



Civic Engagement Platform

Restore and Strengthen Voting Rights with Preclearance

October 2021

The right to vote has long been considered one of the cherished freedoms of the American democracy. Today, communities of color continue to face obstacles to participating in our democratic process despite the ratification of the Fifteenth Amendment in 1870 and the passing of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. The US consistently lags behind the majority of developed democratic nations in voter turnout,¹ averaging less than half of the eligible voter population participating in midterm elections. Critical to the fight against societal racial inequities is a democracy that can represent us all.

What's at Issue

The Voting Rights Act of 1965 (VRA) is **generally considered the most successful piece of civil rights legislation** ever adopted by the United States Congress.² It is a federal law that contains provisions that prohibit state and local governments from passing voting laws that result in discrimination against a racial group. It was intended to enforce the Fifteenth Amendment and led to a quarter million new Black voters to be registered.³ The VRA has been amended and reauthorized the past four decades by **bipartisan** legislatures; most recently in 2006 with a unanimous 98-0 vote in the Senate.⁴

Section 5 of the VRA, also known as **preclearance**, required states and jurisdictions with a proven historical record of discriminatory voting practices to obtain certification that the proposed changes were not discriminatory before making changes to election procedures. For nearly 50 years, this helped protect voters of color in jurisdictions with a history of racial discrimination.

A Supreme Court decision in 2013 (Shelby County v. Holder) concluded preclearance was unconstitutional because Congress was using an outdated formula to decide which states and jurisdictions were required to go through the preclearance process. Following the decision, between 2014 and 2018, states that were previously covered by preclearance **closed a total of 1,173 polling places** – despite a significant increase in voter turnout.⁵

The absence of preclearance has made it increasingly difficult to identify discriminatory voting practices before they take effect because states and localities are no longer required to notify federal officials of changes to voting laws.

¹ Pew Research Center – In past elections, U.S. trailed most developed countries in voter turnout (November 3, 2020) <https://www.pewresearch.org/fact-tank/2020/11/03/in-past-elections-u-s-trailed-most-developed-countries-in-voter-turnout/>

² Department of Justice – History of Federal Voting Rights Laws/The Voting Rights Act of 1965 <https://www.justice.gov/crt/history-federal-voting-rights-laws>

³ Voting Rights Act (1965) <https://www.ourdocuments.gov/doc.php?flash=false&doc=100>

⁴ Brennan Center for Justice - 50 Years Later, Voting Rights Act Under Unprecedented Assault (August 2, 2015) <https://www.brennancenter.org/our-work/research-reports/50-years-later-voting-rights-act-under-unprecedented-assault>

⁵ The Leadership Conference Education Fund – Democracy Diverted: Polling Place Closures and the Right to Vote (September 2019) <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

How Obstacles to Voting Impacts Civil Liberties

- The US trailed most developed countries in voter turnout, ranking **26 out of 32** developed democracies.⁶
- Countries with high degrees of respect for civil liberties experience **higher economic growth** rates - moving from zero to one on the Varieties of Democracy Civil Liberties Index is correlated with an increase in GDP per capita by an average of 1.3 percent over a period of five years. This is significant: a country that increases GDP from zero to 1.3 percent will double its income level in just over 50 years.⁷
- Moreover, there tends to be **higher levels of human development** (e.g., life expectancy and infant mortality) especially in countries that also hold free and fair elections.⁷
- **Over 500 bills** with provisions that restrict voting access have been introduced in 49 states in the 2021 legislative sessions.⁸
- 19 states have already enacted 33 laws this year that will make it harder for Americans to vote.⁹
- In **over 60 percent** of blocked voting changes, there was evidence of intentional discrimination. The preclearance requirement deterred many jurisdictions from adopting discriminatory changes in the first place.¹⁰
- Discriminatory practices such as strict photo voter ID policies deprive many Americans of the right to vote. Consider that voter ID laws exist in **35 states** despite the **gap in photo ID access**.¹¹ Some groups are disproportionately affected, including people of color, young adults, older adults, and people with disabilities. 25 percent of Black citizens of voting age lack a government-issued ID, compared to 8 percent of white citizens.¹²

Taking Action

CEO Action for Racial Equity will work with our signatories and other interested organizations to better understand the bipartisan history of voting rights; and focus efforts on preclearance, including two provisions currently included in the John Lewis Voting Rights Advancement Act, for which **a Senate vote is expected at the end of October or early November 2021**.

- Modernizes previous **geographic coverage formula** to cover states with 15 or more voting rights violations in the previous 25 years, or 10 violations if at least one is statewide
- Adds a complementary provision - **practice-based preclearance** - protecting voters in every state against certain anti-voter restrictions in the future, including polling place closures, purges of eligible voters from the rolls, strict ID laws, and racial gerrymandering. Qualifying jurisdictions must obtain pre-approval before making voting- related changes.

⁶ Pew Research Center – In past elections, U.S. trailed most developed countries in voter turnout (November 3, 2020) <https://www.pewresearch.org/fact-tank/2020/11/03/in-past-elections-u-s-trailed-most-developed-countries-in-voter-turnout/>

⁷ The B Team – The Business Case for Protecting Civic Rights (October 2018) <http://bteam.niceandserious.com/assets/reports/The-Business-Case-for-Protecting-Civic-Rights.pdf>

⁸ Voting Rights Lab – Weekly Election Legislation Update (October 12, 2021) <https://votingrightslab.org/the-markup-weekly-election-legislation-update-for-tuesday-october-12/>

⁹ Brennan Center for Justice – Voting Laws Roundup (October 2021) <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>

¹⁰ Assistant Attorney General Kristen Clarke Testifies Before the Senate Judiciary Committee Hearing on the John R. Lewis Voting Rights Advancement Act of 2021 (October 6, 2021) <https://www.justice.gov/opa/speech/assistant-attorney-general-kristen-clarke-testifies-senate-judiciary-committee-hearing>

¹¹ National Conference of State Legislatures ID Requirements | Voter ID Laws (October 2021) <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

¹² NAACP Legal Defense & Educational Fund Report – Defending Democracy: Confronting Modern Barriers to Voting Rights in America (December 16, 2011) https://www.naacpldf.org/wp-content/uploads/Defending%20Democracy%2012-16-11_Political_Participation_.pdf



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