



The Rise and Fall of the Voting Rights Act of 1965

(And What To Do About It)





History Behind Voting Rights

1861 - 1865



1865 - 1877



1840 - 1920



1965-1973



Congress has the power to pass Election Laws.



- **US Constitution power:**
 - 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.***



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 restrictive voting practices in states and counties



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>



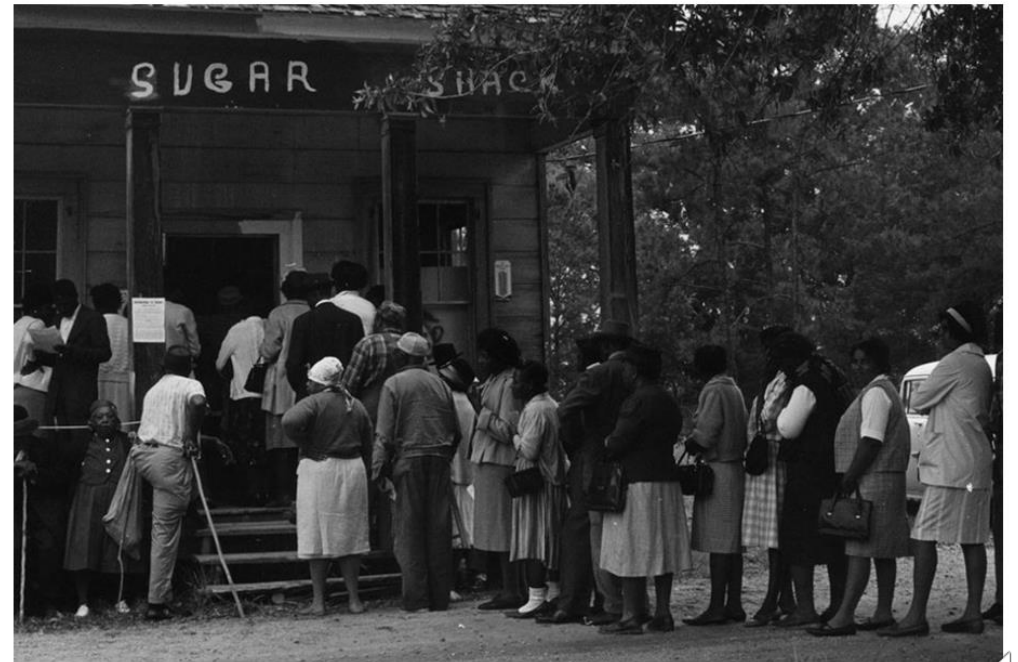
VRA Pre-Clearance Impact Huge!



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.**

1965: The Voting Rights Act passes Congress

- **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!**



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

Amendments to the VRA of 1965



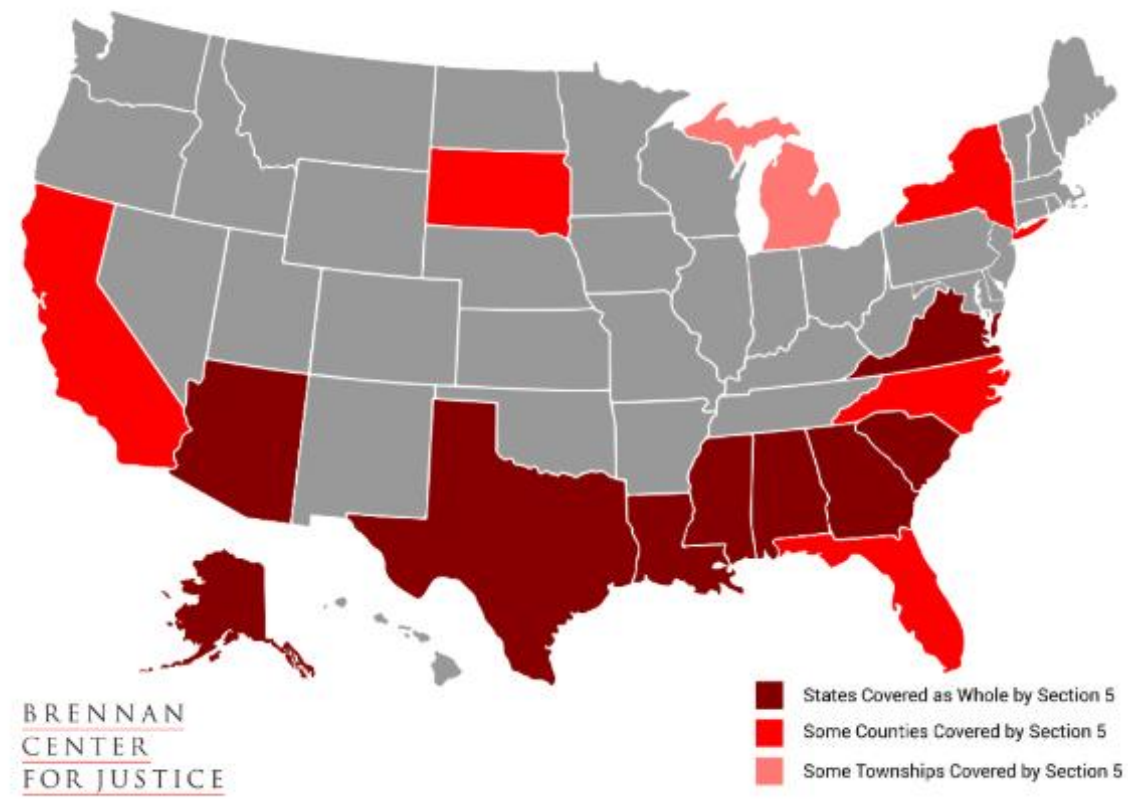
Favorable changes!

- **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)



BRENNAN
CENTER
FOR JUSTICE



US Supreme Court *guts* Voting Rights Act: Shelby 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."***

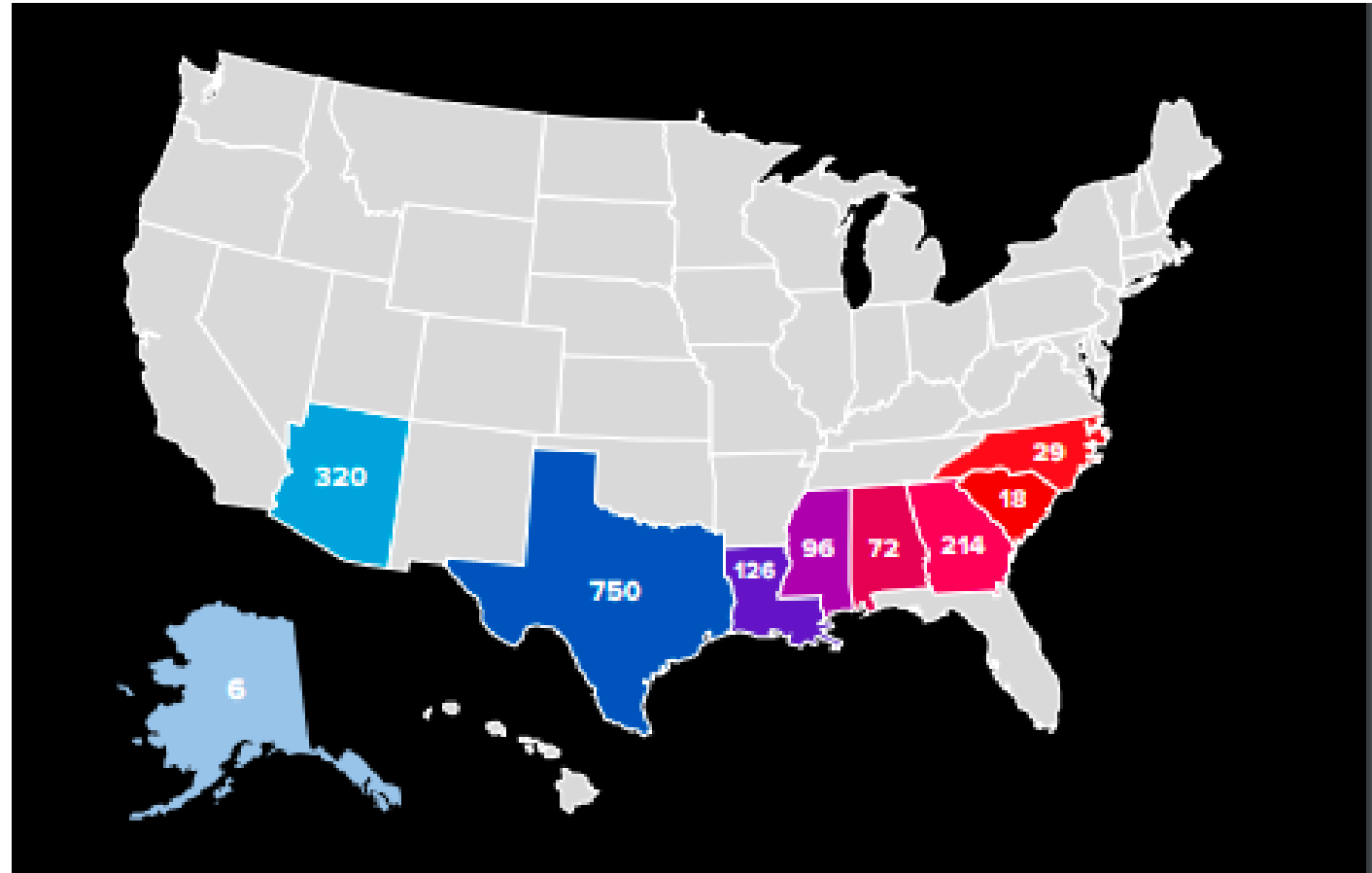




Shelby Impact: 1688 polling places CLOSED in previously covered States

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).**



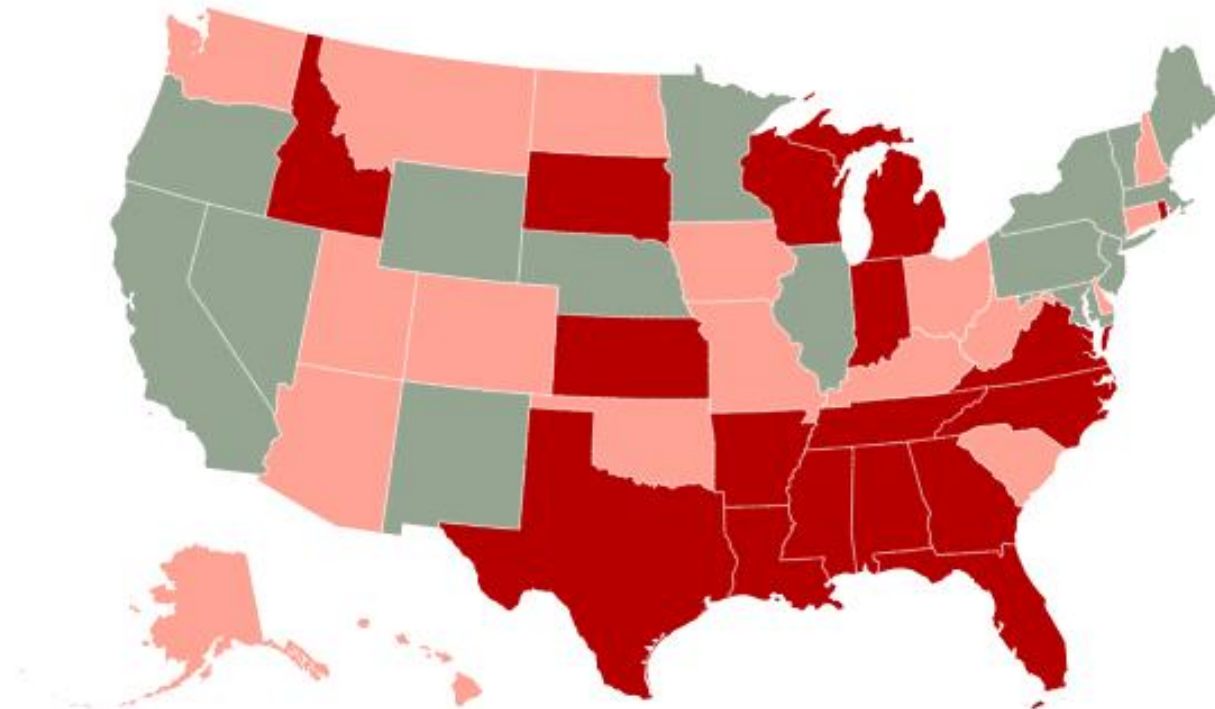
<http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>



By 2019, 35 States had added Stricter Voter Identification Requirements



35 States require an approved ID, 17 require photo IDs



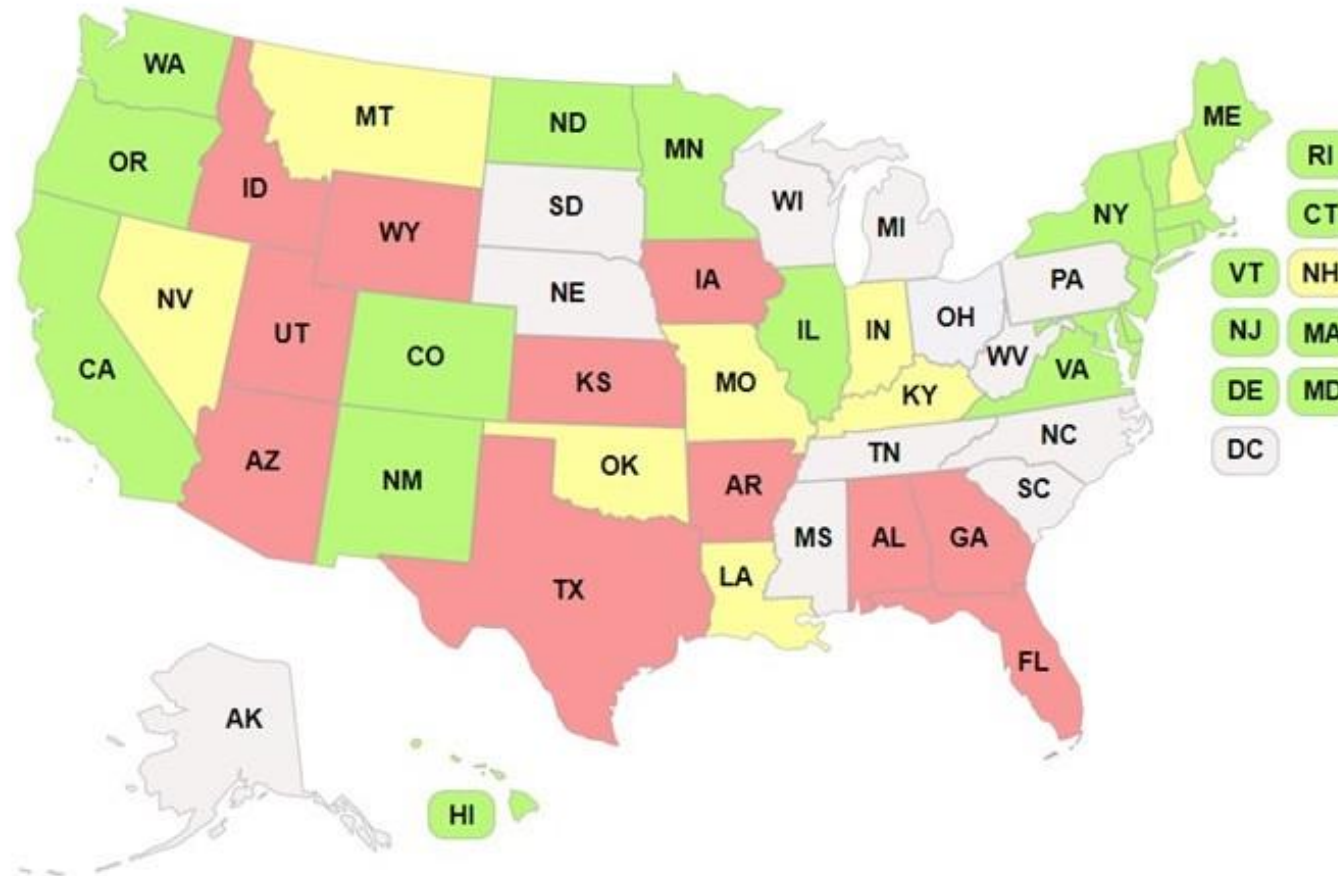
- No ID required
- Non-photo ID
- Photo ID required

30 Million Voters Purged since Shelby



Sources: [Wikipedia](https://www.wikipedia.org/) and Brennan Center

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



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 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**.



10/2022: Supreme Court: 2 key cases



- ***Merrill v Milligan:***

Alabama redistricting: will SCOTUS determine that taking race into consideration under §2 of the Voting Rights Act, (the purpose of §2 to overcome the continuing impact of discrimination based on race), is unconstitutional?

- ***Moore v. Harper:***

North Carolina arguing “Independent State Legislature” theory that State Legislatures are all powerful for election laws unless Congress acts, even if State Supreme Court finds its State Legislature’s act(s) unconstitutional.



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 (HR5746)

- 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*

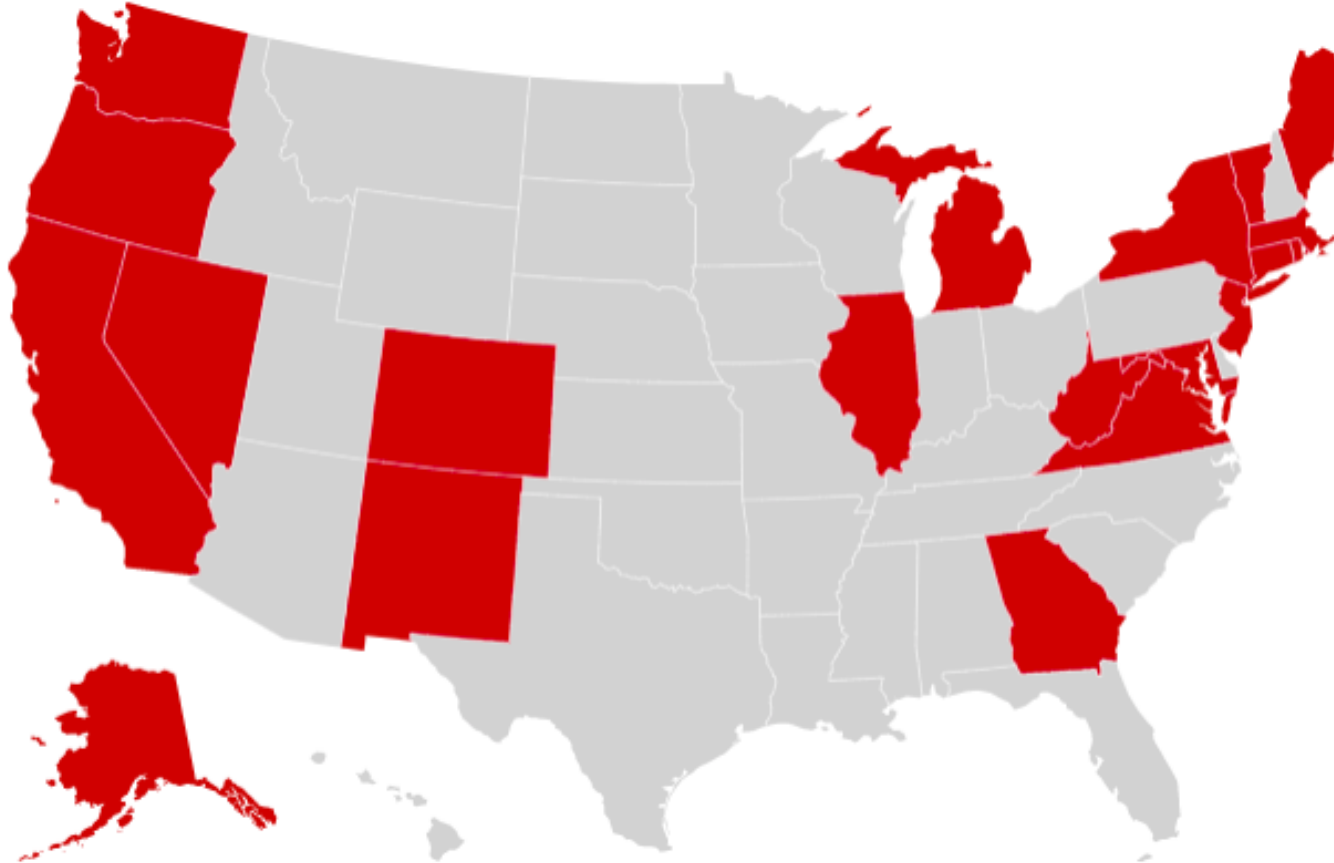


- Establishes one standard for times, places and manner of elections. **Your zip code will *not* control how you vote.**
- Removes **gerrymandering** from control of State Legislature by independent redistricting commissions with standards
- Protects **election integrity** by removing State Legislatures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

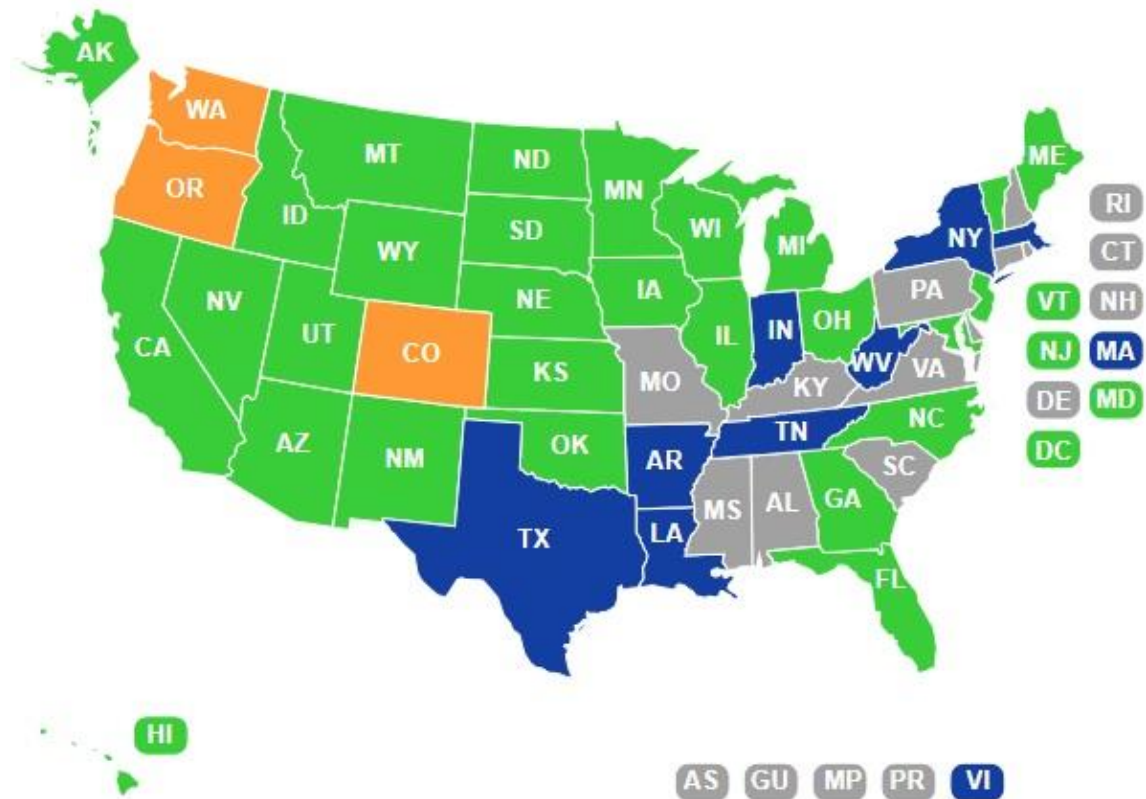


ALL STATES will enjoy EARLY VOTING



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

2019 Status



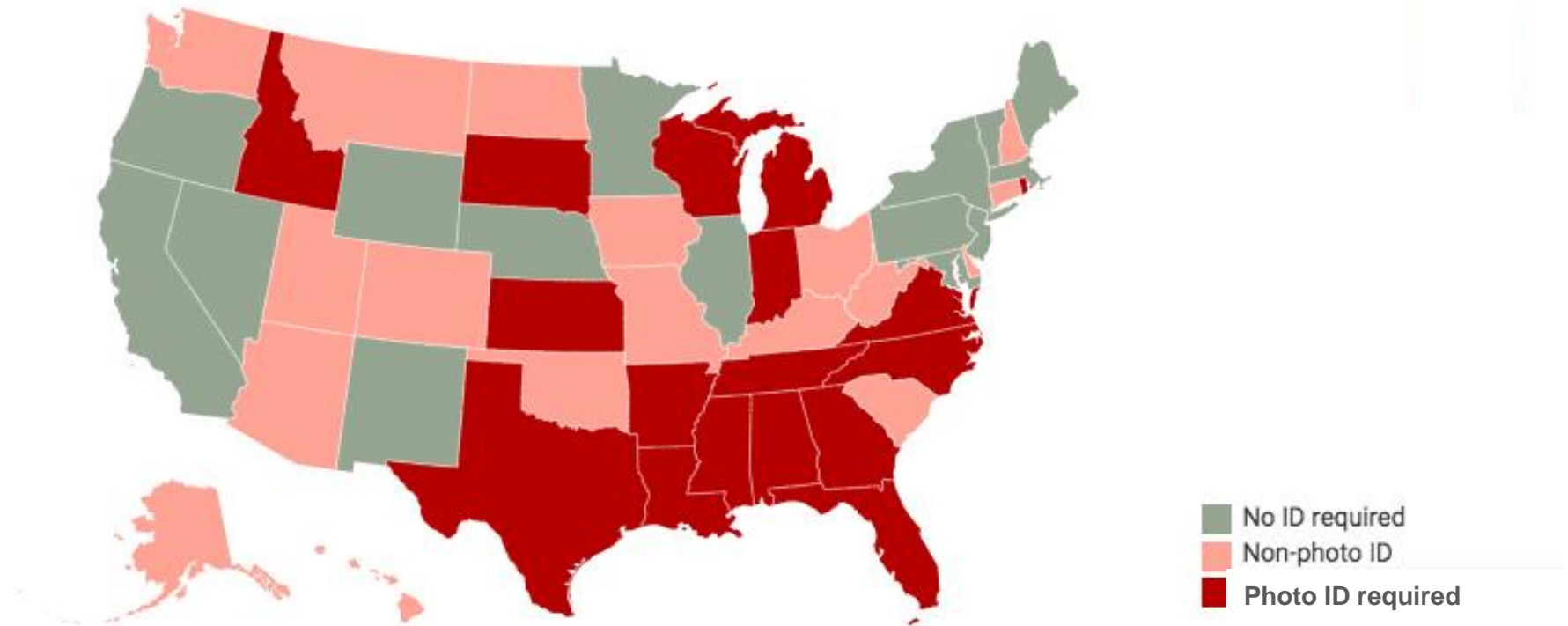
Source:

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

All States: set limits on Voter ID requirements



35 States require an approved ID, 17 require photo IDs

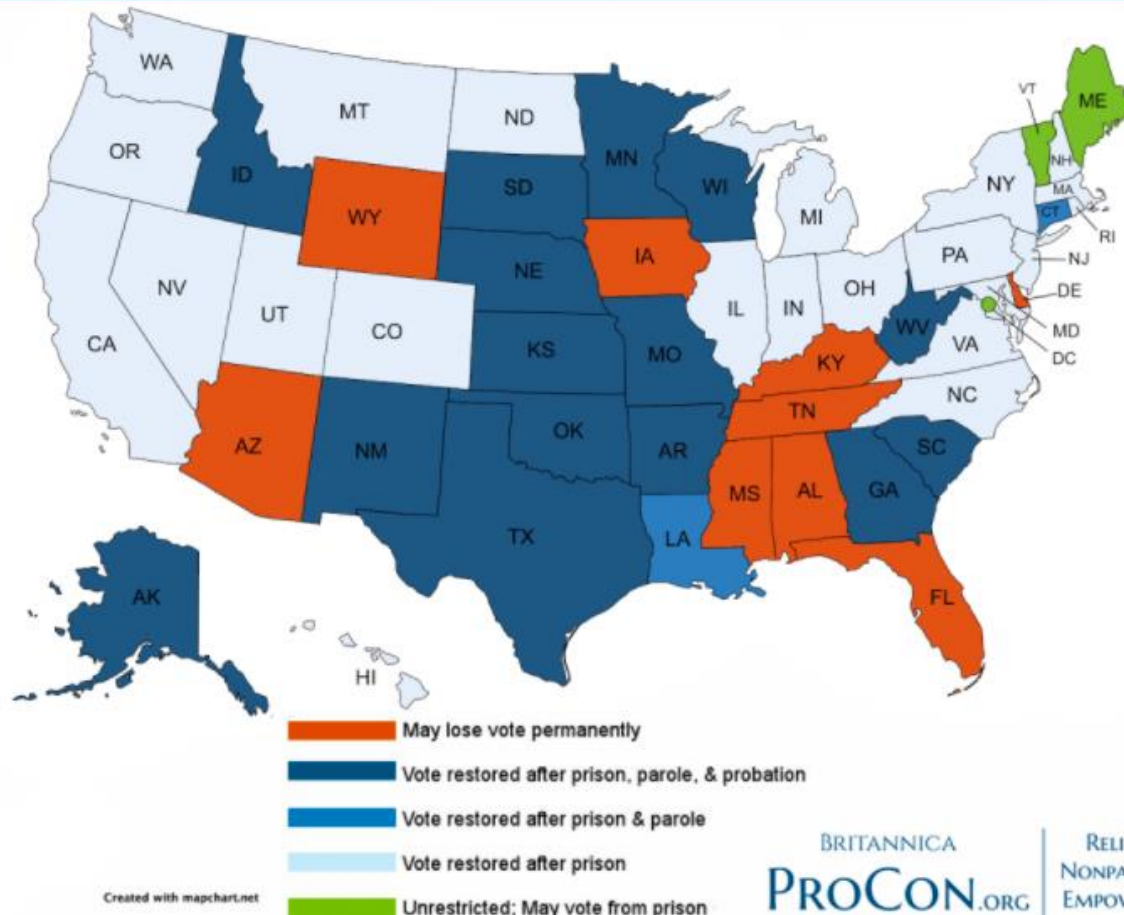


Felons' right to vote standardized.

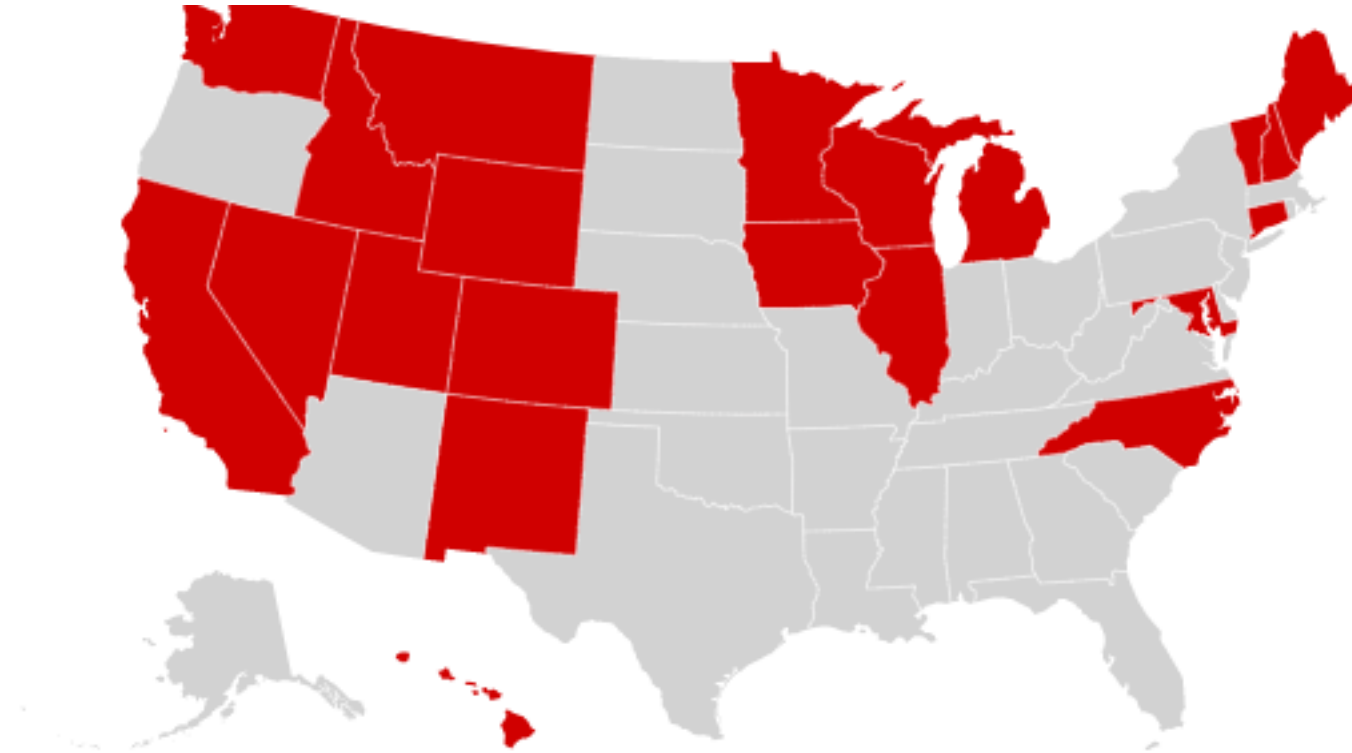
“ a man without a vote is a man without protection.”



State Felon Voting Laws & Policies



All States will enjoy Same Day Registration



2019 Status

Same-day voter registration

- Yes
- No

BALLOTEDIA



HR5746 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



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/>



Join and get active with Voting Rights Organizations

- See www.nationalvotercorps.org map with local organizations by state and lists of national organizations
- **VoteRiders** (nationwide voter id work)
- **Reclaim Our Vote** (arm of Center for Common Ground: rural south)
- **Students Learn, Students Vote**
- **Mi Familia Vota** (Latinx)
- **Four Directions** (Native American)
- **Declaration for American Democracy** (Coalition for democracy)



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, LA, ID, OK, AZ, ND, SD, MT.

CALL: US Senators and State Legislatures to support HR 5746: 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



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.