

STOP THE STEAL: THE HISTORY OF VOTER SUPPRESSION IN AMERICA, AND WHO IS REALLY STEALING VOTES?

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I. Early Attempts at Voter Suppression

A. Founding Documents/Founding Fathers

President Barack Obama once quipped, “elections have consequences.”¹ It is clear that 245 years later, the Founding Fathers understood the implications of voting and the weight it carries. These men knew that to maintain power, they would have to limit the people that would have the ability to vote. These fifty-six men who represented the new thirteen colonies met on July 4, 1776, to sign what would be called the Declaration of Independence. In part are the words: “[w]e hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”²

The irony is not lost on the fact that these men were declaring freedom from British rule and control as they sought to rule and control others. In the words penned by these freedom seekers, they deliberately excluded from these rights the nation’s African and African American residents. These same drafters of the Declaration

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¹ Chuck McCutcheon, *'Elections Have Consequences': Does Obama Regret Saying That Now?*, THE CHRISTIAN SCI. MONITOR (Nov. 21, 2014), <https://www.csmonitor.com/USA/Politics/Politics-Voices/2014/1121/Elections-have-consequences-Does-Obama-regret-saying-that-now>.

² *Declaration of Independence: A Transcription*, NAT’L ARCHIVES (July 24, 2020), <https://www.archives.gov/founding-docs/declaration-transcript>.

of Independence classified Black people as less than human and, thus, undeserving of basic human rights and dignities.

Eleven years later, the United States Constitution would be created and would designate people of African descent as *three-fifths* of a human being.³ Not being considered a full human, these individuals would not be able to vote and, as such, would be utterly helpless in being able to shape their prospects for a life in this newly created country. In the South, people of African descent were basically treated as property, like cattle, with no greater rights than animals. Sadly, cattle were generally treated better than African Americans.

For centuries, millions of African Americans were on a journey of abuse, torture, barbarism, oppression and systemic racism that would not be addressed in any meaningful way until the middle of the twentieth century.⁴ This was a quest for *civil rights*. One could make the argument that these were not civil rights Black people sought, but human rights. Civil rights are ensured to citizens through man-made statutes, policies and laws.⁵ Human rights are those rights one is endowed with from birth, from our Creator—they are inalienable rights.⁶

When we think of rights as granted by man, the issue becomes which man decides what rights will be granted to other men. Many of these civil rights are granted based on citizenship.⁷ When those in control can dictate who is classified as a citizen, then they can control a person's basic civil rights. White popular opinion has always determined the nature and degree of American citizenship that Black people possess.⁸ This control has been imposed through what is

³ Cong. Res. Serv., *The Constitution of the United States of America: Analysis and Interpretation*, S. Doc. No. 112-9, at XXI (2d Sess. 2016) [hereinafter *Analysis and Interpretation of the U.S. Constitution*].

⁴ See ACLU, *The Bill of Rights: A Brief History*, <https://www.aclu.org/other/bill-rights-brief-history>.

⁵ *Id.*

⁶ Jacqueline Langholtz, *The Declaration of Independence Around the World*, MONTICELLO (2018), <https://www.monticello.org/declaration/?ref=homecard>.

⁷ See *Analysis and Interpretation of the U.S. Constitution*, *supra* note 3, at 2157.

⁸ Erin Blakemore, *How the GI Bill's Promise Was Denied to a Million Black WWII Veterans*, HISTORY (June 21, 2019), <https://www.history.com/news/gi-bill-black->

officially sanctioned by law and practices that exist in reality (even when not backed by laws) as public policy.⁹ Perhaps the greatest impediment to Black people being granted basic civil rights is the opposition, volatility, and aggression of White public opinion.¹⁰

To justify the enslavement of African Americans, Whites had to dehumanize them, create a distorted reality,¹¹ manufacture false religious beliefs,¹² and twist historical truth.¹³ This process of classifying Black people as subhuman allowed Whites to overlook the heinous, barbarous actions that were crucial to enslave human beings by looking past murder, torture, degradation, and moral and ethical considerations.¹⁴

wwii-veterans-benefits (explaining how wide popular opinion controlled which veterans received G.I. Bill benefits and which ones did not; this kind of control is an example of what is officially sanctioned by line practices that exist in reality as public policy).

⁹ See ANALYSIS AND INTERPRETATION OF THE U.S. CONSTITUTION, *supra* note 3, at 2243 (discussing abolition of suffrage qualifications on the basis of race).

¹⁰ See *generally id.*

¹¹ See Ezekiel Emmanuel, *Unequal Treatment*, N.Y. TIMES (Feb. 18, 2007), <https://www.nytimes.com/2007/02/18/books/review/Emanuel.t.html> (showing a photograph of Renty, a slave, photographed in the mid-1850s as a part of a study that was designed to show that whites and blacks were from different species); see also Michael E. Ruane, *A brief history of the enduring phony science that perpetuates white supremacy*, WASH. POST (Apr. 30, 2019), https://www.washingtonpost.com/local/a-brief-history-of-the-enduring-phony-science-that-perpetuates-white-supremacy/2019/04/29/20e6aef0-5aeb-11e9-a00e-050dc7b82693_story.html.

¹² See Julie Zauzmer Weil, *The Bible was used to justify slavery. Then Africans made it their path to freedom*, WASH. POST (Apr. 30, 2019), https://www.washingtonpost.com/local/the-bible-was-used-to-justify-slavery-then-africans-made-it-their-path-to-freedom/2019/04/29/34699e8e-6512-11e9-82ba-fcfeff232e8f_story.html; see also Tom Gjleten, *White Supremacist Ideas Have Historical Roots in U.S. Christianity*, NPR (July 1, 2020), <https://www.npr.org/2020/07/01/883115867/white-supremacist-ideas-have-historical-roots-in-u-s-christianity>.

¹³ See Public Broadcasting Services, *Go Deeper: Race Timeline*, 2003, https://www.pbs.org/race/000_About/002_03-godeeper.htm (explaining how the notion of “race” was created as a concept to justify enslaving people of African descent and keeping them subservient to white people) [hereinafter *Race Timeline*].

¹⁴ See *id.*

Through the United Nations, we have the Universal Declaration of Human Rights (UDHR), which delineates the rights every human is endowed with at birth.¹⁵ The UDHR unequivocally states that “[a]ll human beings are born free and equal in dignity and rights.”¹⁶ It further explains that these rights are the “inalienable entitlements of all people, at all times, and in all places. ...”¹⁷ This document specifically calls out slavery and servitude as a violation of human rights as we mull over these inherent rights, that all humans are born free and equal in dignity and rights; being endowed with reason and conscience and acting towards one another in a spirit of brotherhood; everyone being entitled to all the rights and freedoms set forth in this declaration regardless of race or color; everyone having the right to life, liberty, and security of person; no one being held in slavery or servitude; slavery and the slave trade being prohibited in all forms; no one being subjected to torture or to cruel, inhumane or degrading treatment or punishment; everyone having the right to recognition everywhere as a person before the law; all peoples being equal before the law and entitled without any discrimination to equal protection of the law.¹⁸ Armed with this knowledge, and in the light of the understanding of these inalienable rights, perhaps the greatest human rights violation in the history of the world is the enslavement of people of African descent.¹⁹ It is a heinous and grievous system of brutality and torture that reduces an entire segment of our global community to a mere form of trade and property. This process takes away from these individuals the ability to control their futures, families, and finances for generations to come.²⁰ Enslavement is a gross violation of a people’s humanity and snatches away hope

¹⁵ G.A. Res. 217 (III), Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

¹⁶ *Id.* art. 1.

¹⁷ ILLUSTRATED EDITION OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS v (Yacine Ait Kaci illus., 2015)

¹⁸ UDHR, *supra* note 15.

¹⁹ See *The 1619 Project*, N.Y. TIMES (Sept. 4, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html> (explaining how slavery has impacted every aspect of this country).

²⁰ See IBRAM X. KENDI & KEISHA N. BLAIN, *FOUR HUNDRED SOULS: A COMMUNITY HISTORY OF AFRICAN AMERICA 1619-2019* (2021).

intrinsic in every heart.²¹ For the barbaric traffickers, brutal slave owners, and all those who had a hand in the slave trade, it all boiled down to the almighty dollar.²² Just as with modern-day slavery, the focus was on the profit margin and how much money was to be made in enslaving people.²³ In order to do the mental gymnastics needed to enslave another person, it required a slave owner to believe that he was racially superior and the slave was inferior.²⁴

From the very beginning of the transatlantic slave trade, White slave traders used the idea of a Black inferiority as a basis for enslaving Africans.²⁵ This fallacious notion was preached in churches,²⁶ spoken in front of legislative bodies,²⁷ and courts,²⁸ written in philosophical and historical documents,²⁹ disseminated through magazines, and newspapers,³⁰ and even made its way into popular culture.³¹ It was taught by educators in classrooms, and

²¹ See Press Release, U.N. Secretary-General, *Transatlantic Slave Trade 'One of the Greatest Atrocities in History'*, U.N. Press Release SG/SM/11479 (March 25, 2008).

²² See Dr. Alan Rice, *The Economic Basis of the Slave Trade*, in REVEALING HISTORIES, <http://revealinghistories.org.uk/how-did-money-from-slavery-help-develop-greater-manchester/articles/the-economic-basis-of-the-slave-trade.html>.

²³ See Dr. Ewelina U. Ochab, *Are We All Complicit In Modern Day Slavery?* FORBES (Dec. 2, 2020), <https://www.forbes.com/sites/ewelinaochab/2020/12/02/are-we-all-complicit-in-modern-day-slavery/?sh=4d335a4c50d1>.

²⁴ Ruane, *supra* note 11.

²⁵ See *Race Timeline*, *supra* note 13 (follow “Explore ‘Race, Science, and Social Policy’” hyperlink).

²⁶ See *Why Did So Many Christians Support Slavery?* CHRISTIANITY TODAY, <https://www.christianitytoday.com/history/issues/issue-33/why-christians-supported-slavery.html> (last visited Oct. 1, 2021).

²⁷ See *Race-based Legislation in the North*, PUB. BROADCASTING SERV., <https://www.pbs.org/wgbh/aia/part4/4p2957.html> (last visited Apr. 15, 2021).

²⁸ See generally *Loving v. Virginia*, 388 US 1 (1967) (explaining outlawed marriages between races).

²⁹ See generally U.S. CONST. art. I, §§ 1-10; art. II, §§ 1-4; art. III, §§ 1-3; art. IV, §§ 1-4; art. V; art. VI; art. VII.

³⁰ See generally Kassia E. Kulaszewicz, *Racism and the Media: A Textual Analysis* (May 2015) (MSW Clinical Research Paper, St. Catherine University) (on file with Sophia the Institutional Repository, St. Catherine University).

³¹ See generally Leonard Shapiro, *‘Jimmy the Greek’ Says Blacks are ‘Bred’ For Sports*, WASH. POST (Jan. 16, 1988), <https://www.washingtonpost.com/>

repeated and reiterated by parents at home.³² In the legal case, *Dred Scott v. Sandford*, as heard before the United States Supreme Court, Justice Roger Taney stated:

[African Americans] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far, inferior, that they had no rights which the white man was bound to respect; and that the [N]egro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it.³³

B. Colonies' Response

In the Dutch town of New Amsterdam (modern-day New York City), it was custom that if a Black person had been baptized, they could then be classified as a *free person*.³⁴ The rationale being, Christians should not be enslaved.³⁵ The way the Dutch justified

archive/politics/1988/01/16/jimmy-the-greek-says-blacks-are-bred-for-sports/128a889e-83e2-44a3-b911-851d5281ade4/.

³² See generally *Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483, 494 (1954) (“[T]he policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn.”).

³³ *Dred Scott v. Sandford*, 60 U.S. 393, 407 (1857), superseded by constitutional amendment, U.S. CONST. amend. XIV; see also Martin Magnusson, “No Rights Which the White Man was Bound to Respect”: *The Dred Scott Decision*, American Constitution Society (Mar. 19, 2007), <https://www.acslaw.org/expertforum/no-rights-which-the-white-man-was-bound-to-respect/>; *The Human Factor of History: Dred Scott and Roger B. Taney*, NAT'L MUSEUM OF AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/blog-post/human-factor-history-dred-scott-and-roger-b-taney> (last visited Nov. 4, 2021) [hereinafter *The Human Factor of History*].

³⁴ Joyce D. Goodfriend, *The Souls of African American Children: New Amsterdam*, 3.4 COMMON PLACE (2003) <http://commonplace.online/article/the-souls-of-african-american-children-new-amsterdam/>

³⁵ KENDI, *supra* note 20.

enslavement was to classify Blacks as heathens, a Godless people.³⁶ If they then were baptized, they were no longer Godless and as such should not be slaves.³⁷ But in a society where Whites depended on free Black labor, it soon became apparent that this loophole for getting a *get out of slavery* free card was going to be costly.³⁸ In the mid-1600's, the church stopped baptizing Blacks in an apparent bid to forego proselytizing to keeping slavery as an institute.³⁹

Virginia made a law that stated being baptized would not free a Black person from slavery.⁴⁰ The sad fact of slavery saw children born into indentured servitude.⁴¹ This shows the depravity of a nation increasingly becoming dependent on the forced labor of slaves.⁴²

As the population of Black people grew, so did the fears of insurrection.⁴³ As a result, states began to enact laws geared at quelling such actions.⁴⁴ South Carolina passed a law that made the exchange of products between slaves, or slaves and freemen, illegal unless they had the permission of their White slave master.⁴⁵

Many other colonies passed draconian laws designed to subjugate, oppress, and dehumanize enslaved Blacks.⁴⁶ These laws

³⁶ See generally Goodfriend, *supra* note 34.

³⁷ See *id.*

³⁸ See *id.*

³⁹ See KENDI, *supra* note 20, at 42.

⁴⁰ *Id.* at 58.

⁴¹ *The Lives of Individual African Americans in Massachusetts after the End of Slavery*, https://www.masshist.org/features/endofslavery/life_after.

⁴² See Matthew Desmond, *In Order to Understand the Brutality of American Capitalism, you Have to Start on the Plantation*, N.Y. TIMES MAG. (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/slavery-capitalism.html>.

⁴³ See KENDI, *supra* note 20, at 67.

⁴⁴ *Id.* at 68.

⁴⁵ See *Slavery and The Making of America: Timeline*, THIRTEEN MEDIA WITH IMPACT, <https://www.thirteen.org/wnet/slavery/timeline/1739.html> (last visited Apr. 15, 2021); see also KENDI, *supra* note 20, at 74.

⁴⁶ See *Slavery and The Making of America: Historical Overview*, THIRTEEN MEDIA WITH IMPACT, <https://www.thirteen.org/wnet/slavery/experience/legal/history2.html> (last visited Apr. 15, 2021).

included having no voice in political or social life.⁴⁷ How can a piece of property have a say in a society that views them as less than human?⁴⁸

After the Civil War and during the Reconstruction era, Black men received the right to vote and were instrumental in giving politicians like Ulysses Grant the presidency.⁴⁹ During this same period, approximately 2,000 Black men were elected to various political offices in the South.⁵⁰ But this progress was severely halted by Southern states' hatred for progression and upliftment of people they considered subhuman. These states began to create elaborate schemes designed to prevent Blacks from being able to vote.⁵¹ One such example of these efforts made to prevent Black people from voting was literacy tests.⁵² A person wanting to vote would be required to read a section of the state constitution and then explain its meaning to a court official who was responsible for gauging whether or not the Black person was correct in their interpretation of the constitutional section.⁵³ Another example is a property test that required showing that you owned property to be able to vote.⁵⁴ Many Black people did not own property because Whites refused to sell them property and most Blacks did not have the funds to purchase property.⁵⁵ An additional example of ways Blacks were prevented from voting is the grandfather clause. The grandfather clause said that

⁴⁷ *Id.*

⁴⁸ See *Discrimination Against Blacks Linked to Dehumanization, Study Finds*, STAN. NEWS SERV. (Feb. 8, 2008), <https://news.stanford.edu/pr/2008/pr-eber-021308.html>.

⁴⁹ Joan Waugh, *Ulysses S. Grant: Campaigns and Elections*, MILLER CTR., <https://millercenter.org/president/grant/campaigns-and-elections>.

⁵⁰ Katie Serena, *Could You Pass This Voting Literacy Test Designed to Disenfranchise African Americans?*, ALL THAT'S INTERESTING (Sep. 22, 2017), <https://allthatsinteresting.com/voting-literacy-test>.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Race and Voting*, CONS. RTS. FOUND., <https://www.crf-usa.org/brown-v-board-50th-anniversary/race-and-voting.html> (last visited Nov. 20, 2021).

⁵⁴ See *Slavery and The Making of America: Historical Overview*, *supra* note 46.

⁵⁵ Russell Brooker, *Voting Rights For Blacks And Poor Whites In The Jim Crow South*, AMERICA'S BLACK HOLOCAUST MUSEUM, <https://www.abhmuseum.org/voting-rights-for-blacks-and-poor-whites-in-the-jim-crow-south/> (last visited Nov. 20, 2021).

anyone could vote if their fathers or grandfathers had voted prior to 1867.⁵⁶ It is highly unlikely that any Blacks had voted prior to 1867.⁵⁷ In effect, the grandfather clause worked only for White people.⁵⁸ Much of the gains made by Blacks were eroded due to racist and bigoted actions of Southern states.

C. Women's Suffrage Movement

African American women have historically been a reliable segment of the population for various organizations such as the women's suffrage movement. During the 19th and 20th centuries, Black women were crucial in a consistent struggle for universal suffrage. Black women were involved in various political organizations and took part in political meetings. Black women have traditionally been the voice for human rights in the church and other civic organizations working for the rights of people. A greater number of Black women worked for news publications, school systems, and churches. Being in a variety of work settings gave them a broader platform in which to advocate for their rights.⁵⁹

Even though Black women stood shoulder to shoulder with White women to secure the right to vote for all women, the same White women refused to fully honor and acknowledge the rights of Black women. As is far too common, Black men and White women were almost always the leaders for civil rights organizations, and as such were able to set the agenda. This agenda routinely did not focus on the needs and priorities of Black women.

⁵⁶ *Id.*

⁵⁷ See *The Human Factor of History*, *supra* note 33 (noting that slaves in Galveston, Texas were not informed that slavery had ended until 2 ½ years after the Emancipation Proclamation had been signed. This makes it even more unlikely that any Black people would have voted prior to 1867.).

⁵⁸ Brooker, *supra* note 55.

⁵⁹ Dr. Megan Bailey, *Between Two Worlds: Black Women and the Fight for Voting Rights*, NAT'L PARK SERV., <https://www.nps.gov/articles/black-women-and-the-fight-for-voting-rights.htm> (last visited Apr. 15, 2021).

Black women were prevented from being able to attend the National American Woman Suffrage Association's Convention.⁶⁰ Many times Black women were forced to even march separately in suffrage parades.⁶¹ White women, to gain their own civil rights, actively excluded Black women from attaining the same rights.⁶²

Black women had to deal with the unusual pull between the rights of being a female and the rights of being a Black person. This intersectionality of racism and sexism places Black women in a unique position where they are forced to choose one side or the other in many situations.⁶³ Black women far too often have learned the hard way that the only people they can depend on is themselves.⁶⁴ In too many situations Black women have waited for their White female allies and Black male allies to support them in various positions, and they have been disappointed.⁶⁵

Although the 15th Amendment made voting discrimination illegal based on "race, color, or previous condition of servitude," this certainly did not stop racist White people from using violent and brutal tactics to prevent Blacks from exercising their right to vote.⁶⁶

Many do not realize that the 15th amendment, in theory, granted the right to vote to Black men, but Black women were excluded.⁶⁷ Even Susan B. Anthony was not a proponent for giving

⁶⁰ Allison Lange, *Suffragists Unite: National American Woman Suffrage Association*, NAT'L WOMEN'S HIST. MUSEUM (2015), <http://www.crusadeforthetvote.org/nawsa-united>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ See Bailey, *supra* note 59.

⁶⁴ *Id.*

⁶⁵ See *id.*

⁶⁶ U.S. CONST. amend. XV ("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."); Chris Yu, *How Many Jelly Beans in This Jar?: Voter suppression throughout history*, WSP LOCAL (Oct. 20, 2020) https://www.wpsdlocal6.com/decision_2020/how-many-jelly-beans-in-this-jar-voter-suppression-throughout-history/article_0c1d9db2-1b10-11eb-8c54-cbcf166f9be9.html.

⁶⁷ See Melissa Block, *Yes, Women Could Vote After The 19th Amendment — But Not All Women. Or Men*, NAT'L PUB. RADIO (Aug. 26, 2020, 5:00 A.M.), <https://www.npr.org/2020/08/26/904730251/yes-women-could-vote-after-the->

the right to vote to Black women.⁶⁸ She was associated with the phrase, “Women First and Negro Last.”⁶⁹ Inherent in the struggle was the ambivalence of White women towards granting the right to vote to Black women.⁷⁰ Proof of this fact is that Black women did not get the right to vote until almost 50 years after the passage of the 19th Amendment.⁷¹ This milestone occurred with the passage of the 1965 Voting Rights Act.⁷²

A part of the campaign strategy of Susan B. Anthony and her other White female cohorts was to blame immigrants for the obstacles of White people.⁷³ Anthony also attempted to sell the idea of giving White women the right to vote on the fact that granting the right to vote to highly educated women, would solidify the future of White supremacy.⁷⁴ Some wonder if this might have been a motivating factor for the forty-fifth President of the United States to issue Anthony a pardon for illegally voting in 1872.⁷⁵ It is clear that even

19th-amendment-but-not-all-women-or-men.

⁶⁸ Becky Little, *How Early Suffragists Left Black Women Out of Their Fight*, HISTORY (Jan. 29, 2021), <https://www.history.com/news/suffragists-vote-black-women>.

⁶⁹ Melinda Henneberger, *Susan B. Anthony appealed to white supremacists, sure we’d make up for it later. When?*, THE KANSAS CITY STAR (Aug. 21, 2020, 5:00 A.M.), <https://www.kansascity.com/opinion/opn-columns-blogs/melinda-henneberger/article245084250.html>

⁷⁰ Block, *supra* note 67.

⁷¹ *Id.*; U.S. CONST. amend. XIX (“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.”).

⁷² *Id.*; Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437 (outlawing racial discrimination in voting); *see also* Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (Title I outlawed discrimination based on race, color, religion, sex, or national origin in the application of voting registration requirements).

⁷³ Henneberger, *supra* note 69.

⁷⁴ *Id.*

⁷⁵ *Id.*; *see also* Samantha Schmidt, *Susan B. Anthony was arrested for voting when women couldn’t. Now Trump will pardon her*, WASH. POST (Aug. 18, 2020), <https://www.washingtonpost.com/history/2020/08/18/susan-b-anthony-trump-pardon/> (Anthony was pardoned on the 100th Anniversary of the 19th Amendment for voting in an election in 1872 in Rochester, N.Y., as a female, which was illegal).

in the struggle for the right to vote, the gains have been sporadic, sexist and racist in the process.⁷⁶

There are countless stories of Black men and women seeking to get registered to vote and being unable to vote, but almost none as horrifying and brutal as what occurred on November 2, 1920, in Ocoee, Florida.⁷⁷ On the same day that saw a victory in voting rights for White women, Blacks in the small central Florida town were dealt a crushing defeat as one Black man simply tried to vote.⁷⁸ As with many brutal, violent acts of racist White people, this violence has to this day gone unpunished.⁷⁹ The Equal Justice Initiative has documented that Florida was second only to Mississippi in lynchings per capita.⁸⁰ Florida was a hotbed for the KKK's campaign of White domestic terrorism and murders that seemed to be state sanctioned, but the town of Ocoee was a different kind of town.⁸¹ The Whites and Blacks there lived together for 30 years without many incidents of racial violence and animosity.⁸² Some Whites in the town even attempted to explain to Blacks how to register to vote; however, about

⁷⁶ Gillian Brockell, *A White Mob Unleashed the Worst Election Day Violence in U.S. History in Florida a Century Ago*, WASH. POST (Nov. 2, 2020, 7:00 AM), <https://www.washingtonpost.com/history/2020/11/02/ocoe-florida-election-day-massacre/>.

⁷⁷ See Nov. 2, 1920: *The Ocoee Massacre*, ZINN EDUC. PROJECT, <https://www.zinnproject.org/news/tdih/ocoe-massacre/> (last visited Apr. 16, 2021) [hereinafter *The Ocoee Massacre*.]

⁷⁸ See *id.*

⁷⁹ *The Little-Known Story of America's Deadliest Election Day Massacre*, SMITHSONIAN MAG. (NOV. 13, 2020), <https://www.smithsonianmag.com/smart-news/new-exhibition-florida-honors-victims-bloodiest-election-massacre-american-history-180976283/> (“White authorities refused to recognize the massacre for decades; the City of Ocoee, in fact, only issued a proclamation acknowledging the attack in 2018.”) [hereinafter *America's Deadliest Election Day Massacre*.]

⁸⁰ See *Lynching in America: Confronting the Legacy of Racial Terror*, EQUAL JUST. INITIATIVE (3rd ed. 2017) <https://eji.org/reports/lynching-in-america/> (last visited Apr. 16, 2021).

⁸¹ See *id.*

⁸² See Brockell, *supra* note 76 (highlighting 1920 Census records documenting that approximately one-third of the town's 800 residents were Black and many owned property).

a month before the November election, two White leaders in Ocoee received a threatening letter from the KKK.⁸³ This letter stated:

Orlando, Fla. Sept. 28th. 1920.

Mr. W.R. O'Neal,
City.

Sir:

While stopping in your beautiful little city this week, I was informed that you are in the habit of going out among the negroes of Orlando and delivering lectures explaining to them just how to become citizens, and how to assert their rights.

If you are familiar with the history of the days of reconstruction which followed in the wake of the Civil War, you will recall that the "Scallawags" of the north, and the Republicans of the south proceeded very much the same as you are proceeding, to instill into the negro the idea of social equality. You will also remember that these things forced the loyal citizens of the south to organize clans of determined men, who pledged themselves to maintain white supremacy and to safeguard our women and children.

And now if you are a scholar, you know that history repeats its self, and that he who resorts to your kind of a game is handling edged tools. We shall always enjoy WHITE SUPREMACY in this country and he who interferes must face the consequences.

GRAND MASTER FLORIDA KU KLUXS.

Copy
Judge Jno.M.Cheney.
You may accept this as a fitting message to you.

Copy
Local Ku Kluxs.
Watch these two.

Figure 1 – Letter from Grand Master Florida Ku Kluxs to Mr. W.R. O'Neal.⁸⁴

⁸³ *Id.*

⁸⁴ Letter from Grand Master Florida Ku Kluxs to Mr. W.R. O'Neal (Sept. 20, 1920 (on file with the Orange County Regional History Center).

In spite of the threats, many Black people showed up at the polls on that November election day.⁸⁵ Voting went smoothly during the morning but by the afternoon a man by the name of Mose Norman attempted to vote.⁸⁶ He was denied the right to vote stating that he had not paid the appropriate poll tax although he said that he did.⁸⁷ Mr. Norman went to speak to John Cheney, a White judge, who told him to go back to the poll and try to vote again.⁸⁸ He was turned away a second time and denied the right to vote.⁸⁹ Varying accounts of what happened that day are not clear on why this was the catalyst that caused White people to attack the Black residents and burn the city to the ground.⁹⁰ Later that evening, a White mob from Orlando went looking for Mr. Norman at the home of a Black landowner, Mr. July Perry, who had helped blacks get registered to vote.⁹¹ Mr. Perry's home was surrounded by angry White people, and at some point in the melee, two White men were shot and killed, perhaps in self-defense by the Perry residents who fired back as the mob shot at Mr. Perry's home.⁹² There is speculation that the two White men were shot by one of their own.⁹³ Mr. Perry's home was set on fire, as well as a church and dozens of other homes.⁹⁴

Mr. Perry's wife and child were transported to a jail in Tampa but Mr. Perry was taken to a jail where he was pulled from his cell, tortured and lynched by a vicious mob of White men.⁹⁵ His maimed

⁸⁵ The Ocoee Massacre, *supra* note 77.

⁸⁶ Troy Herring, *A Century Removed: Truth and Reconstruction of the 1920 Ocoee Massacre*, W. ORANGE TIMES & OBSERVER (Oct. 28, 2020), <https://www.orangeobserver.com/article/a-century-removed-truth-and-reconciliation-of-the-1920-ocoe-massacre>.

⁸⁷ Stephen Hudak, *Official Narrative of the Terror for Decades was Obscured or Excused by a Whitewashing of Facts*, ORLANDO SENTINEL (Oct. 30, 2020), <https://www.orlandosentinel.com/news/ocoe-massacre/os-ne-ocoe-what-happened-20201029-n3k7lqdbafg5re3qwxq2g3wnve-htmlstory.html>.

⁸⁸ See Brockell, *supra* note 76.

⁸⁹ Hudak, *supra* note 87.

⁹⁰ See *id.*

⁹¹ America's Deadliest Election Day Massacre, *supra* note 79.

⁹² Brockell, *supra* note 76 (noting that inside the home was Perry, his wife, and their teenage daughter).

⁹³ *Id.* (stating this could have been "friendly fire").

⁹⁴ *Id.*

⁹⁵ *Id.*

and tortured body was left hanging near the home of Judge Cheney whom had attempted to help Blacks register to vote.⁹⁶ Weeks after the domestic terrorism attack, agents for the Bureau of Investigation (BOI) showed up and indicated that they were only interested in investigating fraud that took place in the election.⁹⁷ To show how political leaders have been clearly racist individuals, the leader of the mob that was responsible for this massacre, was later elected as mayor of Ocoee in 1951.⁹⁸

Many residents of Ocoee left out of fear for their lives and never returned.⁹⁹ In the process of leaving, these black residents lost everything.¹⁰⁰ There is documented proof that shows the estimated value of the land that was stolen by Whites from Blacks in Ocoee, Florida is valued at approximately \$10 million.¹⁰¹ To this day, no White person was ever held responsible criminally or civilly, for their racially motivated crimes in the Ocoee murders and thefts.¹⁰² This was all as a result of a Black man attempting to cast his ballot to vote in the United States of America.

⁹⁶ Robert Stephens, *The Truth Laid Bare*, PEGASUS UCF MAG. (2020), <https://www.ucf.edu/pegasus/the-truth-laid-bare/>.

⁹⁷ Brockell, *supra* note 76; the Bureau of Investigation was later renamed to its current name Federal Bureau of Investigation (FBI).

⁹⁸ *Id.*

⁹⁹ Herring, *supra* note 86.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Stephen Hudas, *Ocoee Issues Formal Apology for 1920 Massacre: “Never Again”*, ORLANDO SENTINEL (Nov. 4, 2020), <https://www.orlandosentinel.com/news/orange-county/os-ne-ocoe-massacre-meeting-apology-20201104-6j2vmcqn35d5pjo3rqycamdh74-story.html>.

II. The Voting Rights Act of 1965 (August 6, 1965)

A. The Battle for Voting Rights:

Edmund Pettis Bridge March in Selma, Alabama (John Lewis)

Only through a relentless need to succeed and a burning desire for equality under the law have African Americans found the strength to consistently fight for the most basic of human rights. This tenacity caused a persistence that saw the rise of the Civil Rights Movement and the start of a revolution that would change the world. Four Black students from North Carolina A&T decided to go to a White lunch counter (Woolworth) in Greensboro, North Carolina for a cup of coffee.¹⁰³ They were denied service, however, they refused to leave the establishment until they were served.¹⁰⁴ The business closed for the day and refused to treat the students as ordinary customers.¹⁰⁵

The next day—and the day after and the day after that—the same students came back with more students.¹⁰⁶ They eventually formed an organization called the Student Executive Committee for Justice.¹⁰⁷ The word spread and soon other students were having what came to be known as “sit-ins.”¹⁰⁸ These peaceful protestors were both men and women, Black and White.¹⁰⁹ Many of the students were arrested but their bravery and commitment lit a fire in the hearts of

¹⁰³ Christopher Wilson, *The Moment When Four Students Sat Down to Take a Stand*, SMITHSONIAN MAG. (Jan. 31, 2020), <https://www.smithsonianmag.com/smithsonian-institution/lessons-worth-learning-moment-greensboro-four-sat-down-lunch-counter-180974087/>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Freedom for Struggle*, SMITHSONIAN NAT’L MUSEUM OF AM. HIST., <https://americanhistory.si.edu/brown/history/6-legacy/freedom-struggle-2.html> (last visited Sept. 26, 2021).

¹⁰⁷ *Sit-ins*, Stanford: Martin Luther King, Jr. Res. & Educ. Inst., <https://kinginstitute.stanford.edu/encyclopedia/sit-ins> (last visited Dec. 1, 2021); see also MARK BAUERLEIN, CIVIL RIGHTS CHRONICLE: THE AFRICAN AMERICAN STRUGGLE FOR FREEDOM (2003).

¹⁰⁸ See *The Sit-In Movement*, U.S. HISTORY: PRE-COLUMBIAN TO THE MILLENNIUM, <https://www.ushistory.org/us/54d.asp> (last visited Apr. 16, 2021).

¹⁰⁹ See *id.*

many across America.¹¹⁰ Prior to sit-ins, many Black people and Civil Rights organizations were mainly non-physically active.¹¹¹ The sit-in movement allowed these organizations to see that direct action could become the preeminent tactic in the fight for civil rights.¹¹²

Martin Luther King, Jr. gave his “Give Us the Ballot” speech in 1957 where he advocated for Black people to get the right to vote and implicated both political parties in the failure of Blacks being treated fairly.¹¹³ In part, he said “the Democrats have betrayed it by capitulating to the prejudices and undemocratic practices of the southern Dixiecrats. The Republicans have betrayed it by capitulating to the blatant hypocrisy of right wing, reactionary northerners. These men so often have a high blood pressure of words and an anemia of deeds.”¹¹⁴ Martin Luther King, Jr. recognized the numerous obstacles that were being placed in the pathway of Black people preventing them from being able to attain the right to vote.¹¹⁵ He spoke in the speech about specific areas that were contributing to this theft of rights and concluded by saying that those seeking these rights must not get weary, bitter, or discouraged.¹¹⁶

¹¹⁰ *Id.*

¹¹¹ See Alton Hornsby Jr., *Looking Back on the Fight for Equal Access to Public Accommodations*, ECON. POL’Y INST. (July 2, 2014), <https://www.epi.org/publication/fight-equal-access-public-accommodations/>.

¹¹² See CHRISTOPHER W. SCHMIDT, *THE SIT-INS: PROTEST AND LEGAL CHANGE IN THE CIVIL RIGHTS ERA* (2018).

¹¹³ Dr. Martin Luther King, “Give Us the Ballot,” Address delivered at the Prayer Pilgrimage for Freedom (May 17, 1957), in 4 *THE PAPERS OF MARTIN LUTHER KING, JR., VOLUME IV: SYMBOL OF THE MOVEMENT, JANUARY 1957-DECEMBER 1958* (Clayborne Carson et al. eds., 2000).

¹¹⁴ “*Give Us the Ballot*,” *Address Delivered at the Prayer Pilgrimage for Freedom*, STAND.: MARTIN LUTHER KING, JR. RES. & EDUC. INST., <https://kinginstitute.stanford.edu/king-papers/documents/give-us-ballot-address-delivered-prayer-pilgrimage-freedom> (noting that the speech was held in Washington, D.C. at the Prayer Pilgrimage and was entitled “Give Us the Ballot”) (last visited Nov. 20, 2021) [hereinafter *Give Us the Ballot*].

¹¹⁵ *Id.*

¹¹⁶ See *id.*

Seven years later, Malcolm X gave his “The Ballot or the Bullet Speech.”¹¹⁷ Malcolm X’s position was clear in his speech: he believed in being non-violent with those that were non-violent with him.¹¹⁸ He also advocated using violence against anyone that was violent towards him.¹¹⁹ He saw, and openly discussed, the insidious and pervasive evil that infected certain parts of America through blatant and callous disregard for the edicts of the U.S. Constitution.¹²⁰ Malcolm X’s thought process was different from Martin Luther King, Jr., in a myriad of ways but both men recognized the colossal and malignant default in White people, especially Southern Whites, in granting voting rights to Black people.¹²¹ They both unequivocally recognized and acknowledged that the government was duplicitous in their dealings with Black people.¹²² Malcolm X opined that the use of gerrymandering was clear in how White politicians and officials were creating various tactics to prevent Black people from being able to vote.¹²³ Malcolm X, unlike Martin Luther King, Jr., felt that given the

¹¹⁷ Malcolm X, *The Ballot or the Bullet* (Apr. 3, 1964) (transcript available in Social Justice Speeches) [hereinafter *The Ballot or the Bullet*].

¹¹⁸ *Id.* (“If you don’t take an uncompromising stand, I don’t mean go out and get violent; but at the same time you should never be nonviolent unless you run into some nonviolence. I’m nonviolent with those who are nonviolent with me. But when you drop that violence on me, then you’ve made me go insane, and I’m not responsible for what I do. And that’s the way every Negro should get.”).

¹¹⁹ *Id.*; see also *Malcolm X Sees Rise in Violence; Says Negroes Are Ready to Act in Self-defense*, N.Y. TIMES (March 13, 1964), <https://www.nytimes.com/1964/03/13/archives/malcolm-x-sees-rise-in-violence-says-negroes-are-ready-to-act-in.html>

¹²⁰ *The Ballot or the Bullet*, *supra* note 117.

¹²¹ *Id.*; see *supra* note 114 and accompanying text.

¹²² See *The Ballot or the Bullet*, *supra* note 117 (“You and I in America are faced not with a segregationist conspiracy, we’re faced with a government conspiracy. Everyone who’s filibustering is a senator—that’s the government. Everyone who’s finagling in Washington, D.C., is a congressman—that’s the government.”); *Give Us the Ballot*, *supra* note 114 (“In the midst of the tragic breakdown of law and order, the executive branch of the government is all too silent and apathetic. In the midst of the desperate need for civil rights legislation, the legislative branch of the government is all too stagnant and hypocritical.”).

¹²³ *The Ballot or the Bullet*, *supra* note 117 (“In the North, they do it a different way. They have a system that’s known as gerrymandering, whatever that means. It means when Negroes become too heavily concentrated in a certain area, and begin to gain too much political power, the white man comes along and changes the

delay in receiving man-made, civil rights in the form of the right to vote, this required Black people to either get the right to vote or use violence when necessary to effectuate their rights.¹²⁴ He also delineated how Black people were never truly considered, or treated, as full American citizens.¹²⁵ He remarked on how Europeans come from various other countries and receive American citizenship without laws, and amendments having to be put in place.¹²⁶ But the Black man, born and raised on American soil has fought from day one to be called and treated as an American citizen with the same rights and privileges that others so easily obtain and enjoy.¹²⁷

In addition to Martin Luther King, Jr. and Malcolm X speaking out and advocating for equal rights and justice for Black people, many were organizing marches for voting rights. One such person was John Lewis. As Chairman of the Student Nonviolent Coordinating Committee (SNCC), he and 600 others had planned a march from Selma, Alabama to Montgomery on March 7, 1965.¹²⁸ As the marchers walked silently, two by two, they were met at the end of the Edmund Pettis Bridge by approximately 150 Alabama law enforcement officials.¹²⁹ The day has come to be known as “Bloody Sunday” given the numbers of peaceful, unarmed, non-violent protestors the police officers brutally assaulted.¹³⁰ John Lewis

district lines.”).

¹²⁴ See (1964) Malcolm X, “*The Ballot or the Bullet*,” BLACK PAST (July 26, 2010), <https://www.blackpast.org/african-american-history/speeches-african-american-history/1964-malcolm-x-ballot-or-bullet/>.

¹²⁵ Malcolm X, Not Just an American Problem, but a World Problem, Address delivered in the Corn Hill Methodist Church (Feb. 16, 1965) (transcript available in the National Humanities Center Toolbox Library).

¹²⁶ The Ballot or the Bullet, *supra* note 117 (“Polacks are already Americans; the Italian refugees are already Americans. Everything that came out of Europe, every blue-eyed thing, is already an American.”).

¹²⁷ *Id.* (“And as long as you and I have been over here, we aren't Americans yet.”).

¹²⁸ See Eyewitness American Originals, *John Lewis - March from Selma to Montgomery, “Bloody Sunday,” 1965*, THE NAT’L ARCHIVES, <https://www.archives.gov/exhibits/eyewitness/html.php?section=2> (last visited Apr. 16, 2021).

¹²⁹ *Id.*

¹³⁰ *Id.*

suffered from a fractured skull as a result of being hit multiple times by an officer wielding a billy club.¹³¹ Approximately six months after “Bloody Sunday,” President L.B. Johnson signed into law the Voting Rights Act of 1965.¹³²

By 1965 it was clear that the efforts put in place to end the southern states’ ability to disenfranchise Black people from voting had proven to be entirely ineffectual. After multiple civil rights activists had been murdered in southern states, the nation’s attention was focused on the violence and terrorism enacted by racist White southerners whose goal was to intimidate and prevent Black people from being able to vote.¹³³ Given the severe and brutal attack on March 7, 1965 by local law enforcement on peaceful demonstrators crossing the Edmund Pettis bridge located in Selma, Alabama as they were heading to the state capital, persuaded President Johnson and the United States Congress to begin the process to pass civil rights legislation.¹³⁴ Following Bloody Sunday and Governor Wallace’s willful and blatant inability to protect and safeguard peaceful black demonstrators, President Johnson proposed laws to crush suffrage discrimination.¹³⁵ In a watershed moment President Johnson, while speaking in a televised address to a joint session of Congress on March 15, 1965, announced that preventing Black people from voting was “wrong – deadly wrong,” and then reiterated the mantra of the civil rights movement, “We Shall Overcome!”¹³⁶

¹³¹ *Id.*

¹³² See *On this day, the Voting Rights Act of 1965 is signed*, NAT’L CONST. CTR. (Aug. 6, 2020), <https://constitutioncenter.org/blog/on-this-day-the-voting-rights-act-of-1965-is-signed>.

¹³³ See Peter Kihss, *Malcolm X Shot to Death at Rally of Black Nationalists in a Ballroom Here*, N.Y. Times, Feb. 22, 1965, at 10 (announcing that Malcom X assassinated on February 21, 1965).

¹³⁴ See *supra* text accompanying notes 128-132; see also *History of Federal Voting Rights Laws*, U.S. DEP’T OF JUST., <https://www.justice.gov/crt/history-federal-voting-rights-laws> (last visited Dec. 13, 2021).

¹³⁵ Kyle Longley, *Lyndon Johnson’s vision for voting rights offers a blueprint for protecting them*, WASH. POST (Apr. 8, 2021, 6:00 AM), <https://www.washingtonpost.com/outlook/2021/04/08/lyndon-johnsons-vision-voting-rights-offers-blueprint-protecting-them/>.

¹³⁶ President Lyndon B. Johnson’s Message to Congress on Voting Rights (Mar. 18, 1965); see also STEVEN F. LAWSON, *BLACK BALLOTS: VOTING RIGHTS IN THE*

Legislators figured out that the existing anti-discrimination laws that were on the books were not sufficient to overcome states' ability to prevent Blacks from being able to vote and take advantage of their 15th amendment constitutional right.¹³⁷ The Voting Rights Act of 1965 was designed to place a checks and balance on Southern states that had a practice of discriminating and disenfranchising Black people in their constitutional rights.¹³⁸ This law would give the federal government oversight on the southern states that had a history of discrimination in voting and would place the burden on the states to explain away any laws put in place that had a discriminatory effect on Black people and their ability to vote.¹³⁹ These laws also made literacy tests illegal and prevented establishing fluency in English as a requirement for voting.¹⁴⁰ Perhaps the greatest tool in the toolbox of the Civil Rights Act of 1965 was the fact that it required states with a verifiable history of disenfranchising Black people from voting, to receive prior approval (pre-clearance) from the United States Justice Department prior to enacting any new voting related laws or rules.¹⁴¹

B. How it Looked in Real Life: Jellybean Count and other Tools used to prevent Voter registration

There were many efforts made to prevent Blacks from being able to vote. One tactic was the jellybean jar.¹⁴² Unsuspecting voters would attempt to get registered to vote but would be told that they first had to successfully guess the number of jellybeans contained in a jar.¹⁴³ No doubt, even if the individual somehow was able to correctly guess the number, it is almost certain they would be told that

SOUTH, 1944-1969 (1999).

¹³⁷ See LAWSON, *supra* note 136.

¹³⁸ BRUCE HARTFORD, VOTING RIGHTS IN AMERICA TWO CENTURIES OF STRUGGLE (3d ed. 2008), <https://www.crmvet.org/info/votehist3-lg.pdf>.

¹³⁹ See LAWSON, *supra* note 136.

¹⁴⁰ HARTFORD, *supra* note 138.

¹⁴¹ *Id.*

¹⁴² Yu, *supra* note 66.

¹⁴³ *Id.*

they were wrong. There was clearly no articulable reason for having Black voters guess how many jellybeans were in a jar and its relevance to voting.

Disguised as a way to determine if Black voters were knowledgeable enough to vote, literacy tests had a singular purpose, to prevent Blacks from voting.¹⁴⁴ They would make a Black person read a particular passage and if they were unable to read, decipher and understand the passage, they would not be able to register to vote.¹⁴⁵ These same tests were “graded” by prejudiced “judges” and Black people would inevitably fail.¹⁴⁶ Even college graduates were failing tests as graded by the White biased judges.¹⁴⁷ A law professor at Duke University in the 1960’s, sent a sample literacy test to practically all professors at all American law schools teaching constitutional law.¹⁴⁸ When he received their responses, 70% were accurate.¹⁴⁹

Many times, these biased, discriminatory tests were scored and graded by people who had no intent on allowing the Black test taker to pass.¹⁵⁰ Many times, they would simply mark the answer wrong without even reading the response.¹⁵¹ The state of Louisiana’s test was practically incomprehensible and nonsensical:

¹⁴⁴ See HARTFORD, *supra* note 138, at 5.

¹⁴⁵ Serena, *supra* note 50 (The questions were intentionally written to confuse the reader, and one wrong answer would result in automatic failure.”).

¹⁴⁶ *Id.* (“In practice, a white registrar would administer and grade the tests. These registrars would be the arbiters of who passed and who failed, and more often than not, a registrar would simply mark answers wrong for no reason.”).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* (addressing that the test was given by Professor Alstyne. The professors taking the test were asked to take the literacy test without the use of any kind of external resource and to answer the questions just as if they were the person being originally asked to take the test. 96% of the professors sent in their answers. “Presumably, these men, each of whom teaches constitutional law, each having at least 20 years of formal education, are no less ‘qualified’ by literacy than those in Alabama to whom this type of test is supposed to apply.”).

¹⁴⁹ *Id.*

¹⁵⁰ See *Literacy Tests*, NAT’L MUSEUM OF AM. HIST., <https://americanhistory.si.edu/democracy-exhibition/vote-voice/keeping-vote/state-rules-federal-rules/literacy-tests>.

¹⁵¹ Serena, *supra* note 50.

The State of Louisiana

Literacy Test (This test is to be given to anyone who cannot prove a fifth grade education.)

Do what you are told to do in each statement, nothing more, nothing less. Be careful as one wrong answer denotes failure of the test. You have 10 minutes to complete the test.

1. Draw a line around the number or letter of this sentence.
2. Draw a line under the last word in this line.
3. Cross out the longest word in this line.
4. Draw a line around the shortest word in this line.
5. Circle the first, first letter of the alphabet in this line.
6. In the space below draw three circles, one inside (engulfed by) the other.



7. Above the letter X make a small cross.
8. Draw a line through the letter below that comes earliest in the alphabet.
Z V S B D M K I T P H C
9. Draw a line through the two letters below that come last in the alphabet.
Z V B D M K T P H S Y C
10. In the first circle below write the last letter of the first word beginning with "L".

11. Cross out the number necessary, when making the number below one million.
10000000000
12. Draw a line from circle 2 to circle 5 that will pass below circle 2 and above circle 4.

13. In the line below cross out each number that is more than 20 but less than 30.
31 16 48 29 53 47 22 37 98 26 20 25

Figure 2 – First page of a literacy test administered in the State of Louisiana in 1964.¹⁵²

¹⁵² Serena, *supra* note 50.

14. Draw a line under the first letter after "h" and draw a line through the second letter after "j".

a b c d e f g h i j k l m n o p q

15. In the space below, write the word "noise" backwards and place a dot over what would be its second letter should it have been written forward.

16. Draw a triangle with a blackened circle that overlaps only its left corner.

17. Look at the line of numbers below, and place on the blank, the number that should come next.

2 4 8 16 ____

18. Look at the line of numbers below, and place on the blank, the number that should come next.

3 6 9 ____ 15

19. Draw in the space below, a square with a triangle in it, and within that same triangle draw a circle with a black dot in it.

20. Spell backwards, forwards.

21. Print the word vote upside down, but in the correct order.

22. Place a cross over the tenth letter in this line, a line under the first space in this sentence, and circle around the last the in the second line of this sentence.


23. Draw a figure that is square in shape. Divide it in half by drawing a straight line from its northeast corner to its southwest corner, and then divide it once more by drawing a broken line from the middle of its western side to the middle of its eastern side.

Figure 3 – Second page of a literacy test administered in the State of Louisiana in 1964.¹⁵³

¹⁵³ *Id.*

24. Print a word that looks the same whether it is printed frontwards or backwards.

25. Write down on the line provided, what you read in the triangle below:



Paris
in the
the spring

26. In the third square below, write the second letter of the fourth word.

27. Write right from the left to the right as you see it spelled here.

28. Divide a vertical line in two equal parts by bisecting it with a curved horizontal line that is only straight at its spot bisection of the vertical.

29. Write every other word in this first line and print every third word in same line, (original type smaller and first line ended at comma) but capitalize the fifth word that you write.

30. Draw five circles that one common inter-locking part.

Figure 4 – Third page of a literacy test administered in the State of Louisiana in 1964.¹⁵⁴

¹⁵⁴ *Id.*

Many times, these “tests,” had to be completed in an unreasonable amount of time—making it impossible to complete.¹⁵⁵ It is clear, these tests are designed for the test taker to fail. Researchers have uncovered documented proof of the fallacy and surreptitious nature of these tests and voter registration forms.¹⁵⁶ One can review these tests to see if they could qualify to vote using the impossible standards set by those intent on suppressing the Black vote.¹⁵⁷

If White people were illiterate, they would get a pass under the grandfather clause.¹⁵⁸ This clause meant if a person’s grandfather was registered to vote, then they too received the right to vote, and it meant that they would be eligible to vote if they had been eligible to vote before Blacks were given the same ability.¹⁵⁹

Other methods used to discourage and prevent Blacks from voting were the use of poll taxes, fear tactics and intimidation by law enforcement, White violence and domestic terrorism and economic retaliation.¹⁶⁰ Poll taxes were put in place and forced those that wanted to vote to pay a fee to vote.¹⁶¹ Voting is free in America—and as such, these taxes were illegal—but these fees could range from \$1 to \$5 a year.¹⁶² In the South, there was ubiquitous police intimidation which resulted in hundreds of arrests and even deaths of workers

¹⁵⁵ Carl L. Miller & Dennis O. Ojogho, *A Sacred Right Remains Threatened*, THE HARV. CRIMSON (January 26, 2015) <https://www.thecrimson.com/article/2015/1/26/voter-id-laws-louisiana>.

¹⁵⁶ See Serena, *supra* note 50; see also *Civil Rights Movement Voting Rights: Are You "Qualified" to Vote? Take a "Literacy Test" to Find Out*, CIV. RTS. MOVEMENT ARCHIVE, <https://www.crmvet.org/info/lithome.htm> (last visited Dec. 14, 2021) [hereinafter *Are You "Qualified" to Vote?*].

¹⁵⁷ See *Are You "Qualified" to Vote?*, *supra* note 156.

¹⁵⁸ Alan Greenblatt, *The Racial History of The 'Grandfather Clause*, NPR (Oct. 22, 2013, 9:44 AM), <https://www.npr.org/sections/codeswitch/2013/10/21/239081586/the-racial-history-of-the-grandfather-clause>.

¹⁵⁹ *Id.*

¹⁶⁰ See *Are You "Qualified" to Vote?*, *supra* note 156.

¹⁶¹ Michael D. Gilbert, *The Problem in Voter Fraud*, 115 COLUM. L. REV. 739, 740 (2015).

¹⁶² *The 24th Amendment*, HIST., ART & ARCHIVES: U.S. HOUSE OF REPRESENTATIVES, <https://history.house.gov/HistoricalHighlight/Detail/37045>, (last visited Dec. 14, 2021); Drew DeSilver, *Anti-poll Tax Amendment is 50 years Old Today*, PEW RES. CTR. (Jan. 23, 2014) <https://www.pewresearch.org/fact-tank/2014/01/23/anti-poll-tax-amendment-is-50-years-old-today/>.

trying to register people to vote.¹⁶³ There was also economic retaliation which came in the form of denial of loans to Blacks, forced evictions, boycotting Black businesses, and even foreclosures.¹⁶⁴ And perhaps the most vicious, brutal and barbaric way to intimidate voters was violent, horrific killings. The rise of the Ku Klux Klan (KKK) sent fear into the hearts of many law-abiding Black people who only wanted to exercise the Constitutional right to vote.¹⁶⁵ Perhaps what made the KKK even more menacing and terrifying was the fact that they were given a stamp of approval by law enforcement and the local and state governments.¹⁶⁶ There is proof that those under the KKK hoods at night, were the same men behind the badge and in the suit and tie in the daylight.¹⁶⁷

III. Ongoing Voter Suppression

A. U.S. Supreme Court invalidates key parts of the VRA, which allows states to disenfranchise Black voters

Perhaps one of the cases that has ushered in an era of stricter voting requirements is the United States Supreme Court case *Crawford v. Marion County Election Board*.¹⁶⁸ This case dealt with a 2005 Indiana law which required voters to provide a government issued photo identification before they could cast a vote and have it counted.¹⁶⁹ The case was argued by some proponents as imposing an

¹⁶³ *Voting Rights*, LIBR. OF CONGRESS, <https://www.loc.gov/collections/civil-rights-history-project/articles-and-essays/voting-rights/> (last visited Apr. 16, 2021)

¹⁶⁴ See Are You "Qualified" to Vote?, *supra* note 156.

¹⁶⁵ See *supra* Figure 1.

¹⁶⁶ Trevor Griffey, *Citizen Klan Electoral Politics and the KKK in WA*, SEATTLE CIV. RTS. & LABOR HIST. PROJECT https://depts.washington.edu/civilr/klk_politicians.htm (last visited Apr. 17, 2021).

¹⁶⁷ *Id.* (noting in the state of Washington various Klan members elected to public office included mayors, city attorneys, politicians, a director of schools and a congressman).

¹⁶⁸ See *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008).

¹⁶⁹ *Id.* (this decision was initially heard by the Seventh Circuit Court. A 2005

onerous voter ID restriction on those most likely to be disenfranchised from voting.¹⁷⁰ Even though it was argued that requiring a photo ID was being used as a means to prevent voter fraud or voter impersonation at the polls, there was never proof submitted that showed that voter fraud was taking place in Indiana.¹⁷¹

Scholars recognized the difficulty that the Court faced in reaching a decision and chose to rule in such a way that did not appear to be a victory for one political party over another.¹⁷² The Court faced the fact that the two political parties perceived voter fraud from vastly different perspectives.¹⁷³ One political party saw it as a real and growing threat and the opposition saw these beliefs as highly exaggerated and overblown.¹⁷⁴

Indiana law required voters to have a valid state issued photo ID in order to vote and if they did not have a valid State issued photo ID, they would only be allowed to cast a provisional ballot. They would have to show up at a later date to prove their identity and have their ballot validated. This case was affirmed by the United States Supreme Court. The question of law was whether or not the law requiring voters to present a state issued photo identification unduly burdened a citizen's right to vote. In a vote of 6 to 3, the United States Supreme Court upheld the law and reasoned that the photo ID requirement was closely related to Indiana's interest in preventing voter fraud. This was found to be a legitimate state history interest. The court held that the burden this new law placed on voter's rights did not outweigh the state's legitimate interest in preventing voter fraud. The court characterized the imposition of the photo ID requirement as "neutral and non-discriminatory.").

¹⁷⁰ *Crawford v. Marion County Election Board Indiana Democratic Party v. Rotika: Concerning Photo Identification Requirements for Voters*, ELECTRONIC PRIVACY INFO. CTR., <https://epic.org/privacy/voting/crawford/> (last visited Sept. 28, 2021).

¹⁷¹ *Crawford v. Marion County Election Board*, AM. CIV. LIBERTIES UNION (Aug. 10, 2012), <https://www.aclu.org/cases/crawford-v-marion-county-election-board>.

¹⁷² Jason Harrow, *More on Crawford: The Court Steps Back from Electoral Refereeing*, SCOTUS BLOG (Apr. 29, 9:40 AM), <https://www.scotusblog.com/2008/04/more-on-crawford-the-court-steps-back-from-electoral-refereeing/>.

¹⁷³ See Adam Endures & Joseph Uscinski, *Voters Always Imagine Fraud. Politicians don't always go along with it*, WASH. POST (Nov. 12, 2020), <https://www.washingtonpost.com/outlook/2020/11/12/fraud-conspiracy-theories-election-public-opinion/>.

¹⁷⁴ See Philip Ewing, *Voting Elections Divide Republicans and Democrats Like Little Else and Why*, NPR (June 12, 2020, 5:03 AM), <https://www.npr.org/2020/06/12/873878423/voting-and-elections-divide-republicans-and-democrats-like-little-else-heres-why>.

With this consequential decision, the courts seemed to be indicating hesitance in refereeing reform in election disputes unless the proposed reform puts forth no legitimate and relevant state interest or unless it places particularly harsh, repeated burdens on the right to vote on an identifiable group of voters.¹⁷⁵

The High Court signaled an opposition to meticulously scrutinizing or second-guessing a State's determination that certain measures are necessary to protect the sanctity of the electoral process.¹⁷⁶ The court opined that assuming the State's noted basis for the regulation—in this case the desire to prevent voter fraud and assure the public's reliability in our elections—is relevant and related to its stated interest in election security, the Court indicated it would be unlikely to intervene or interfere with the state's imposition of said regulation.¹⁷⁷

The Democratic Party presented arguments putting forth the detrimental impact these laws will have on People of Color and how it would make voting more onerous.¹⁷⁸ Republicans advocated the opposite and said that these laws are not burdensome and do not negatively impact any one group of people.¹⁷⁹ The United States Supreme Court indicated that these kinds of legal disputes are most appropriately decided by the legislature and not the judiciary.¹⁸⁰

Crawford paved the way for future laws and legal challenges to be upheld, in that it made clear that any cursory challenges to a

¹⁷⁵ *Crawford*, 553 U.S. at 200-01 (the court held that the state requirement for a state issued photo ID was closely related to a legitimate state interest and did not unreasonably impose additional burdens upon voters).

¹⁷⁶ *Id.* at 203 (“[w]hen evaluating a neutral, nondiscriminatory regulation of voting procedure, “[w]e must keep in mind that ‘[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.’”) (citing *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 451 (2008)).

¹⁷⁷ Harrow, *supra* note 172.

¹⁷⁸ Brief of Appellant Indiana Democratic Party at 10, *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008) (No. 06-2317).

¹⁷⁹ Brief of Appellee Rokita at 24, *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008) (No. 06-2317).

¹⁸⁰ Harrow, *supra* note 172; *Crawford*, 553 U.S. at 208 (Scalia, J., concurring).

voting restriction made out to be discriminatory would not succeed.¹⁸¹ This is especially true when one is able to show how the law is rationally related to a legitimate state interest.¹⁸² So long as the law bears no monetary requirements (which would be an illegal “poll tax”), and has a clearly enunciated State goal, it will likely withstand a judicial challenge.¹⁸³ The Supreme Court’s majority is signaling an aversion to striking down these types of laws, even when the law appears to be taxing and indeed onerous on a certain segment of voters. This unwillingness to strike down these types of laws is evident in the Court’s involvement in other cases where the Court refused to declare statutes facially invalid.¹⁸⁴

The result of *Crawford* shows that the Supreme Court is reluctant to be drawn into a political fight, when they can rest on a law being non-discriminatory and upheld by valid neutral justifications. But it could be argued that even imposing a “minimal” burden on voters is not justified when the sole purpose of the regulation is to discourage and dissuade otherwise previously targeted, marginalized, underrepresented voters from exercising their constitutional right to vote.¹⁸⁵

These attempts by various elements of our society to suppress the vote have changed very little as we move into modern day. Following the *Crawford* case, another way voter’s rights have been abridged is with the 2013 United States Supreme Court case, *Shelby County v. Holder*.¹⁸⁶ This case effectively broke the heart of the Voting Rights Act of 1965, Section 5, in a 5 to 4 vote, which now allows nine, primarily southern states, to make changes to their election laws with no prior approval by the federal government.¹⁸⁷

¹⁸¹ See *Shelby v. Holder*, 570 U.S. 529 (2013) (holding that Section 4 of the Voting Rights Act was unconstitutional as the formula used to determine whether a state required approval by federal authorities to change their voting laws and requirements was essentially outdated).

¹⁸² *Id.* at 567 (Ginsburg, J., dissenting).

¹⁸³ See *supra* notes 161-62.

¹⁸⁴ See Harrow, *supra* note 172.

¹⁸⁵ *Id.*

¹⁸⁶ *Shelby*, 570 U.S. 529 (2013).

¹⁸⁷ *Id.*; Adam Liptak, *Supreme Court Invalidates Key Part of Voting Rights Act*, N.Y. TIMES (Jun. 25, 2013), <https://www.nytimes.com/2013/06/26/us/supreme->

This is a perfect example of how White privilege impacts and infects every segment of our society, as Chief Justice John Roberts stated for the majority “while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.”¹⁸⁸ Justice Roberts noted for the majority opinion that the facts that precipitated the necessity for the Voting Rights Act of 1965 no longer existed.¹⁸⁹ Stated plainly, things were better and there was no longer a need to verify whether certain states were mistreating and disenfranchising Black voters and continuing to suppress their votes.¹⁹⁰ It is worth noting that the monitoring of these states that had a history of voter discrimination did not infringe upon state sovereignty (as was alleged), it can be argued that it enhanced it by supplying “a viable, engaged and protected electorate.”¹⁹¹

This vote came during the presidency of Barack Obama and was a direct response to Whites who felt threatened by a change in political demographics.¹⁹² The direction of power was moving into Black and Brown hands, but some Whites felt that their lives were dependent on and supported by the continuation of a racial hierarchy.¹⁹³ President Obama’s election awoke a sleeping giant and brought forth a wave of White supremacy that began to give voter suppression even more momentum, speed, deliberation and anger than in the years immediately preceding his election.¹⁹⁴ We can

court-ruling.html.

¹⁸⁸ *Shelby*, 570 U.S. at 557.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 535 (“[t]here is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions.”).

¹⁹¹ Brief of Professor Patricia A. Broussard et al. of Florida A&M University College of Law as Amici Curiae Supporting Respondents at 3, *Shelby v. Holder*, 570 U.S. 529 (2013) (No. 12-96).

¹⁹² Diana C. Mutz, *Status Threat, Not Economic Hardship, Explains the 2016 Presidential Vote*, 115 PROC. ACAD. SCI. U.S. 19, 19 (May 8, 2018).

¹⁹³ *Id.* at 2.

¹⁹⁴ *The Rise of White Identity Politics Didn’t Start with Trump* explains Michael Tesler: *Podcast & Transcript*, NBC NEWS: THINK, ANALYSIS, ESSAYS (Oct. 30, 2018, 3:53 PM), <https://www.nbcnews.com/think/opinion/rise-white-identity->

witness that since the *Shelby* decision, keeping Black and Brown people from the ballot box has taken on new meaning in the insidious, pervasive and pernicious ways to stop voting from taking place.

To show how egregiously erroneous Justice Roberts and the majority were in their opinion, one need only observe the years 2016-2020 which brought with them the disastrous Trump administration.¹⁹⁵ From the bench, and in a rare move, Justice Ruth Bader Ginsburg voiced her dissent by quoting Dr. Martin Luther King, Jr. and emphasizing that his life's work and legacy had been done a disservice by the majority's decision.¹⁹⁶ She mentioned that the policies and procedures in place in the late 1800's to the early 1900's were not vanquished but remodeled and updated to still accomplish the same purpose: voter suppression.¹⁹⁷

Justice Ginsburg understood how this erosion of voting rights and cessation of necessary federal oversight was crucifying rights long fought for and hard won. These provisions were enacted in states that had clear histories of racially motivated voter suppression.¹⁹⁸ The sole purpose was to allow federal oversight in states that had shown they could not be trusted to treat all voters in a fair and equitable manner. These were not random policies directed at random states. These were specifically targeted at states that showed through their policies, laws, and procedures that federal supervision was absolutely necessary if we were to have free and fair elections where all U.S. citizens have a right to cast a free and fair ballot.¹⁹⁹ By withdrawing said federal surveillance, the states would be able to enact provisions

politics-didn-t-start-trump-explains-michael-ncna926191.

¹⁹⁵ See Mutz, *supra* note 192.

¹⁹⁶ *Shelby*, 570 U.S. at 581 (Ginsburg, J., dissenting) (“[i]n King's words, ‘the arc of the moral universe is long, but it bends toward justice.’”).

¹⁹⁷ *Id.* at 563; see also Liptak, *supra* note 187.

¹⁹⁸ *Shelby*, 570 U.S. at 560 (Ginsburg, J., dissenting) (“[p]articularly effective is the VRA's requirement of federal preclearance for all changes to voting laws in the regions of the country with the most aggravated records of rank discrimination against minority voting rights.”).

¹⁹⁹ See *id.* (“[a] century after the Fourteenth and Fifteenth Amendments guaranteed citizens the right to vote free of discrimination on the basis of race, the ‘blight of racial discrimination in voting’ continued to ‘infec[t] the electoral process in parts of our country.’”).

and policies that perhaps would violate people's right to vote.²⁰⁰ It goes without saying that the people most impacted by these types of laws are people of color. These are the individuals that the Voting Rights Act was designed to protect.²⁰¹ As Chief Justice Roberts noted, "the 'blight of racial discrimination in voting' that had 'infected the electoral process in parts of our country for nearly a century,'" which this Act was enacted to help ameliorate, was no longer necessary in 2013.²⁰² Justice Roberts suggested that the evils of the past in regards to voter suppression and intimidation, were no longer a problem because "things ha[d] changed dramatically."²⁰³ Justice Ginsburg, in her dissent, opined that it was foolish to take away the "preclearance" portion of the Voting Rights Act.²⁰⁴ She analogized how the Act worked as an umbrella, explaining that one does not discard of the umbrella in a storm simply because one is not getting wet.²⁰⁵ The comparison is simple and easy to understand. The "preclearance" section of the Voting Rights Act is working as it is designed to. Do not roll away these protections when we can see we are making progress and protecting the rights of vulnerable citizens. Justice Ginsburg's passion will be sorely missed from the Bench, but her sage wisdom and knowledge will never be replaced as her words guide future legal advocates. It is clear that her opinion was accurate because on the day that *Shelby* was decided, multiple states began to make decisions that were in opposition to the safeguards designed by the "preclearance" section of the Voting Rights Act.²⁰⁶ On the day

²⁰⁰ See *id.* ("between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory. Congress found that the majority of DOJ objections included findings of discriminatory intent, and that the changes blocked by preclearance were 'calculated decisions to keep minority voters from fully participating in the political process.'").

²⁰¹ See *Congress and the Voting Rights Act of 1965*, NAT'L ARCHIVES, <https://www.archives.gov/legislative/features/voting-rights-1965> (last reviewed Jun. 19, 2019).

²⁰² *Shelby*, 570 U.S. at 530 (2013) (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966)).

²⁰³ *Id.* at 547.

²⁰⁴ See *id.* at 560 (Ginsburg, J., dissenting).

²⁰⁵ *Id.* at 590.

²⁰⁶ Joyce White Vance, *Ruth Bader Ginsburg Lost Her Battle to Save Voting Rights*.

Shelby was decided, Alabama and Mississippi both enacted voter ID laws that would not have passed pre-*Shelby*; Texas and North Carolina enacted stricter voter ID acts and North Carolina also decreased early voting times; the *Shelby* decision also opened the door to multiple jurisdictions purging voter rolls.²⁰⁷

1. Strict Voter ID Laws

At the heart of voter suppression and intimidation is the desperate desire to cling to political power and resist the inevitable tide of changing demographics. Stated plainly, Whites in power want to remain in power. As an ever-increasing shrinking demographic, non-Hispanic White people are diminishing in numbers. This group has managed to hold onto a disproportionate amount of political capital using violent, aggressive, and repressive actions geared at Blacks and allies in the struggle for the right to have a voice speak for them in the political arena. This threat to dismantle power in the hands of a frightened White segment of the country, ushered in the rise of the poisonous politics we saw play out in the lead up to the 2020 election.

Opposing views would argue that these efforts are not geared towards voter suppression or intimidation but are an attempt to discourage and eliminate voter fraud.

One way in which the previous administration attempted to steal, invalidate, and discount votes was to make an attempt at impeding the progress of the U.S. Mail System. The Postmaster General,²⁰⁸ sought to *eliminate overtime* for postal workers, reducing

Here's How We Can Take Up the Fight and Honor Her Legacy, TIME MAG. (Sept. 21, 2020 11:05 AM), <https://time.com/5890983/ruth-bader-ginsburg-voting-rights/>.

²⁰⁷ *The Effects of Shelby County v. Holder*, BRENNAN CTR. FOR JUST. (Aug. 6, 2018), <https://www.brennancenter.org/our-work/policy-solutions/effects-shelby-county-v-holder>.

²⁰⁸ *New Postmaster General is Top GOP Fundraiser*, NAT'L PUB. RADIO (May 7, 2021, 1:28 PM), <https://www.npr.org/2020/05/07/851976464/new-postmaster-general-is-top-gop-fundraiser> (explaining that Louis DeJoy, a businessman who has given millions of dollars to the Republican Party, including the Trump campaign, has been named the nation's new postmaster general).

post office hours, removing public postal mailboxes, and replacing various mail sorting machines.²⁰⁹ The intended effect was to disenfranchise voters. This, all during the COVID-19 global pandemic, which precipitated the necessity for people to vote by mail. Being in a pandemic, the public was warned to stay home when able, socially distance, wear masks and frequently wash their hands.²¹⁰

Attempts were also made to completely discredit the United States mail system. This was due in part to the fact that many Americans were choosing to cast their ballots by mail because of the COVID-19 pandemic. People were choosing to vote by mail to save lives and the president of the United States attempted to undermine the very system that had provided reliable delivery of mail for more than two centuries.²¹¹ These outcries were aimed at setting the scene for the “big lie” that the election was faulty and that the only true winner would be Donald Trump.²¹² This was an attempt at disqualifying and deleting the millions of votes cast by Black and Brown people.

Some will make the argument that Donald Trump did not attempt to use the United States Postal Service to subvert votes, but the evidence shows otherwise. Donald Trump is quoted as saying the following:

²⁰⁹ Emily Cochrane et al., *Postal Service Suspends Changes After Outcry Over Delivery Slowdown*, N.Y. TIMES (Aug. 18, 2020) <https://www.nytimes.com/2020/08/18/us/politics/postal-service-suspends-changes.html>.

²¹⁰ *How to Protect Yourself & Others*, CTR. FOR DISEASE CONTROL AND PREVENTION (Aug. 13, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

²¹¹ *The Mailing Industry and the United States Postal Service: An Enduring Partnership*, SMITHSONIAN NAT’L POSTAL MUSEUM, <https://postalmuseum.si.edu/exhibition/america’s-mailing-industry/the-united-states-postal-service> (last visited Apr. 19, 2021).

²¹² Chris Cillizza, *Donald Trump Just Straight-Up Admitted he is Working to Meddle in the Election*, CNN (Aug. 13, 2020 4:44 PM), <https://www.cnn.com/2020/08/13/politics/donald-trump-mail-in-ballots-2020/index.html>.

*They want \$3.5 billion for something that will turn out to be fraudulent, that's election money basically. They want \$3.5 trillion -- billion dollars for the mail-in votes, OK, universal mail-in ballots, \$3.5 trillion. They want \$25 billion, billion, for the Post Office. Now they need that money in order to have the Post Office work so it can take all of these millions and millions of ballots... Now, if we don't make a deal, that means they don't get the money. That means they can't have universal mail-in voting, they just can't have it. So, you know, sort of a crazy thing. Very interesting.*²¹³

The previous administration had no lows to which they were too ashamed to descend to. The hypocrisy in rushing through a U.S. Supreme Court nominee (a mere days after the passing of the late Justice Ruth Bader Ginsburg), Amy Barrett, was to set up a looming court battle in what many thought was going to be a fight for the presidency.²¹⁴ She was to help push the conservative edge,²¹⁵ on the highest court in the land in a positive way for the previous administration.²¹⁶ This, all in an effort to override legally cast votes by citizens of the United States.

2. Massive Closing of Polls

An additional tactic included closing polling places in predominantly Black communities.²¹⁷ Recall the previous discussion

²¹³ *Id.*

²¹⁴ See Joan Biskupic, *Amy Coney Barrett Joins the Supreme Court in Unprecedented Times*, CNN (Oct. 27, 2020 11:09 AM), <https://www.cnn.com/2020/10/27/politics/amy-coney-barrett-joins-supreme-court-unprecedented/index.html>.

²¹⁵ *Id.* (explaining how the Court now has a 6-3 conservative-liberal bench).

²¹⁶ *Id.*

²¹⁷ See Elena Mejia Lutz, *Report: Texas has closed most polling places since court ruling*, THE TEXAS TRIB., (Nov. 4, 2016, 4:00 PM) <https://www.texastribune.org/2016/11/04/report-texas-holds-highest-number-polling-place-cl/> (highlighting that 5 counties in Texas rank among the top 10 in the country for having the greatest percentage of polling places shuttered. At the time of publication of the referenced

regarding the gutting of the 1965 Voting Rights Act and how it now allows states previously federally supervised to now make changes without prior federal approval; that is what happened in Texas. Once the ruling took place making these drastic changes to the Voting Rights Act of 1965, Texas began to close polling places and led the nation in doing so.²¹⁸ Keep in mind the original provisions in the Voting Rights Act of 1965 specified certain states that had a history of discrimination in their voting practices.²¹⁹ Texas was one of the states with a history of disenfranchising voters. The ruling and *Shelby* shows the fallacy and blindness in Justice Roberts' comments regarding the lack of necessity for federal oversight of certain jurisdictions.²²⁰ Prior to the *Shelby County* ruling, Texas would have had to get prior approval from the federal government in order to close these polling places.²²¹ But since the oversight was deemed no longer necessary, Texas was able to make these decisions unilaterally. These kinds of moves only serve a singular purpose: to dissuade, discourage and prevent people from registering and voting.

Pre-Shelby: States and municipalities were mandated to notify voters of planned polling location closures ahead of time.²²² Election officials were also required to show that proposed voting changes would not have a discriminatory effect on voters of Color, and they were required to give the Department of Justice statistical results and data from the U.S. Census Bureau regarding the racial results and

2016 article, no other state had closed more polling places than Texas).

²¹⁸ *Id.*

²¹⁹ *See id.*; *see also About Section 5 of the Voting Rights Act*, U.S. DEP'T OF JUST., <https://www.justice.gov/crt/about-section-5-voting-rights-act> (Dec. 13, 2021).

²²⁰ *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 546-47 (2013) ("At the time, the coverage formula—the means of linking the exercise of the unprecedented authority with the problem that warranted it—made sense. ... Nearly 50 years later, things have changed dramatically. Shelby County contends that the preclearance requirement, even without regard to its disparate coverage, is now unconstitutional. Its arguments have a good deal of force.").

²²¹ Such approval was known as "preclearance." *See id.* at 537 ("A jurisdiction could obtain such "preclearance" only by proving that the change had neither "the purpose [nor] the effect of denying or abridging the right to vote on account of race or color.")

²²² *See* Mejia Lutz, *supra* note 217.

impact of polling closures.²²³ The Department of Justice would afterwards make contact with the affected community to gather information concerning the impact of the proposed voting change/proposal.²²⁴

Post-Shelby: States and municipalities are no longer required to update voters of changes, and the Department of Justice is not required to scrutinize the effect of proposed voting changes on minority communities in Section 5 jurisdictions.²²⁵ In order to recognize potentially discriminatory polling place relocations or precinct changes or polling closures, voters have to depend on reports from the media, and or local advocates who have the knowledge from attending specific legislative meetings.²²⁶ In the vast majority of cases, closures are not noticed, are unreported and rarely if ever are challenged.²²⁷

Texas Republican Governor Greg Abbott claimed that the justification for closing voting locations was an attempt to stop illegal voting.²²⁸ By making this move in closing satellite locations where people would be able to drop off mail in ballots, it would cause potentially thousands of additional voters to have to go to one central location to drop off ballots.²²⁹

While polling sites were being closed in Black and Brown communities, Whites saw greater polling sites opening up in their communities.²³⁰ In a predominantly White area (Hamilton County),

²²³ *An Assessment of Minority Voting Rights Access in the United States, 2018 Statutory Report*, U.S. COMMISSION ON CIV. RTS. (2018) https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Texas Governor Cuts Back on Voting Locations Weeks Before Election*, BBC NEWS (Oct. 1, 2020), <https://www.bbc.com/news/election-us-2020-54380684>.

²²⁹ *Id.*

²³⁰ See Alexia Fernández Campbell, *Indiana Has Made It Harder For People To Vote*, THE CTR. FOR PUB. INTEGRITY (Oct. 16, 2020), <https://publicintegrity.org/politics/elections/us-polling-places/indiana-has-made-it-harder-for-people-to-vote/>.

election officials increased the early voting places thereby offering White voters greater opportunities to vote.²³¹

In the state of Indiana, lawmakers worked diligently to make voting more difficult.²³² A law was passed in 2019 which gave voters a smaller window in which to request an absentee ballot.²³³ The state also passed a law that prohibited citizens from asking judges to allow polling sites to remain open additional hours if a polling place was experiencing problems.²³⁴ This law was eventually struck down but it shows the lengths that politicians will go to in order to keep votes from being cast and tallied.²³⁵

Opponents say that voter fraud is a legitimate issue that is not being addressed properly and as a result, many votes are being cast that are illegal.²³⁶ The belief is that instances of election fraud affect the outcome of elections and it is serious enough to warrant prosecution.²³⁷ These officials propose simply trying to create an electoral process that is trustworthy and dependable. They believe that the system has multiple security vulnerabilities that lead to voter fraud.²³⁸ In an effort to address the security vulnerabilities they believe that the best solution is to increase the security surrounding the ability to vote.²³⁹ Hence, the multiple states across America that have passed restrictive voting laws.

Over the last two decades, various sectors of our country have placed significant hurdles in front of the ballot box.²⁴⁰ These attempts

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ Campbell, *supra* note 230.

²³⁶ See Hans A. von Spakovsky, *U.S. Election Fraud is Real - And It Is Being Ignored* THE HERITAGE FOUND (Oct. 27, 2020), <https://www.heritage.org/election-integrity/commentary/us-election-fraud-real-and-it-being-ignored>.

²³⁷ See *About The Election Fraud Database*, THE HERITAGE FOUND., <https://www.heritage.org/article/about-the-election-fraud-database> (last visited Apr. 16, 2021).

²³⁸ *Id.*

²³⁹ See *id.*

²⁴⁰ *Vote Suppression*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/>

come in the form of restricting voting times, limiting voter registration, enacting strict voter ID laws and cleaning or purging voter registration rolls.²⁴¹ Sadly, these efforts have been made easier as a result of the United States Supreme Court decreasing the effectiveness of the Voting Rights Act in 2013.²⁴² These efforts have caused a number of eligible voters to not be able to vote.²⁴³ Those that have been impacted most are racial minorities, old voters, rural voters, those with disabilities and poor people of all races.²⁴⁴ In spite of the rhetoric espoused by those who claim the need for stricter voting requirements, the proof is that these concerted efforts disproportionately impact African-Americans.²⁴⁵

There have only been a small number of voter fraud cases that have resulted in a conviction.²⁴⁶ In 2007 an analysis done by the New York Times showed 120 cases that have been filed by the department of justice over a five-year period.²⁴⁷

IV. Bold Moves and Voter Intimidation

In an unprecedented move, Indiana closed voter registration 29 days prior to the 2020 election.²⁴⁸ Of all states, they were the earliest to do so.²⁴⁹ The state also purged voting rolls if they believed a voter had left the state and did so without notifying the voter.²⁵⁰

issues/ensure-every-american-can-vote/vote-suppression (last visited Jun. 14, 2021).

²⁴¹ The Leadership Conference Education Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote*, 6, THE LEADERSHIP CONF. (Sept. 2019), <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

²⁴² *Id.*

²⁴³ *Id.* at 6, 8.

²⁴⁴ *Id.* at 8.

²⁴⁵ *Id.*

²⁴⁶ Eric Lipton & Ian Urbina, *In 5-Year Effort, Scant Evidence of Voter Fraud*, N.Y. TIMES (Apr. 12, 2007), <https://www.nytimes.com/2007/04/12/washington/12fraud.html?pagewanted=all>.

²⁴⁷ *Id.*

²⁴⁸ Campbell, *supra* note 230.

²⁴⁹ *Id.*

²⁵⁰ Campbell, *supra* note 176 (stating that the state used the Interstate Voter Registration Crosscheck Program to search for residents who voted in another state).

Voter purges are currently increasing. Between 2016 and 2018, 17 million voters were purged across America.²⁵¹ If there were still constitutional protections offered by Section 5 of the Voting Rights Act of 1965, there would be “as many as 1.1 million fewer” people removed from voting rosters from 2016 to 2018.²⁵²

Tennessee, Kansas, and Indiana were among the states with the toughest versions of the voter ID law.²⁵³ Prior to 2006, no state-mandated voters produced a state-issued photo identification in order to vote.²⁵⁴ This requirement severely hampers Black and Brown communities in a way that suppresses turnout. Many people of lower incomes may not have valid, up-to-date, state-issued photo identification for several reasons, but the requirement hinders voters from showing up in the numbers in which they should.²⁵⁵ Proponents of the photo ID mandates argue that it is easy to acquire a state issued photo ID.²⁵⁶ This is not true for many poor, Black, Brown, or elderly people who may not have the resources or means of transportation to get the ID.²⁵⁷ There is documentation that an applicant must have in order to get the state issued ID, and many times having the necessary

If a “match” was found, then the individual could be taken off of the Indiana voting roll, all with no notice to the voter).

²⁵¹ Kevin Morris, *Voter Purge Rates Remain High, Analysis Finds*, BRENNAN CTR. FOR JUST. (Aug. 21, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/voter-purge-rates-remain-high-analysis-finds>.

²⁵² *Id.*

²⁵³ Suevon Lee & Sarah Smith, *Everything You’ve Ever Wanted to Know About Voter ID Laws*, PROPUBLICA (Mar. 9, 2016, 8:33 AM), <https://www.propublica.org/article/everything-youve-ever-wanted-to-know-about-voter-id-laws>.

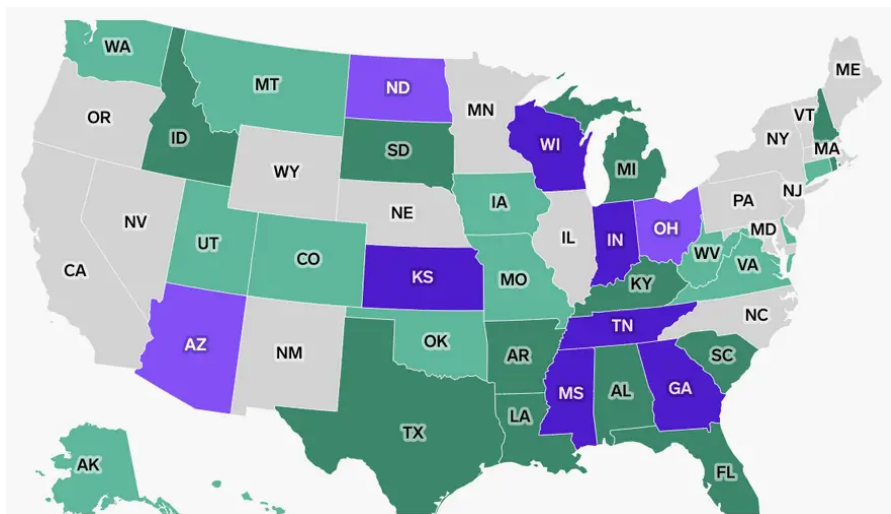
²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ See *Arguments For and Against Voter Identification Laws*, BALLOTPEDIA, https://ballotpedia.org/Arguments_for_and_against_voter_identification_laws (last visited Apr. 15, 2021).

²⁵⁷ Sari Horwitz, *Getting A Photo ID So You Can Vote Is Easy. Unless You’re Poor, Black, Latino, Or Elderly*, WASH. POST (May 23, 2016), https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html.

documents and finances is the issue.²⁵⁸ Many people are unaware of the difficulties that others face in getting a state-issued ID card, and these restrictions cause many people to simply give up on trying to get the ID.²⁵⁹ This means they will not be able to vote in jurisdictions that require a photo ID to vote. Here is a map showing voter identification laws by state as of November 2020:



Light Grey: No ID required; Dark Green: Non-strict photo ID; Light Green: Non-strict non-photo ID; Dark Purple: Strict photo ID; Light Purple: Strict non-photo ID.²⁶⁰

²⁵⁸ *Id.*

²⁵⁹ *Voter ID 101: The Right to Vote Shouldn't Come with Barriers*, INDIVISIBLE, <https://indivisible.org/resource/voter-id-101-right-vote-shouldnt-come-barriers>.

²⁶⁰ Grace Panetta & Yuqing Liu, *In 34 States, You'll Need To Show Id To Vote On Election Day. See What The Law Requires In Each State*, BUS. INSIDER (Nov. 2, 2020), <https://www.businessinsider.com/voter-identification-requirements-in-each-state-2020-8>. (Hawaii was cut off in the graph but it is Light Green).

A. Gerrymandering

Gerrymandering is the maneuvering of district maps to maximize the voters a candidate or political party wants to encapsulate.²⁶¹ The parties seek to draw boundaries in such a way as to win as many political seats as possible in the newly drawn boundary lines.²⁶² Currently, these gerrymandered districts are more Republican-controlled because in part, Republicans performed well in the 2010 elections.²⁶³ This allowed Republicans greater access to “state legislatures, which oversaw redistricting after the 2010 census.”²⁶⁴

B. Greater Suppression Tactics

It was commonplace in the late 19th century and early part of the 20th century, for armed White men to go to polling sites in an effort to keep Blacks from voting.²⁶⁵ It was not uncommon for them to show up with placards and signs with racist slogans such as, 'Coon Hunting Club.'²⁶⁶ The acts of armed White people entering polling places during the 2020 elections is a frightening reminder of the past intimidation tactics employed by White people to suppress the non-White voters.²⁶⁷ The Trump administration actively courted armed people to show up at polling places in a clear effort of intimidation.²⁶⁸

²⁶¹ Michael Wines, *What Is Gerrymandering? And How Does it Work?*, N.Y. TIMES (June 27, 2019), <https://www.nytimes.com/2019/06/27/us/what-is-gerrymandering.html>.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ Yu, *supra* note 48.

²⁶⁶ *Id.*

²⁶⁷ Shaila Dewan, *Armed Observers, Chants of '4 More Years' at Polls: Is That Legal?*, N.Y. TIMES (Oct. 30, 2020), <https://www.nytimes.com/2020/10/30/us/poll-watching-intimidation.html>.

²⁶⁸ See Tim Sullivan & Adam Geller, *Increasingly Normal: Guns Seen Outside Voting Centers*, ASSOCIATED PRESS NEWS (Nov. 7, 2020) <https://apnews.com/article/protests-vote-count-safety-concerns-653dc8f0787c9>

Election officials had to specifically address voter security in light of the direct requests made by Donald Trump to have his supporters go to the polls and *watch very carefully*.²⁶⁹ The Nevada Attorney General, Aaron Ford, replied in response to a tweet by Donald Trump and said that Trump was not seriously talking about poll watching, but was really talking about voter intimidation.²⁷⁰ The Attorney General made it clear that voter intimidation is against the law in Nevada; therefore, anyone breaking the law in such a manner would be prosecuted.²⁷¹ The Trump administration had supporters who would caravan in packs while having flags and banners streaming from their vehicles.²⁷² One frightening incident involved a caravan of supporters of the last administration, bullying and attempting to force a Biden/Harris bus off of the highway in Texas.²⁷³ The group were aggressively trying to get the bus to stop and/or get off of the road. They ran into a person's vehicle and were yelling profanity and

258524078548d518992 (discussing armed protesters outside vote counting centers); see also Robert J. Spitzer, *Guns Don't Belong Near Polling Places. Right Wingers Want Them There Anyway*, WASH. POST (Sept. 30, 2020 9:52 AM), <https://www.washingtonpost.com/outlook/2020/09/30/guns-polling-places-intimidation/> (discussing pro-Trump activists at polling places and demonstrations).

²⁶⁹ Matt Vasilogambros & Carrie Levine, *'We'll Protect Their Right To Vote': How Election Officials Are Preparing For Voter Intimidation Tactics*, USA TODAY (Oct. 19, 2020, 10:20 AM), <https://www.usatoday.com/story/news/nation/2020/10/17/election-officials-see-voter-intimidation-threats-harassment-tactics/3677238001/>.

²⁷⁰ *Id.*

²⁷¹ Cara Korte & Audrey McNamara, *Trump Encourages Supporters To Independently Monitor Polling Places — A Federal Crime*, CBS NEWS (Sept. 30, 2020, 3:09 PM), <https://www.cbsnews.com/news/president-trump-encourages-supporters-to-monitor-polling-places-a-federal-crime/>.

²⁷² Scott Wilson et al., *With Caravans And Outdoor Rallies That Some See As Intimidation, Trump Supporters Step Up Public Promotion*, WASH. POST (Nov. 1, 2020 8:15 PM), https://www.washingtonpost.com/national/trump-caravans-rallies-highways/2020/11/01/7e80c48a-1c8a-11eb-8b18-db150c1e65f1_story.html.

²⁷³ David Montgomery & Maggie Haberman, *Vehicles Flying Trump Flags Try To Force A Biden-Harris Campaign Bus Off A Highway In Texas.*, N.Y. TIMES (Oct. 31, 2020), <https://www.nytimes.com/2020/10/31/us/elections/vehicles-flying-trump-flags-try-to-force-a-biden-harris-campaign-bus-off-a-highway-in-texas.html>.

threats.²⁷⁴ Local law enforcement officials had to accompany the bus to its destination.²⁷⁵

The last presidential administration was able to, through blatant lies and incredible falsehoods, convince a swath of his gullible supporters that there was massive voter fraud, and that the election was stolen.²⁷⁶ This, despite U.S. election officials (who verify the security of elections) stating this election was the “most secure” in U.S. history.²⁷⁷

What this last president attempted to do was the same thing that has been happening to Black voters for centuries: deny a group’s ability and right to vote in a free and fair election. While the tactics look different in some regards, the aim is the same. The goal and purpose are to not allow every person who wants to get registered to do so; to not allow lawfully registered voters to vote and if they somehow manage to vote, to discredit and/or not allow their vote to be counted.

The Republican party knows that for them to remain in power, every single vote cannot be counted.²⁷⁸ So, they then will use every opportunity to craft policies and procedures that will keep the Republican party in power. This results in a perverted type of political power play. As the nation grows Browner and Blacker and more progressive in ideas and fundamentals, this demographic shift is causing the party of old White men (Republicans) to be displaced and

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ See Reuters Staff, *Fact Check: Courts Have Dismissed Multiple Lawsuits of Alleged Electoral Fraud Presented By Trump Campaign*, THOMSON REUTERS (Feb. 15, 2021 10:41 AM), <https://www.reuters.com/article/uk-factcheck-courts-election/fact-check-courts-have-dismissed-multiple-lawsuits-of-alleged-electoral-fraud-presented-by-trump-campaign-idUSKBN2AF1G1> (hereinafter *Fact Check: Courts Have Dismissed Multiple Lawsuits of Alleged Electoral Fraud*).

²⁷⁷ *Id.*

²⁷⁸ ACLU, *Block the Vote: How Politicians are Trying to Block Voters from the Ballot Box*, August 17, 2021, <https://www.aclu.org/news/civil-liberties/block-the-vote-voter-suppression-in-2020> (last visited December 9, 2022).

out of the seat of authority.²⁷⁹ Losing a position of power, authority and clout can be frightening. This has caused the Republican party to enact rules to keep themselves in office.²⁸⁰

V. The Tea Party and Beyond

Georgia Democratic candidate Stacey Abrams (an African American female) and Republican candidate Georgia Governor Brian Kemp's (an older White male) gubernatorial race exemplified how, in the words of Ms. Abrams, Kemp was an "architect of voter suppression."²⁸¹ Ms. Abrams explained, because of the position Kemp held as the Georgia Secretary of State, he was the "referee, the contestant and the scorekeeper."²⁸² Abrams was able to systematically show how centuries old tactics of keeping Black and Brown people from the polls, worked in the Georgia 2018 gubernatorial election. Age-old tricks, manipulation and deceit were at work in the forms of the rejecting of absentee ballots, purging voter rosters and closing of voting locations across the entire state, changing the outcome of a very close election.²⁸³

Abrams claimed that Kemp engaged in a deliberate campaign to limit the number of Georgia residents allowed to cast ballots.²⁸⁴ In July of 2017, Kemp's office removed almost 600,000 people, or 8% of the state's registered voters, from the rolls; an estimated 107,000 of them were eliminated just because they had not cast ballots in

²⁷⁹ Michael H. Keller & David D. Kirkpatrick, *Their America Is Vanishing. Like Trump, They Insist They Were Cheated*, October 23, 2022, <https://www.nytimes.com/2022/10/23/us/politics/republican-election-objectors-demographics.html> (last visited December 9, 2022).

²⁸⁰ Zack Beauchamp, *Call it authoritarianism*, June 15, 2021, <https://www.vox.com/policy-and-politics/2021/6/15/22522504/republicans-authoritarianism-trump-competitive> (last visited December 9, 2022).

²⁸¹ Katie Bernard, *Stacey Abrams Calls Former Opponent in Georgia Governor's Race An 'architect Of Voter Suppression'*, CNN POL. (Apr. 3, 2019 7:52 PM), <https://www.cnn.com/2019/04/03/politics/abrams-kemp-voter-suppression>.

²⁸² *Id.*

²⁸³ *Id.* (Noting that Abrams lost the race to Kemp by 1.4%).

²⁸⁴ *Id.*

recent elections.²⁸⁵ Kemp also prevented the registration of approximately 53,000 state residents, 70% of whom are African-American and therefore could have reasonably been expected to vote for Stacey Abrams.²⁸⁶ For reference, Texas, between 2012 and 2014, deleted approximately 363,000 more voters than they removed from 2008 to 2010.²⁸⁷ Virginia removed 379,019 more voters between 2012 and 2016 than between 2008 to 2012.²⁸⁸

Both previously mentioned actions taken by Georgia were entirely legal. Georgia, and at least eight other states, had a “use it or lose” law that allows it to cancel voter registrations if the person has not voted in recent elections.²⁸⁹ The stated goal behind “use it or lose it” policies is to allow the state to keep voter registration records up-to-date.²⁹⁰ It is reasonable to take people off of the roll who have passed away, are in prison, have become legally incompetent, or have left the state.²⁹¹ The state also has an “exact match” law, enacted last year, whereby a voter registration application must be identical to the information on file with Georgia’s Department of Driver Services or the Social Security Administration; if they don’t match, or no such information is on file, then the registration is put on hold until the applicant can provide additional documents to prove his or her identity.²⁹² That’s why more than 50,000 applicants are on hold; they

²⁸⁵ See Lawrence Goldstone, *America’s Relentless Suppression of Black Voters*, THE NEW REPUBLIC (Oct. 24, 2018), <https://newrepublic.com/article/151858/americas-relentless-suppression-black-voter>.

²⁸⁶ *Id.*

²⁸⁷ Jonathan Brater et al., *Purges: A Growing Threat to the Right to Vote*, BRENNAN CTR. FOR JUST. (2018), <https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote>.

²⁸⁸ *Id.*

²⁸⁹ See Paul M. Smith, “Use It or Lose It”: The Problem of Purges from the Registration Rolls of Voters Who Don’t Vote Regularly, AM. BAR ASS’N HUM. RTS. (Feb. 9, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/-use-it-or-lose-it---the-problem-of-purges-from-the-registration0/.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² Stanley Augustin, *Georgia Largely Abandons Its Broken “Exact Match” Voter Registration Process*, LAWYERS’ COMMITTEE FOR CIV. RTS. UNDER L. (Apr. 5,

can still vote, with a photo ID, but no doubt their pending status will discourage many.²⁹³ This law is currently being challenged.²⁹⁴ In words that ring true throughout the ceaseless ages of eternity in American history, Abrams said, “voter suppression is as old as America.”²⁹⁵

A. Fake Cries of Voting Fraud/Mail in Ballots

Once it was becoming clear that former Vice President Joe Biden would win the 2020 presidential election, his competitor began to craft an elaborate, unbelievable lie that the election was being rigged.²⁹⁶ He began to utter this phrase in various iterations daily through social media, right leaning television news shows, from the White House, and at his rallies.²⁹⁷ He began to lay the foundation for the *stop the steal* and *fraudulent election scheme* long before the 2020 election.²⁹⁸ He understood if he could convince his supporters that they were going to be cheated and that their country would be taken

2019), <https://www.lawyerscommittee.org/georgia-largely-abandons-its-broken-exact-match-voter-registration-process/>.

²⁹³ *Id.* (“The ‘exact match’ system placed more than 50,000 voter registrations—disproportionately those of voters of color—on hold before the 2018 elections because of discrepancies between government records.”).

²⁹⁴ *Id.* (“Litigation around the state’s process for verifying voter registration applications started over a decade ago. After the initial 2008 litigation that challenged the first implementation of the verification process, then-Secretary of State Kemp implemented an exact match process in 2010. That version was ended by a settlement after a lawsuit filed in 2016. In 2017, the legislature revived the failed program despite knowing it had a disparate impact on voters of color. After the current lawsuit was filed in 2018, the Georgia legislature and Governor Kemp have now largely ended this discriminatory system.”)

²⁹⁵ Bernard, *supra* note 278.

²⁹⁶ Amanda Seitz et al., *False Claims Of Voting Fraud, Pushed By Trump, Thrive Online*, ASSOCIATED PRESS NEWS (Nov. 10, 2020), <https://apnews.com/article/election-2020-joe-biden-donald-trump-politics-media-1bf96bf3910bdcbe0f125958357c8f1a>.

²⁹⁷ See Glenn Kessler & Salvador Rizzo, *President Trump’s False Claims of Vote Fraud: A Chronology*, WASH. POST (Nov. 5, 2020 5:59 PM), <https://www.washingtonpost.com/politics/2020/11/05/president-trumps-false-claims-vote-fraud-chronology/>.

²⁹⁸ *Id.*

over by liberals if he lost, he knew that they would do anything to stop the theft. He repeated the lie that he had won the election and had won it by a landslide.²⁹⁹ This, despite the fact that he lost the election by 7,060,140 votes.³⁰⁰ In addition to the fact that Vice President Joe Biden received more votes, Donald Trump was the first president in modern history to lose the popular vote in consecutive elections.³⁰¹ The popular vote is not the only factor in determining a presidential election. The results from the electoral college are also significant. In the 2020 election, Donald Trump lost the electoral college vote to Vice President Joe Biden, who received 306 electoral votes to Trump's 232.³⁰² Donald Trump and his allies filed more than 40 lawsuits in various courts challenging the validity of the 2020 presidential election, and every single lawsuit failed.³⁰³ Each lawsuit failed to show any validity or merit, and as a result, many were dismissed and thrown out of court.³⁰⁴

Even though Donald Trump was defeated in the 2020 presidential election, he still held a rally in Washington D.C. on the very day that Congress met to certify the electoral college vote.³⁰⁵ At that rally, supporters were told that the election had been stolen from them, and that they needed to “fight like hell” to take their country

²⁹⁹ *Id.*

³⁰⁰ James M. Lindsay, *The 2020 Election by the Numbers*, COUNCIL ON FOREIGN REL. (Dec. 15, 2020 5:00 PM), <https://www.cfr.org/blog/2020-election-numbers>

³⁰¹ Nick Bryant, *US election 2020: Why Donald Trump lost*, BBC NEWS (Nov. 7, 2020), <https://www.bbc.com/news/election-us-2020-54788636>.

³⁰² Ella Lee, *Fact Check: Trump Lost The 2020 Presidential Election*, USA TODAY (Dec. 8, 2020 4:22 PM), <https://www.usatoday.com/story/news/factcheck/2020/12/08/fact-check-president-donald-trump-did-not-win-2020-election/6467942002/>.

³⁰³ Jacob Shamsian & Sonam Sheth, *Trump and His Allies Filed More Than 40 Lawsuits Challenging The 2020 Election Results. All Of Them Failed*, BUS. INSIDER: POL. (Feb. 22, 2021 5:03 PM), <https://www.businessinsider.com/trump-campaign-lawsuits-election-results-2020-11>.

³⁰⁴ *See id.*

³⁰⁵ *See* Brian Naylor, *Read Trump's Jan. 6 Speech, A Key Part Of Impeachment Trial*, NPR (Feb. 10, 2021, 2:43 PM), <https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>.

back.³⁰⁶ One supporter encouraged there to be trial by combat.³⁰⁷ These words incited and inspired this vicious mob to storm the United States Capital in an insurrection that sadly, left five people dead and hundreds severely injured.³⁰⁸

In the face of facts, reality, court defeats, common sense and practicality, lies continue to be spread surrounding the validity of the Biden/Harris administration and the 2020 election. These bold, outrageous, incorrigible lies only work to fuel bigots who do not want every vote to count. These people will stop at nothing to eliminate votes that do not further their racist agenda and maintain the unbalanced power they seek to keep.

VI. The Significance of the Black Vote

A. Stacey Abrams, FairFight.com and the Georgia Senate Race: Warnock/Ossoff

As part of the fight to regain Democratic control of the senate there was the 2020 Georgia senate race between Jon Ossoff (D) versus David Perdue (R) and Rev. Raphael Warnock (D) versus Kelly Loeffler (R).³⁰⁹ Congressmen Ossoff and Warnock won their elections as a direct result of an incredible Democratic voter turnout, “especially among Black Georgians.”³¹⁰ A large percentage of voters in Georgia are Black and their high turnout numbers made the

³⁰⁶ *Id.*

³⁰⁷ Michael R. Sissak, *Bar Association Seeks Giuliani Ban Over ‘combat’ Remarks*, BOSTON HERALD (Jan. 11, 2021 8:58 PM), <https://www.bostonherald.com/2021/01/11/bar-association-seeks-giuliani-ban-over-combat-remarks/>.

³⁰⁸ See Melissa Block, *Can The Forces Unleashed By Trump's Big Election Lie Be Undone?*, NAT’L PUB. RADIO (Jan. 16, 2021 5:00 AM), <https://www.npr.org/2021/01/16/957291939/can-the-forces-unleashed-by-trumps-big-election-lie-be-undone>. (Noting that two more police officers committed suicide and attributed their deaths to the insurrection that took place at the U.S. Capital on January 16, 2021 5:00 AM).

³⁰⁹ See Nate Cohn, *Why Warnock and Ossoff Won in Georgia*, N.Y. TIMES (Jan. 8, 2021), <https://www.nytimes.com/2021/01/07/upshot/warnock-ossoff-georgia-victories.html>.

³¹⁰ *Id.*

difference in both Senate elections.³¹¹ These gains can be attributed to the years-long work by Stacey Abrams and her team at www.fairfight.com as well as other organizations organizing voter drives and encouraging greater voter registration.³¹² After discovering in 2013 that Blacks were not being allowed to register to vote because of the color of their skin, Ms. Abrams worked to get more than 200,000 people registered to vote in the run up to the 2018 election.³¹³ After losing the Georgia 2018 gubernatorial election, Ms. Abrams is credited with getting approximately 800,000 people registered as new voters.³¹⁴ Ms. Abrams stands on the shoulders of many Black women that have fought and died before her to get Blacks the right to vote. Black women such as Harriet Tubman,³¹⁵ Fannie Lou Hamer,³¹⁶ Ida B. Wells,³¹⁷ Ella Baker,³¹⁸ Mary Church Terrell³¹⁹ and countless others whose names, histories and stories are undocumented because of the racist practices of the past. It has been said that “history is

³¹¹ *Id.* (highlighting about 30% of the overall electorate are Black in Georgia).

³¹² See *Democracy Works Best When We Put in Place the Guardrails That Ensure Every American Has an Equal Opportunity to Make Their Voice Heard and be Fairly Represented*, FAIR FIGHT, <https://fairfight.com> (last visited Apr. 19, 2021).

³¹³ Maya King, *How Stacey Abrams and her band of believers turned Georgia blue*, November 8, 2020, <https://www.politico.com/news/2020/11/08/stacey-abrams-believers-georgia-blue-434985>

³¹⁴ Danny Hakim et al., *As Biden Inches Ahead in Georgia, Stacy Abrams Draws Recognition and Praise*, N.Y. TIMES (May 11, 2021), <https://www.nytimes.com/2020/11/06/us/politics/stacey-abrams-georgia.html>.

³¹⁵ See League of Women Voters of Oxford, *Harriet Tubman*, LEAGUE OF WOMEN VOTERS, <https://my.lwv.org/ohio/oxford/suffragist-profiles/harriet-tubman> (last visited Apr. 19, 2021).

³¹⁶ See Debra Michals, *Fannie Lou Hamer (1917-1977)*, NAT’L WOMEN’S HIST. MUSEUM, <https://www.womenshistory.org/education-resources/biographies/fannie-lou-hamer> (last visited Apr. 19, 2021).

³¹⁷ See DeNeen L. Brown, *Ida B. Wells Gets Her Due As A Black Suffragist Who Rejected Movement’s Racism*, WASH. POST (Aug. 25, 2020), <https://www.washingtonpost.com/history/2020/08/25/mosaic-ida-b-wells-black-suffragist-union-station/>.

³¹⁸ See Caitlyn Cobb, *February 15 - Ella Baker (1938-1953)*, The Voting Rights Alliance (Feb. 15, 2020), <https://www.votingrightsalliance.org/2020vrblackhistory/2020/2/17/ellabaker>.

³¹⁹ See Michals, *supra* note 316.

written by the victors.”³²⁰ But today, I write on behalf of all the women and men, Black and White who have fought valiantly for centuries to secure the rights to vote for all people.

VII. Solutions

A. 30 Minute Voting Line

A group called Democracy Docket has proposed a solution that seems pretty simple and bipartisanship in nature.³²¹ They meet the stated goal of Republicans’ desire to encourage in person voting by calling for voting lines to be 30 minutes or less.³²² They are proposing that states pass laws mandating this and if there are any violations of the 30 minute rule, that states pay the voter for the time spent over 30 minutes.³²³ Why the random 30 minute time? That was the time limit that was deemed reasonable and a *general rule* by the bipartisan Presidential Commission on Election Administration.³²⁴ The Commission said any time limit past this allotted time shows that there is something wrong and that corrective steps are necessary.³²⁵

The 30-minute time limit is a reasonable time for an individual to stand in line to cast a ballot. Studies show that many communities of color and poor communities have longer wait times to cast ballots than wealthier White communities.³²⁶ Extended waiting periods “at polling places are disruptive, disenfranchising and all too common.”³²⁷ By allowing there to be a waiting, it would not unduly

³²⁰ *The History of “History is Written by the Victors,”* HIST. NEWS NETWORK (Nov. 26, 2019), <https://historynewsnetwork.org/article/173752>.

³²¹ Marc Elias, *A Simple Solution to Long Voting Lines: 30 Minutes or Less*, DEMOCRACY DOCKET, (Feb. 23, 2021), <https://www.democracydocket.com/2021/02/30-minutes-or-less/>.

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ Hannah Klain et al., *Waiting to Vote*, BRENNAN CTR. FOR JUST. Brennan Ctr. for Just (June 3, 2020), <https://www.brennancenter.org/our-work/research-reports/waiting-vote>.

³²⁷ *Id.*

burden communities of color and people who may not have long periods of time to stand in line and wait to vote. Many people use their lunch hour to vote. When an individual is standing in line for hours, they cannot use a 30-to-60-minute lunch period to vote. One family in Georgia is recorded as having waited 11 hours to vote.³²⁸ Most people would not wait this long, get frustrated and leave. A bipartisan study shows that more than a half a million individuals who are eligible to vote failed to vote due to problems related to the management of polling places which included long waiting periods.³²⁹ We can alleviate this problem by making it a law that a person must be able to vote in 30 minutes or less.

Sadly, the facts bear out the fact that in the predominantly White communities, adequate resources, personnel, equipment, and space are provided for elections.³³⁰ The same is not true for communities of color. Therefore the wait in communities of color can be twice as long than in a White area.³³¹

B. Same Day Registration

Same Day Registration has been proposed as a solution to helping with voting problems and irregularities.³³² Same day registration is where a qualified individual is able to get registered to

³²⁸ *US election 2020: World reaction to long queues of voters in US*, BBC NEWS (Oct. 13, 2020) <https://www.bbc.com/news/election-us-2020-54532189>.

³²⁹ Klain, *supra* note 323 (citing Weil et al., *The 2018 Voting Experience*, 3-4).

³³⁰ Kevin Quealy & Alicia Parlapiano, *Election Day Voting in 2020 Took Longer in America's Poorest Neighborhoods*, N.Y. TIMES (Jan. 4, 2021), <https://www.nytimes.com/interactive/2021/01/04/upshot/voting-wait-times.html>.

³³¹ Frank James, *Blacks' Election-Day Waits Nearly Double Those Of Whites, But Why?*, NAT'L PUB. RADIO NPR (Apr. 9, 2013 2:42 PM), <https://www.npr.org/sections/itsallpolitics/2013/04/09/176675397/blacks-election-day-waits-nearly-double-those-of-whites-but-why>.

³³² See Joshua Clark, *Widening the Lens on Voter Suppression From Calculating Lost Votes to Fighting For Effective Voting Rights*, HASAS INST. FOR A FAIR AND INCLUSIVE SOC'Y, U.C. BERKELEY (July 2018), https://belonging.berkeley.edu/sites/default/files/haas_institute_wideningthelensonvotersuppression_july2018_publish.pdf (noting that laws that prohibit same day voter registration raise red flags).

vote and cast a vote on the same day.³³³ This is a process where voting requires proof of residency³³⁴ and identity.³³⁵ Normally a prospective voter applies to vote and the voting officials have the opportunity to process the application by verifying the person's residency and eligibility. Because this is not possible in "same day registration" jurisdictions, the individual must be able to provide proof on voting day.³³⁶ In all states, a valid driver's license or identification card is sufficient.³³⁷ Some locations will allow a utility bill in the person's name to fulfill the documentation necessary.³³⁸ Amazingly, some states allow a verified voter to vouch for a non-registered voter's residency.³³⁹ A few states will allow a limited ticket for a person doing same day registration, for instance a person might be able to vote for President and Vice President but no other offices.³⁴⁰ Either way, this is how some states handle same day voting. Our goal as a nation should be to allow everyone who is eligible and desirous of voting, to be able to vote. Voting is an integral part of our democracy and the backbone of our nation's voice.³⁴¹

³³³ See *Same Day Voter Registration*, NAT'L CONF. OF STATE LEGISLATURES (Sept. 20, 2021), <https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx> (hereinafter NAT'L CONF. OF STATE LEGISLATURES).

³³⁴ *Id.* (In normal elections, election officials have the time Prior to election day to send mail to prospective voters in order to verify that they are resident before granting the registration. Using same-day registration, the potential voter would have to present proof of residency at the time that they are attempting to get registered. Necessary documentation could include a current driver's license or an ID card. Some jurisdictions allow utility bills in the name of the person seeking to get registered).

³³⁵ Audrey Mcnamara, *Here are the states where you can still register to vote on Election Day*, CBS NEWS (Nov. 3, 2020, 1:25 PM), <https://www.cbsnews.com/news/same-day-voter-registration-states/>.

³³⁶ See Nat'l Conf. of State Legislatures, *supra* note 333.

³³⁷ See *id.*

³³⁸ See *id.*

³³⁹ *Id.*

³⁴⁰ *Same Day Voter Registration*, ROCK THE VOTE <https://www.rockthevote.org/how-to-vote/same-day-voter-registration/> (last visited Apr. 20, 2021).

³⁴¹ See Nicholas Bratcher, *Arguments for and against same-day voter registration*, THE LUMBERJACK (Oct. 29, 2020), https://www.jackcentral.org/news/arguments-for-and-against-same-day-voter-registration/article_2bb638b0-19b6-11eb-ad43-dfa30e68cc8a.html (noting that making it easier for people to be informed and

C. Universal Voting

Universal Voting is also a solution to maintaining accurate and complete voter rolls. This system of voting would place responsibility upon the United States government to maintain voter rolls.³⁴² The opt-in voting system currently employed by the United States requires that a voter proactively take steps in order to become registered to vote.³⁴³ Under universal voting, it would be the exact opposite—all eligible voters would be registered automatically.³⁴⁴ Potential voters would have to take steps to opt out of voting.³⁴⁵ By having universal voting, we could thereby increase the number of registered voters. With the government having the onus of maintaining these potential voting rolls, it would reduce the likelihood of double voting as well as omitting voters. This would also work to help with elections being more accessible to voters as well ensuring a more secure election.³⁴⁶ We trust the government to collect taxes from every individual who is responsible to pay taxes, why can't we allow the government to also control the voter registration system? Employing a universal voting system in the U.S. would also streamline the voting process and reduce states' ability to discriminate and exert bias in their varying tactics, policies, and procedures. We currently have what some may consider a "ragtag" process, whereby states are allowed to craft individual policies and procedures, which creates a patchwork of rules depending upon which state you live in.³⁴⁷

participate in voting is important for a democracy).

³⁴² *Universal Voter Registration*, FAIR VOTE, https://www.fairvote.org/universal_voter_registration (last visited Apr. 20, 2021).

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *See id.*

D. John Lewis Voting Rights Act

As discussed, *Shelby v. Holder* decimated the heart and spirit of the Voting Rights Act of 1965 by allowing states to make substantive changes to their voting policies without first receiving approval from the federal government.³⁴⁸ These acts of open discrimination have “taken on a more subversive and facially neutral quality.”³⁴⁹

One effective way to prevent and perhaps eliminate discrimination in voting rights is by passing the John Lewis Voting Rights Act (the “Act”).³⁵⁰ The United States is a nation where access to the ballot has not been open and fair to all people, especially Black and Brown people. This Act is designed to help prevent people exercising their right to vote from being discriminated against and from voter suppression.³⁵¹ Named after civil rights icon and activist, Congressman John Lewis (1940-2020), the Act was created to restore the safeguards that are necessary to prevent discrimination, unfairness, and bias in allowing all people to have access to the ballot box.³⁵²

This Act is also known as the “For the People Act of 2021.”³⁵³ If passed and enacted into law, this law would effectively address the issue of voter suppression in America and “would transform our democracy by making it fairer, stronger, and more inclusive.”³⁵⁴ The Act is divided into three sections: Divisions A, B, and C. Division A focuses specifically on Voting and all related issues. Division B reviews and covers Campaign Finance. Division C discusses

³⁴⁸ *Shelby Cty., Ala.*, 570 U.S. at 557.

³⁴⁹ Lydia Hardy, *Voter Suppression Post-Shelby: Impacts and Issues of Voter Purge and Voter ID Laws*, 71 MERCER L. REV. 857 (2020).

³⁵⁰ See Myrna Perez & Tim Lau, *How to Restore and Strengthen the Voting Rights Act*, BRENNAN CTR. FOR JUST. (Jan. 28, 2021), <https://www.brennancenter.org/our-work/research-reports/how-to-restore-and-strengthen-voting-rights-act>.

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ For the People Act of 2021, H.R. 1, 117th Cong. § 1 (2021) (hereinafter For the People Act).

³⁵⁴ *Annotated Guide to the For the People Act of 2021*, BRENNAN CTR. FOR JUST. (Mar. 18, 2021) <https://www.brennancenter.org/our-work/policy-solutions/annotated-guide-people-act-2021#t1-sd> (hereinafter *Guide to the For the People Act*).

Ethics.³⁵⁵ Titles I, II, and III cover issues relating to election access, integrity, and security. Titles IV, V, and VI relate to campaign finance issues.³⁵⁶ Title VII speaks to requiring a code of ethics for the justices on the United States Supreme Court.³⁵⁷ Title VIII addresses any potential conflicts of interest in the executive branch.³⁵⁸ Title IX speaks to workplace discrimination claims that have been lodged against members of Congress.³⁵⁹ And finally, Title X would make it mandatory for a sitting president, vice president, or major party candidate to disclose their tax returns.³⁶⁰

Perhaps the specific sections of this Act that are relevant to this article are the parts that relate to voting and voting regulations. A feature of this Act would look at automatic voter registration.³⁶¹ It would give voters the ability to automatically be added to the registration rolls for voting.³⁶² As in an “opt out” system versus the current system of “opting in, each citizen who is eligible to vote and who interacts with state agencies such as the Department of Motor Vehicles, a state agency, or a public university will automatically get registered to vote.³⁶³ The only way they will not be automatically registered to vote is if they decline to be registered.³⁶⁴ Again, this process would cause the citizen to have to take a specific act to opt out of being registered to vote.

This Act would also allow voters to register using an online system.³⁶⁵ This would therefore remove hurdles to registration making the process more seamless and accessible. Another feature of this Act would allow for citizens to become registered the same day

³⁵⁵ See For the People Act, *supra* note 353.

³⁵⁶ Guide to the For the People Act, *supra* note 354.

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² Guide to the For the People Act, *supra* note 354.

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ See For the People Act, *supra* note 353, at 31.

that they vote (Same Day Registration).³⁶⁶ This gives voters another way to have their voices represented. Individuals that have previously been incarcerated will have the ability to have their rights to vote restored after they have completed their jail/prison sentence.³⁶⁷ States will also be required to provide notification in writing to individuals that their right to vote has been restored.³⁶⁸ To rectify voting purges, HR 1 will ensure that voters will not be removed from the rolls just because they have not voted in a recent election (or voted at all).³⁶⁹ If a voter is taken off of the rolls, they have to receive notice that they have been removed and given a chance to rectify their registration issue before being taken off of the rolls.³⁷⁰

The stated goals of this law are to make voting easier in federal elections, end congressional gerrymandering, revamp federal campaign finance laws, ensure that there are mechanisms in place to avoid foreign interference, improve and strengthen governmental ethics rules, and more.³⁷¹

Opponents of the For the People Act (H.R. 1) state that this would take away the rights and privileges granted to a state by its constitution by causing elections to become federalized.³⁷² They argue that the rules for elections in America should remain decentralized giving states and local officials the ability to follow what they deem best for their particular jurisdiction.³⁷³ Those against the Act also say that this law would inhibit the rights to free speech and association.³⁷⁴ The section dealing with campaign finance reform includes language that would create greater and broader disclosure requirements on political advocacy nonprofits.³⁷⁵ Those against this Act say this would have a “chilling effect” on the freedom of speech

³⁶⁶ *Id.* at 84.

³⁶⁷ *Id.* at 150.

³⁶⁸ *Id.* at 157.

³⁶⁹ *Id.*

³⁷⁰ *Id.* at 411.

³⁷¹ See For the People Act, *supra* note 353.

³⁷² See Sara Swann, *The 3 Main Reasons Conservatives Oppose HR 1*, FULCRUM (Jun. 16, 2021), <https://thefulcrum.us/voting/for-the-people-act-2021>.

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.*

because it would encroach on the privacy of major financial donors to various political causes.³⁷⁶

Vocal opposition to this law has emanated not only from the right but the left as well. The ACLU has been very vocal in its opposition to and concerns about specific provisions of the law.³⁷⁷ They reached out to Congress to express concerns regarding provisions as they believe them to be unconstitutional and infringing on the speech and association rights of many public interest organizations and American citizens.³⁷⁸ The ACLU feels that these sections of the law would prohibit speech necessary for their public discourse and would do very little to assist the public's legitimate interest in understanding who is providing substantial financial support for a candidate's election.³⁷⁹

Conservatives have also voiced concerns and opposition to this law by stating it would weaken election security and its integrity.³⁸⁰ They feel that this law would weaken voting rules and cause incentives for fraud. Critics warn that certain provisions in the law would open the door for fraud.³⁸¹ They see loopholes for "ballot harvesting" where partisan operatives would be able to go door-to-door and solicit votes.³⁸² Opponents feel that certain sections of the law would invite fraud and voting irregularities.³⁸³ They specifically point to an example of same day voter registration not being a realistic plan to implement and maintain in rural communities where many citizens have internet access that is not reliable.³⁸⁴

As a nation we must be cognizant of the image that we portray around the globe regarding human rights, but we must also think

³⁷⁶ *Id.*

³⁷⁷ *ACLU Letter Opposing H.R. 1 (For the People Act of 2019)*, Mar. 6, 2019, <https://www.aclu.org/aclu-letter-opposing-hr-1-people-act-2019>.

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ Swann, *supra* note 369.

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ *Id.*

about what eviscerating “one of the most powerful laws enacted in insure and preserve the right to vote for minorities” does to the morale of this underrepresented, marginalized group.³⁸⁵

E. Reform of Redistricting Process

A final solution is to reform and recreate the redistricting process. Currently lawmakers can craft cunning maps and district lines to keep political power and to maintain their political representation.³⁸⁶ The cleverly designed maps can cause entire communities and political parties to no longer have a voice in our nation’s political discourse.³⁸⁷ Jurisdictions and locales can employ non-partisan demographers who will adhere to principles of partisan equity and fairness. These demographers will be guided by a redistricting or Mapping Commission. The Commission would then oversee the redistricting maps but place guidelines which must be adhered to as the map is designed. The demographer would consider the ethnic and community concerns, local boundaries, and borders, doing all within his power to avoid partisan input or influence.

³⁸⁵ Patricia A. Broussard, *Eviscerating the Voting Rights Act and Moral Authority: Freedom to Discriminate Comes with a Price*, 7 J. RACE, GENDER & ETHNICITY 11 (2015), <http://digitalcommons.tourolaw.edu/jrge/vol7/iss1/2>. Professor Patricia Broussard makes the point that the act of dismantling and gutting the Voting Rights Act and attacking the ruling in *Shelby County v. Holder* in essence sends a message to Black people and other minorities about the value of their citizenship, and it sends a clear message to the global community that the standards we hold them to, is not the standard we hold ourselves to here in America.

³⁸⁶ Alexa Ura, *U.S. Department of Justice sues Texas over new political maps*, Dec. 6, 2021, <https://www.texastribune.org/2021/12/06/departments-of-justice-texas-political-maps/>.

³⁸⁷ NAACP Legal Defense Fund, *Louisiana Legislature Overturns Governor’s Veto of Map Lacking a Second Majority-Black Congressional District; Civil Rights Groups File Suit Under Voting Rights Act*, March 30, 2022, <https://www.naacpldf.org/press-release/louisiana-legislature-overturns-governors-veto-of-map-lacking-a-second-majority-black-congressional-district-civil-rights-groups-file-suit-under-voting-rights-act/>.

VIII. Conclusion

Ratified in the late 1870's, the 15th Amendment stands for the principle that all men have the right to vote regardless of their race. In the approximately 100 years between the ratification of the 24th amendment³⁸⁸ and the Reconstruction amendments, the Civil Rights Act of 1964 and the Voting Rights Act of 1965, White supremacists have made attempt after attempt to smother and eliminate the Black vote.³⁸⁹ This has been done with the use of poll taxes, literacy tests, contrived grandfather clauses, and many other duplicitous tactics designed at suppressing the vote.³⁹⁰ In 2021, the same voter suppression tactics continue to plague America, but on January 6, 2021, we witnessed a new strategy in disenfranchising Black voters: not count the votes at all.³⁹¹

This is exactly what we witnessed Republican Congress members attempt to do. After the previous administration's legal team failed in their attempts to have the votes discarded from dense, Democratic-leaning, urban areas in states like Pennsylvania, Michigan, and Georgia, this group of Republican congressmen chose to try to exclude an entire slate of electors.³⁹²

What we witnessed on January 6, 2021, was an electoral college coup on Black voters, modern-day voter suppression.³⁹³ This,

³⁸⁸ See U.S. CONST. amend. XXIV.

³⁸⁹ Gilda R. Daniels, *Voter Deception*, 43 IND. L. REV. 343 (2010) (noting voter intimidation became a primary and deadly issue after the Civil War when blacks were systematically denied the rights to vote).

³⁹⁰ See *supra* Part II.B.

³⁹¹ Katelyn Polantz, *Judge: 'More likely than not' that Trump 'corruptly attempted' to block Congress from counting votes on January 6*, March 28, 2022, <https://www.cnn.com/2022/03/28/politics/john-eastman-memo/index.html>.

³⁹² Mike Wereschagin, *Pa. Republicans' hedged language may have saved them from prosecution over electoral vote scheme*, Jan. 17, 2022 https://lancasteronline.com/news/politics/pa-republicans-hedged-language-may-have-saved-them-from-prosecution-over-electoral-vote-scheme/article_849d4f7e-7589-11ec-8881-6383a823557d.html.

³⁹³ Melissa Block, *The clear and present danger of Trump's enduring 'Big Lie'*, Dec. 23, 2021, <https://www.npr.org/2021/12/23/1065277246/trump-big-lie-jan-6->

even though multiple sources cited that there was absolutely no evidence of any kind of widespread voter fraud.³⁹⁴ And with judges dismissing more than fifty cases alleging voter fraud.³⁹⁵

On November 27, 2020, a federal appeals court rejected the last presidential administration's campaign proposal to block Biden from being declared the winner of Pennsylvania.³⁹⁶ At the time, Stephanos Bibas, on behalf of the three-judge panel wrote: "Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so."³⁹⁷ It added: "Charges require specific allegations and then proof. We have neither here."³⁹⁸

Similarly, a lawsuit was filed by the state of Texas and supported by the previous administration, sought to have votes invalidated in four other states.³⁹⁹ This lawsuit was rejected by the U.S. Supreme Court as having no legal standing for the suit.⁴⁰⁰ The Justice Department also noted that there was no indication or evidence to support widespread voter fraud.⁴⁰¹

Voting should be a non-partisan issue; every citizen should have free and fair access to the ballot. No one should be afraid for their life to vote. Sadly, given the brutal, violent history in this country, that is exactly what Blacks have been facing for centuries. Black people in America, generally, have never been made to feel like full and complete citizens of this country. One way we see this tragic

election.

³⁹⁴ See Fact Check: Courts Have Dismissed Multiple Lawsuits of Alleged Electoral Fraud, *supra* note 276.

³⁹⁵ *Id.*

³⁹⁶ See *Donald J. Trump for President, Inc. v. Sec'y of Pennsylvania*, 830 F. App'x 377 (3d Cir. 2020).

³⁹⁷ *Id.* at 381.

³⁹⁸ *Id.*

³⁹⁹ See Emma Platoff, *U.S. Supreme Court throws out Texas lawsuit contesting 2020 election results in four battleground states*, TEXAS TRIB. (Dec. 12, 2020), <https://www.texastribune.org/2020/12/11/texas-lawsuit-supreme-court-election-results/>.

⁴⁰⁰ See *id.*

⁴⁰¹ See Katie Benner & Michael S. Schmidt, *Barr Acknowledges Justice Dept. Has Found No Widespread Voter Fraud*, N.Y. TIMES (Dec. 1, 2020), <https://www.nytimes.com/2020/12/01/us/politics/william-barr-voter-fraud.html>.

dehumanizing process is in voting. Voting is simply an individual's way of expressing their thoughts on how varying issues should be handled in our city, state, and nation. Voting therefore allows an individual to choose a representative who will speak for them on the local, state, or federal level. So voting is really an individual picking someone to be their voice. Voting is a person deciding who will speak up for them, who will be their voice and represent their beliefs on certain issues. When a person's right to vote is breached, prevented, hindered, or stopped, they have effectively been silenced and made void. When we don't take into consideration a person's thoughts or desires on certain issues, we are telling that person, that segment of our population, that they do not matter. We are in essence telling those people that they are not citizens of the United States of America and as such their ideas, thoughts, opinions, and needs do not matter. Sadly, this is a message that they are irrelevant in the political discourse which is the heart and soul of what this country stands for. Black people in America should be free to live lives "free from the chains of racism and White supremacy that bind us still."⁴⁰² And that binding has suppressed Black and Brown votes for far too long.

We must raise awareness about the tactics that have been used for centuries to keep every vote from being counted and work daily to dismantle this system which attempts to suppress and disenfranchise American citizens.

We have heard the rallying cry in the wake of multiple unarmed, innocent, Black men, women, and children being gunned down because of the brutality and unwarranted violence of thuggish, rogue law-enforcement officers.⁴⁰³ In the wake of the murder of George Floyd the world heard the message loud and clear, "Black Lives Matter!" If Black lives are to matter, Black voters must also matter. We must maintain hope in the process of seeing our United States Constitution and this country live up to and fulfill the lofty

⁴⁰² KENDI, *supra* note 20.

⁴⁰³ Cheryl W. Thompson, *Fatal Police Shootings of Unarmed Black People Reveal Troubling Patterns*, Jan. 25, 2021 <https://www.npr.org/2021/01/25/956177021/fatal-police-shootings-of-unarmed-black-people-reveal-troubling-patterns>.

ideals and notions of liberty and justice for all. That includes Black people, Black voters, Black ideas, Black thoughts, Black suggestions, Black desires, and Black needs. Black Lives Matter. Black Voters Matter.