restore “the core principle of republican government,” namely, **“that the voters should choose their representatives, not the other way around.”** The Elections Clause does not hinder that endeavor.”

ROBERTS DISSENT (4)

“The people of Arizona have concerns about the process of congressional redistricting in their State. **For better or worse, the Elections Clause of the Constitution does not allow them to address those concerns by displacing their legislature.** But it does allow them to seek relief from Congress, which can make or alter the regulations prescribed by the legislature.”

5 to 4 Decision: A close call!

Supreme Court on Gerrymandering (2019) - 5 to 4 Decision in *Rucho v Common Cause*



- Partisan gerrymandering claims ...**political questions beyond the reach of the federal courts. “A jurisdiction may engage in constitutional political gerrymandering.”**
- Standard to adjudicate partisan gerrymandering must be **clear, manageable and politically neutral.**
- **The Constitution does not require proportional representation.**
- “Courts may not apportion political power on the basis of fairness: **vote dilution** in the one-vote cases refers to the idea that each vote must carry equal weight. That requirement does not mean that each party must be influential in proportion to the numbers of their supporters!”

Political (but not racial) Gerrymandering made Constitutional!

Rucho Minority Opinion – Justice Kagan

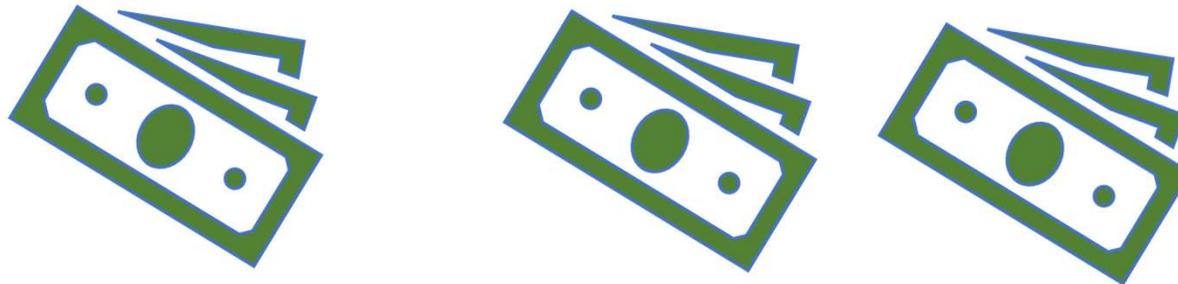


- Core principle is that the **“voters should choose their representatives, not the other way around.”**
- Deprives citizens of the right to participate equally in the political process
- Politicians allowed to entrench themselves in office against voters’ preferences.
- Vote dilution implicates the 14th Amendment: **equality participation of voters in the election**
- First Amendment rights of association and political effectiveness diluted by political gerrymandering, degrading a voter’s influence on the political process
- Specific and predominant **intent to entrench themselves in power** by manipulating district lines.

Supreme Court on Money in Politics (2010)



- **Citizens United v FEC (2010)** unleashed the right for Corporations and Unions to use corporate money in politics.
- **Huge amounts of money used to support candidates who openly vote for Vote Suppression** legislation (both State and Federal) which disproportionately impacts **minorities**.



Our Problem, Solution & Obstacle



- Problem - **voting rights have been battered since 2010, hurting minorities particularly by the Supreme Court and at least 19 state legislatures**
 - Unlimited campaign funding (Citizens United)
 - No pre-clearance constraints (Shelby County)
 - Political gerrymandering legal (Rucho)
 - Diluting voter procedures themselves (Brnovich)
- Solution - **Freedom to Vote John R Lewis Act (HR5647)**
 - Ensures every zip code shares the same election laws for times, place, manner!
 - Passed by the House of Representatives
 - Stalled in the Senate (52 – 48)
- Obstacle – the Filibuster



What is the Filibuster?



- “Filibuster” derived from Dutch word for **looter (or pirate)**
- **Not in US Constitution** – a rule adopted by the Senate because they did not adopt a rule to cut off debate by a simple majority. (1806)
- First used in 1839, i.e., rarely
- Current Rule in the Senate: 60 votes to pass legislation
 - **Unless by a majority vote the senate waives the filibuster!**
- **Exemptions** from filibuster:
 - “Budget Reconciliation” (federal government funding) measures
 - Requirement to speak in person relaxed
 - Federal executive position nominations (2012)
 - Supreme Court nominations (2017)



Why not Voting Rights?



Why is Filibuster Reform Urgently Needed?

- Filibuster was – and is – being **used to stop voting rights legislation**
 - Anti-lynching Bills (1922, 1923, 1924)
 - Anti-Poll Tax Bill (1942 and more)
 - Fair Employment Practices Bill (1946 until 1964 Civil Rights Act)
 - Amendment to Abolish Electoral College (1970)
 - ***Freedom to Vote John Lewis Act (2022)***
- Senate does not reflect **majority American opinion**
 - Rural areas over-represented (2020 Census). Examples:
 - WY (population only 577K) has 2 Senators
 - ND & SD (approximately 1.7M together) have 4 Senators
 - CA (over 39M) has only 2 Senators

Sources: US 2020 Census, <https://www.history.com/news/filibuster-bills-senate>

Freedom to Vote John R Lewis Act addresses Supreme Court decisions



- Provides for *pre-clearance* to be reinstated to the Voting Rights Act of 1965, previously struck down by *Shelby County* 2013 decision
- Proves clear tests for determining which entities shall be subject to preclearance
- Updates “voter protections in Section 2 in response to [*Brnovich v. Democratic National Committee*](#)” *intending to dilute OR diluting minority access to voting*
- “**broadens cases** in which the **U.S. Attorney General** may send **federal observers** to jurisdictions the **courts have deemed necessary**, as well as allow for the **courts to block all new election policy in a wider range of circumstances**”.

https://en.wikipedia.org/wiki/John_Lewis_Voting_Rights_Act (emphasis added)

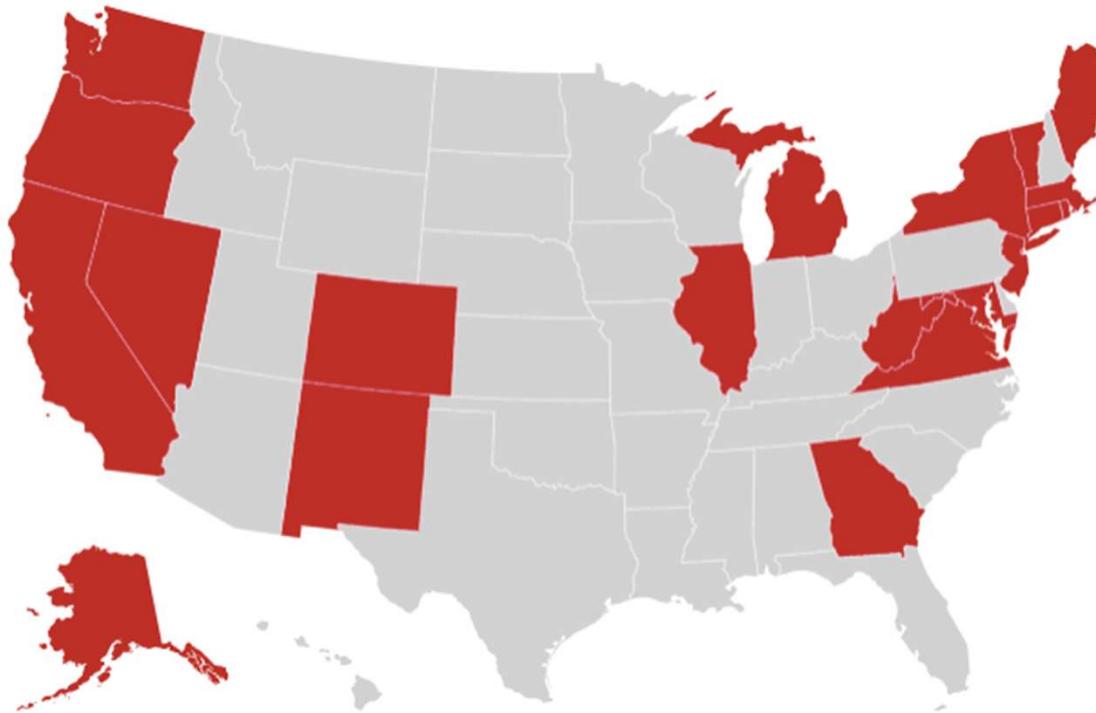
The importance of passing the Freedom to Vote John R. Lewis Act *now*



- Establishes one standard for times, places and manner of elections. **Your zip code will *not* control how you vote.**
- Removes **gerrymandering** from control of State Legislature by independent redistricting commissions with standards
- Protects **election integrity** by removing State Legislatures from the power to determine the election results

When it passes....

All States will have Automatic Voter Registration



Source: [Ballotpedia](#)

BALLOT

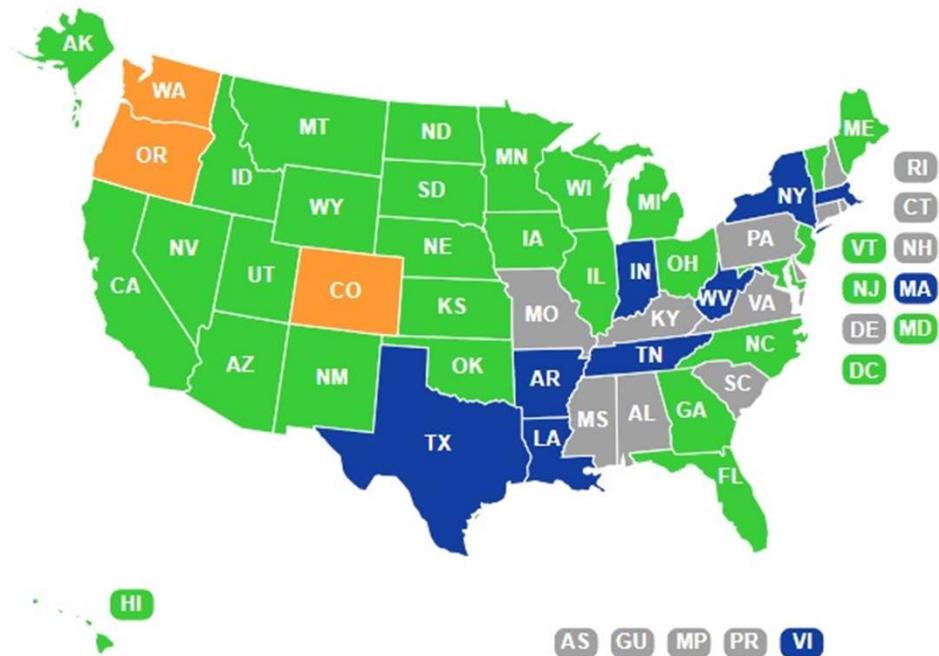
Automatic voter registration, December 2020

ALL STATES will enjoy EARLY VOTING



Early voting	Early voting AND no-excuse absentee voting	All-mail voting	No early voting: excuse required for absentee

2019 Status

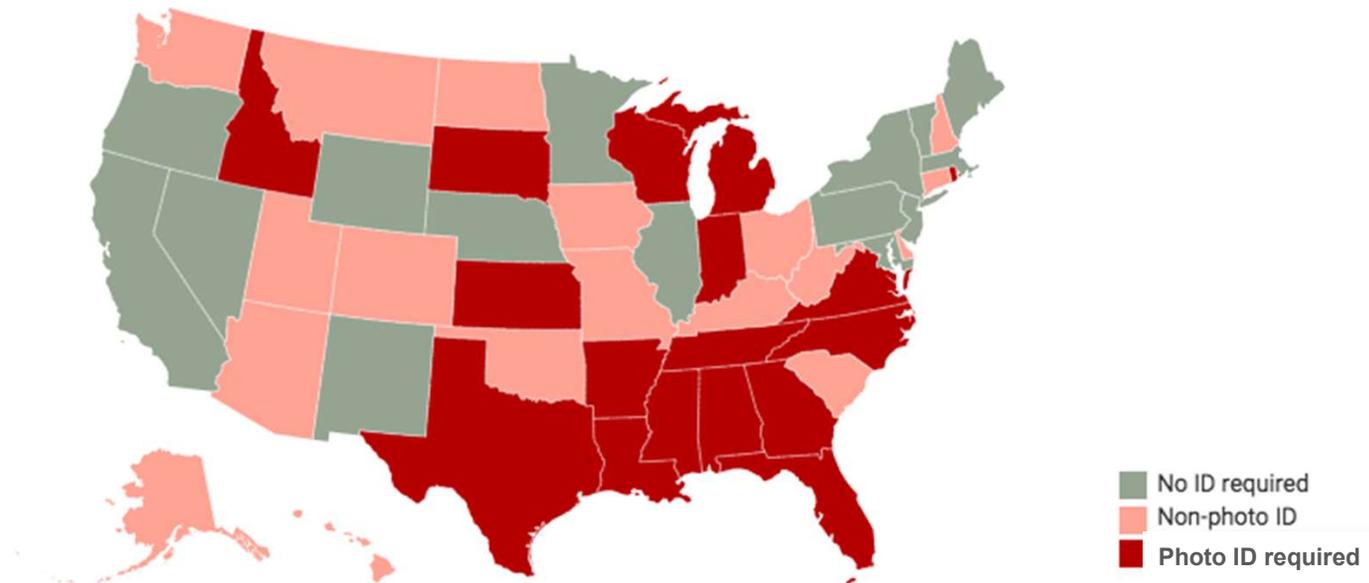


Source:
<https://www.bamapolitics.com/24365/alabama-early-voting-part-of-house-democrats-2019-legislative-agenda/>

All States: sets limits on Voter ID requirements



35 States require an approved ID, 17 require photo IDs



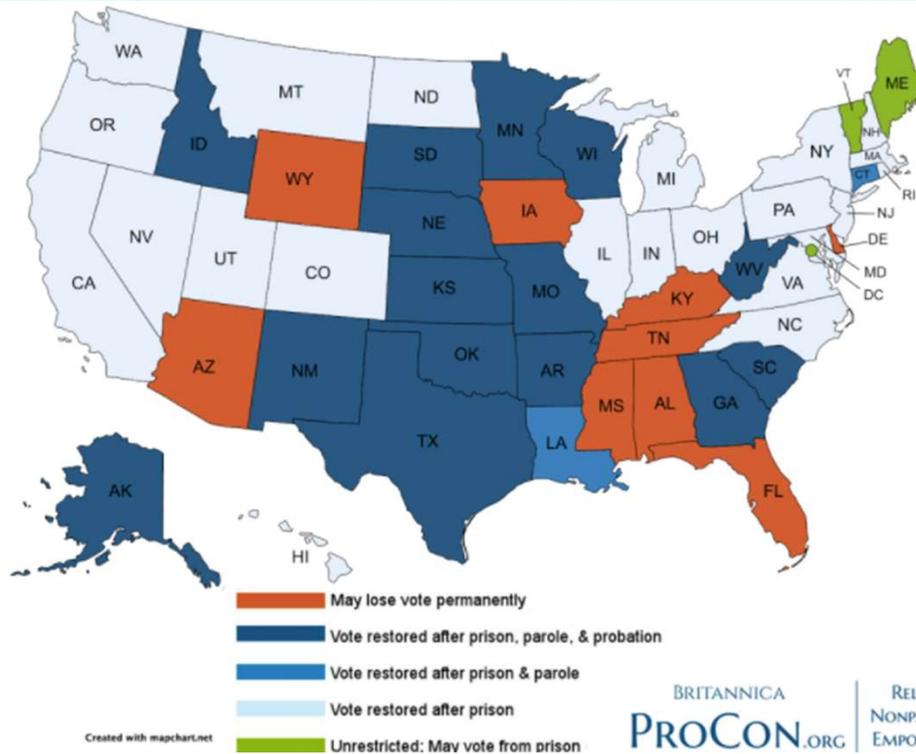
https://ballotpedia.org/Voter_identification_laws_by_state

Felons' right to vote standardized.

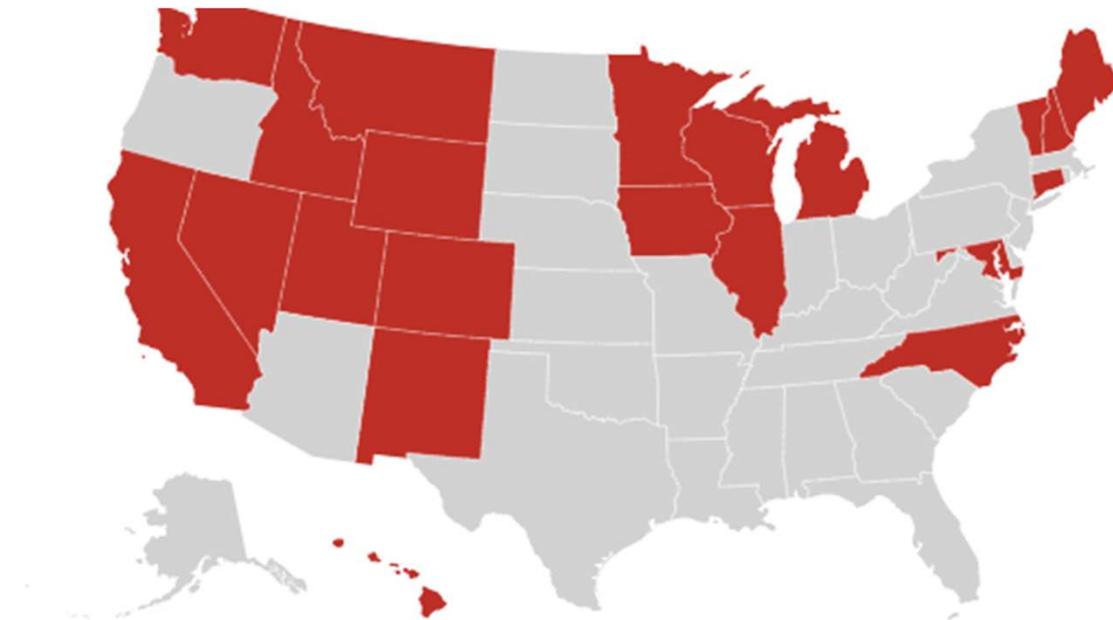
“a man without a vote is a man without protection.”



State Felon Voting Laws & Policies



All States will enjoy Same Day Registration



2019 Status

Same-day voter registration

- Yes
- No

BALLOTEDIA

THE SOLUTION:

Get Involved – Take Action!



Call the White House: 202-456-1111

President Biden said we're facing "the most significant test of our democracy since the Civil War." He's right and we need him to use every lever of power at his disposal to protect the freedom to vote and protect our democracy. Tell President Biden to reaffirm his commitment to using executive action to protect our freedom to vote and our democracy!

The White House comment line is open Tuesday to Thursday, from 11 am – 3 pm ET. When you reach a staff member, tell them your name and that you are a constituent. Then, demand that President Biden do everything in his power to protect democracy.

Call the Senate: 833-345-2551

Call your Senator today to thank them or hold them accountable!

If they're one of the 48 Senators that voted in favor of passing the Freedom to Vote: John R. Lewis Act – call and thank them for their leadership and encourage them to keep fighting to protect our freedom to vote.

If your Senator is one of the 52 Senators who voted against passing the Freedom to Vote: John R. Lewis Act (Senate Republicans joined by two Senate Democrats) – express your disappointment with their decision to protect voter suppression laws, rather than our sacred right to vote.

<https://dfadcoalition.org/takeaction/>

Share this presentation or lessons *you* learned.



Discuss voting rights with your family and friends here AND living especially in:

NH, ME, OH, PA, IN, WI, MI, IA, TX, NC, SC, FL, AL, AK, GA, NC, SC, GA
LA, ID, OK, AZ, ND, SD, MT.

CALL: US Senators and State Legislatures to support HR 5647: the Voting Rights Act.

REMEMBER: OUR VOTE IS OUR VOICE. We MUST establish federal standards for voting!

REMOVE the barriers to voting.

ENSURE nonpartisan election integrity.

ASK EVERY SENATOR TO VOTE for the Freedom to Vote John R. Lewis Act

END THE FILIBUSTER TO PASS the Freedom to Vote John R. Lewis Act.

Consider the brave people in the Ukraine who are defending their democracy. We in the United States need to protect ours by standing up for voting rights now.

Watch Vote Denial on Film



To understand the *when, where, who, what and why* of vote repression:

[ALL IN: The Fight for Democracy](#) - 2020 Film on Prime – Link Below

<https://www.youtube.com/watch?v=t6jVGswLPd8>

[SUPPRESSED and SABOTAGED the Right to Vote](#) a 2022 film by Brave New Films

[RIGGED: The Vote Suppression Playbook](#) a 2018 film by American Issues Initiative

[DARK MONEY](#) a 2018 film by Big Sky Film Productions



About National Voter Corps

Our Mission is to work towards the goal of Let Every Citizen Vote by:

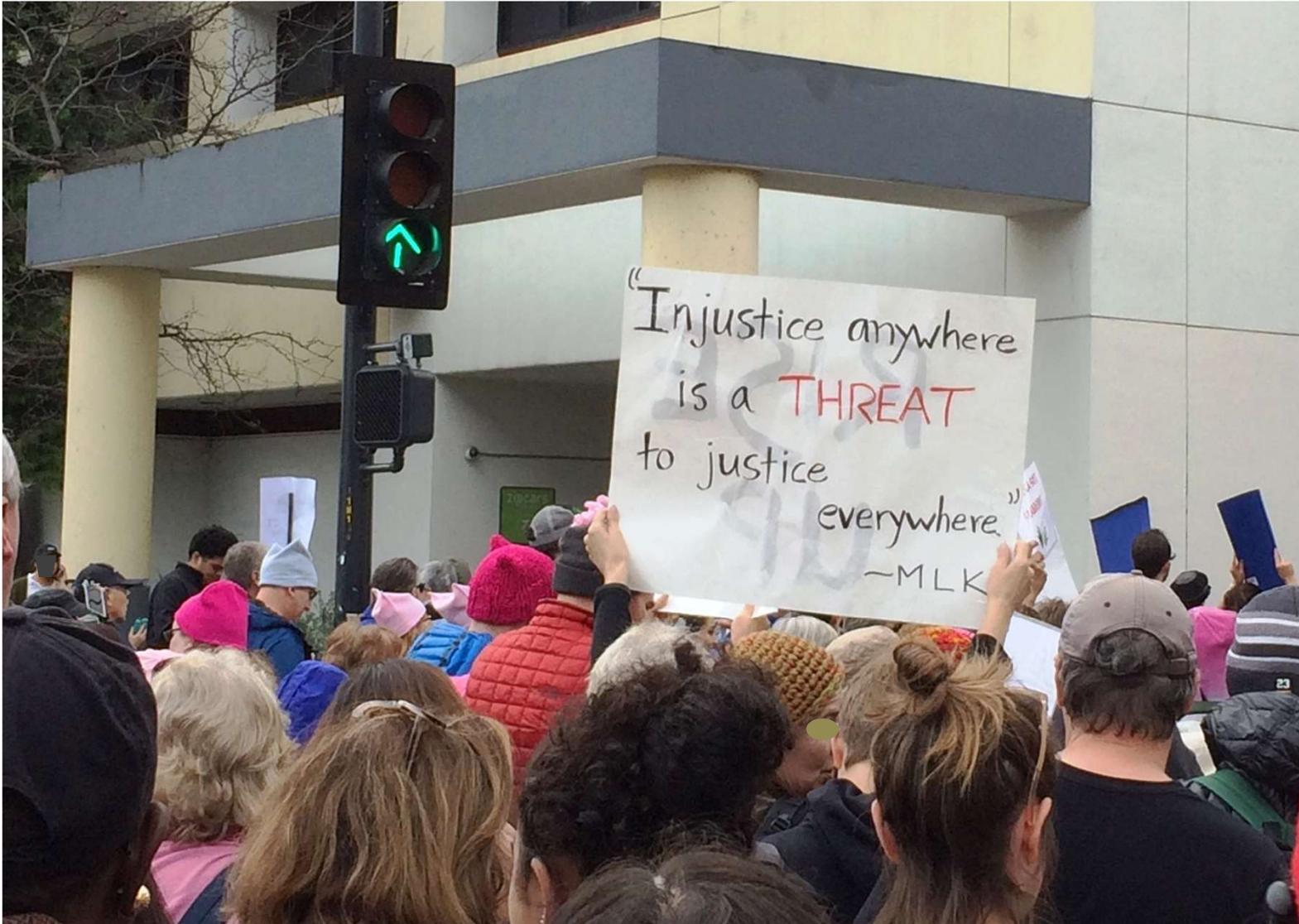
- Encouraging volunteers to join non-partisan voting right groups – [national](#) and by state ([50 State Map](#)) on our website
- Providing information on our website about voter obstruction and how to get help to vote
- Educating about Voting Rights through presentations, letters to editors, etc.
- Registering voters

Formed in November 2016 in Palo Alto, California

Unincorporated - Non-Partisan - Non-Profit

- [Tax-deductible Donations](#) are managed for NVC via The Social Good Fund, a 501(c)(3)

Our website is <https://nationalvotercorps.org/>



APPENDIX: EXTRA INFORMATION

- **VOTING LAWS**
- **GERRYMANDERING**
- **FREEDOM TO VOTE JOHN LEWIS ACT HR5647**

19 States pass *new restrictive voting laws* (2021-22)



- Purging inactive voters for *not* voting
- Requiring “Approved” Identification often tough to acquire
- Requiring complex Photo ID but excluding student ID cards
- Barring no excuse Absentee Voting Applications
- Reducing the times for obtaining an Absentee Ballot
- Restricting the Numbers and Locations of Ballot Boxes
- Reducing # of urban precincts + Hours for Early Voting
- Prohibiting giving Water or Snacks to People waiting in line to vote, making it a crime.
- **Empowering elected reps to determine validity of votes**

Gerrymandering Cases in 2022



- **ALABAMA: US Supreme Court overrules unanimous** lower federal court decision that AL had **racially gerrymandered** out a black district
- **OHIO: State Supreme Court** overrules Republican Legislature's gerrymandering
- **NORTH CAROLINA: 2019 and again in 2022: State Supreme Court:** Maps violate the equal protection, fair elections and free speech clauses of the NC Constitution.
- **TEXAS US Justice Department:** intervenes in Texas, suing Texas over its new congressional map .."violated the Voting Rights Act by not drawing any additional Latino-majority seats in a state where the population grew by 4 million people, half of whom were Latinos. "Washington Post Robert Barnes February 07, 2022



2022: Racial Gerrymandering cases VRA § 2

- **Texas:** Justice Department is suing after Galveston County redistricting maps racial gerrymandering.
- **Maryland:** Court ordered reworking maps, unfair to Republicans. Changed primary date.
- **New York:** State Supreme Court orders special master to redraw maps which changes 22 of 26 safe Democratic to 19. Changed primary date.
- **Kansas:** State Court finds State legislature racial and partisan gerrymandered
- **Florida:** 5/20/22: Stay of FL's redistricting map and appeal to FL Supreme Court: "compliance with the Fair Districts amendment's non-diminishment provision is a compelling state interest." where legislature eliminated black district(s) giving 71% districts to Republicans though registration different.

2022: Court decisions dilute minorities' vote



- **Wisconsin:** 4/22 Governor vetoes redistricting bill. Wisconsin Supreme Court selects a map - adds 1 new black district. **US Supreme Court 7:2 Wisconsin : improper application of the Voting Rights Act and Equal Protection clause, neither of which claim is presented to the Court.** (Sotomayor and Kagan opposing). Result gives Republican legislature 10 years of probable veto power over the Governor. Republicans control 63% of the State legislature with 50% of the registered voters.
- **Arkansas:** 3/22: NAACP et al did not have standing to sue under Voting Rights Act **§ 2**, “The sole claim alleged in the Complaint is that the 2021 reapportionment plan for the Arkansas House of Representatives (“the Board Plan”), which was approved by the Board, “dilutes Black voting strength in violation of Section 2 of the Voting Rights Act”” . **only the Justice Department, not raised in the district court (Judge was approved 51 to 45 by Donald Trump). The Justice Dept declined to join as plaintiff within the 5 days the Judge ordered before dismissing the case.**



HR5647 Key Features continued:

- ..”And to counter *Shelby County* it would revise the Section 4 formula for preclearance to cover states with “**15 or more voting rights violations**” in the previous **25 years**, or just **10 violations** if “**at least one [violation] was committed by the state itself.**” This is intended to be a self-updating formula which will keep the courts from future challenges to the law.”

<https://nymag.com/intelligencer/2021/08/what-would-the-john-lewis-voting-rights-act-actually-do.html> (emphasis added)

States immediately to be covered by self-adjusting Pre-Clearance Formula



Comparison of states requiring pre-clearance at the time of the *Shelby County* decision with those which would require it under the John Lewis Voting Rights Act

State	Covered by VRA of 1965 ^[32]	Covered by John Lewis VRA ^{[c][33]}
Alabama	As a whole	As a whole
Alaska	As a whole	Not covered
Arizona	As a whole	Not covered
California	Certain counties	As a whole
Florida	Certain counties	As a whole
Georgia	As a whole	As a whole
Louisiana	As a whole	As a whole
Michigan	Certain townships	Not covered
Mississippi	As a whole	As a whole
New York	Certain counties	As a whole
North Carolina	Certain counties	As a whole
South Dakota	Certain counties	Not covered
South Carolina	As a whole	As a whole
Texas	As a whole	As a whole
Virginia	As a whole	As a whole