

VOTE! OUR LIVES DEPEND ON IT!

A large crowd of people is shown at a protest. Many individuals are holding up signs with various messages. The signs include "WE DEMAND VOTING RIGHTS NOW!", "AN END TO POLICE BRUTALITY NOW!", "WE MARCH FOR JOBS FOR A DECENT LIFE", "WE MARCH FOR JOBS FOR ALL DECENT PAY", "JAL HTS W!", and "END TO BIAS NOW!". The crowd is diverse in age and appearance. The background is slightly blurred, focusing attention on the protesters and their signs.

# A CALL TO ADVOCACY

VOTE: WE CAN NOT ALLOW OUR  
VOTES OR **OUR VOICES** TO BE SUPPRESSED

MARCIA JOHNSON  
2020

# A CALL TO ADVOCACY



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## INTRODUCTION

America prides itself in being the oldest continuing democracy in the world.<sup>1</sup> The sober truth is that America has never fully embraced the concept that all Americans have the right or privilege to vote. In fact, there has been so much effort given to denying the vote to so many that it causes one to question whether voting is a democratic ideal at all. The constitution provides that our government shall be one by the people, for the people and of the people. But the courts, particularly the United States Supreme Court have intervened in ways that suggest that, in fact, democracy is a domain of governing elites, not robust and engaged citizens.<sup>2</sup> One of the most striking statistics about our political system, Guinier writes, is how poorly it fosters participation in democracy's most basic act: voting.<sup>3</sup> The statement begs the question, Is voting democracy's most basic act?

**P**ower concedes nothing without a demand. It never did and it never will. Find out just what any people will submit to, and you have found out the exact amount of injustice and wrong which will be imposed upon them; and these will continue till they are resisted with either words or blows, or with both. The limits of tyrants are prescribed by the endurance of those whom they oppress.

**-Frederick Douglass (1857)**

Democracy is often defined as a government by the people via rule of the majority; a government in which the supreme power is vested in the people and exercised by them.<sup>4</sup> The word democracy most often refers to a form of government in which people choose leaders by voting.<sup>5</sup>

Accordingly, it seems apparent that voting is a basic act of democracy. One educator opines that voting is perhaps the most important thing a citizen can do to support their democratic form

of government. ...Voting has long been the method used to determine the will of the citizenry. Without a vote, a citizen is essentially voiceless.<sup>6</sup>

Voting: a constitutional right or a societal privilege?

Many argue that voting is not a constitutional right because the constitution never proclaims it as such. In other words, the argument goes, the constitution never specifically states that there is a right to vote. But the reference to "right" appears most often in the Constitution's text when addressing "the right to vote."<sup>7</sup> The argument against the conference of the right to vote is

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further challenged by the fact that if the Constitution has to say "here is a specific right and we now guarantee that right to every person," there are almost no rights in the Constitution.<sup>8</sup> The First Amendment doesn't say "every person has the right to free speech and free exercise of religion." In the Second, the right to "keep and bear arms" isn't defined, but rather shall not be "abridged." In the Fourth, "[t]he right of the people to be secure ... against unreasonable searches and seizures" isn't defined, but instead "shall not be violated." In the Seventh, "the right of (civil) trial by jury" -- whatever that is -- "shall be preserved." And so on.<sup>9</sup>

The "privilege" theory is one the United States regards as dangerous -- when practiced by other countries. After World War II, we imposed a constitution on Japan providing that "universal adult suffrage is guaranteed." The "Basic Law" of Germany gained a provision that "[a]ny person who has attained the age of eighteen shall be entitled to vote." The citizens of Afghanistan "have the right to elect and be elected." Article 20 of the 2005 Constitution of Iraq provides that "Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office."

The privilege theory enhances the power of the elite and powerful by granting in them the authority to choose who will vote and who will not. The ever changing prerequisites for voting Americans reveal the employ of voting as a benefit to be granted to some while denied to others, often for constitutionally impermissible reasons, like race, gender, and nationality. These efforts at limiting the right of Americans to vote include voter dilution, purging voter rolls, denying felons the right to vote, strict voter ID laws, changing locations of voting places in certain communities, closing voting places, intimidation and disinformation. These acts of voter suppression threaten democratic principles, particular of equality and "one [person], one vote. The more power that is put in the hands of a select few, the less America is a democracy and the more it is an oligarchy.

**The story of America's democracy, however, as noted by historian Alexander Keyssar, has been a contested one, characterized by expansion often followed by swift contraction: gains in political participation by communities of color too often are met with corresponding efforts to constrict the franchise. The Black democratic experience provides a salient example. No other democracy in the world has ever enfranchised a large group, then disfranchised it--and then re-enfranchised it. Following the Civil War, Congress moved swiftly to establish widespread Black suffrage. Between 1866 and 1867, the percentage of Black males eligible to vote "shot up from .5 percent to 80.5 percent, with all of the increase in the former Confederacy."**

**-Ryan P. Haygood, Defending Democracy Against Voter Suppression Tactics on the Eve of the 2012 Elections  
64 Rutgers L Rev 1019 (Summer 2012)**

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## DO WE CARE?

It may not be so important to weigh in on the debate of right vs privilege, but caring should go without saying. Voting is a powerful tool. If that was not so then why would the ruling class go through such extraordinary efforts to restrict our voting rights? For many of us, our vote is the one way we get to exercise our power over the decisions that will be made that affect our lives.

Suppressing our vote, suppresses our power and quiets our voices. Fighting against such suppression is the same as fighting for inclusion, and power and democracy. It is therefore important, not only that we vote, but that we work to get other Americans to vote as well.

Overall numbers seem to show that for many voting age populations, voting is important at least for presidential elections. In presidential elections between the 1960 election and the 2004 election, on average 69.83% of voting age population were registered to vote. Of the registered voters, on average 55.20 % actually voted. This would mean that only 38.55% of the voting age population actually voted. During the last three presidential elections, 2008, 2012 and 2016, 56.26% of the voting population cast a ballot.<sup>10</sup> While better, there is much to be done.

**A**LEC founder Paul Weyrich made the point of voter suppression tactics clear when he stated that “our leverage in the elections quite candidly goes up as the voting populace goes down.” The attack on voting rights is not about protecting our democratic process; it is about control and manipulation of the electorate by any means, no matter how discriminatory.

**-Ryan P. Haygood, Defending  
Democracy Against Voter Suppression  
Tactics on the Eve of the 2012 Elections  
64 Rutgers L Rev 1019, 1056 (Summer  
2012)**

## VOTER TURNOUT IN PRESIDENTIAL ELECTIONS 1828 - 2016

- V.A.P. = Voting Age Population 1) from 1972 includes citizens 18 years of age; 2) V.A.P. includes those ineligible to vote such as felons. Because of this, V.A.P. figures are naturally lower than if the Voting Eligible Population (V.E.P.) is used as the denominator.
- REG = Registered to Vote: Total REG data is incomplete or unavailable in some states, making it appear in some years as though more people voted than were registered to vote. From 1976 through 2004, this is due to the fact that North Dakota does not have voter registration, and in Wisconsin eligible voters may register to vote at the polls.

Year	Total V.A.P.	Total REG*	% REG of V.A.P *	Turnout	% TO of V.A.P.
1828					57.6%
1832					55.4%
1836					57.8%
1840					80.2%
1844					78.9%

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1848					72.7%
1852					69.6%
1856					78.9%
1860					81.2%
1864					73.8%
1868					78.1%
1872					71.3%
1876					81.8%
1880					79.4%
1884					77.5%
1888					79.3%
1892					74.7%
1896					79.3%
1900					73.2%
1904					65.2%
1908					65.4%
1912					58.8%
1916					61.6%
1920					49.2%
1924					48.9%
1928					56.9%
1932					56.9%
1936					61.0%
1940					62.5%
1944					55.9%
1948					53.0%
1952					63.3%
1956					60.6%
1960	109,672,000	63,854,789 *	58.22%	68,838,204	62.77%
1964	114,090,000	73,715,818 *	64.61%	70,644,592	61.92%
1968	120,328,186	81,658,180 *	67.86%	73,211,875	60.84%
1972	140,776,000	97,283,541 *	69.11%	77,718,554	55.21%
1976	152,309,190	105,024,916 *	68.96%	81,555,789	53.55%
1980	164,597,000	113,036,958 *	68.67%	86,515,221	52.56%
1984	173,936,000	124,184,647 *	71.18%	92,652,842	53.27%
1988	182,628,000	126,381,202 *	69.70%	91,594,809	50.15%
1992	189,044,000	133,821,178 *	70.79%	104,426,659	55.24%
1996	196,498,000	146,211,960 *	74.40%	96,277,634	49.00%
2000	205,815,000	156,421,311 *	76.00%	105,405,100	51.21%
2004	215,694,000	174,800,000 *	79.00%	122,295,345	56.70%
2008	225,499,000	TBD	TBD	131,313,820	58.23%
2012	235,248,000	TBD	TBD	129,085,403	54.87%
2016	245,502,000	TBD	TBD	136,669,276	55.67%

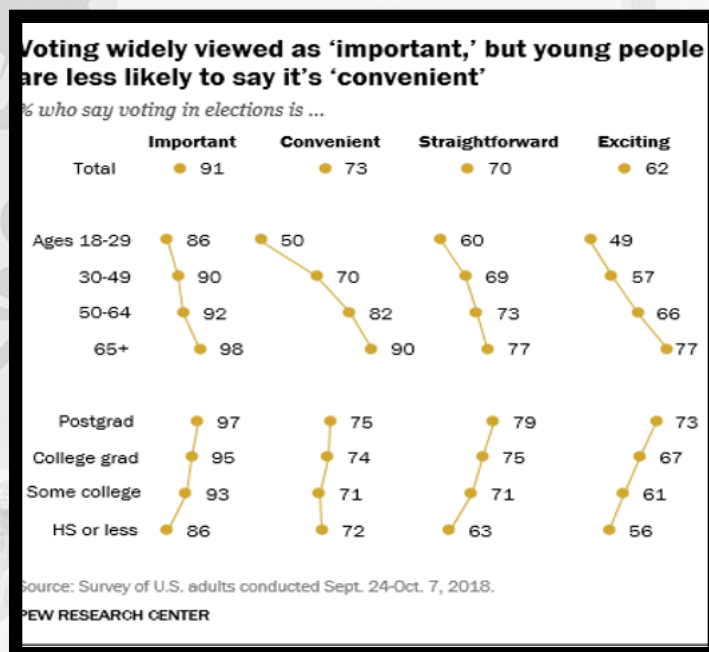
According to at least one report, the U.S. voter turnout is low when compared to international standards.<sup>11</sup> The United States recorded historic highs in its 2018 midterm elections with more than half of U.S. eligible voters casting a ballot.<sup>12</sup> Assuming that Americans tend to vote less robustly than their international peers, there is much evidence that the right to vote is an important part of how Americans view it as part of a strong democracy. In fact, the Pew Research Center reported that

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"when people are asked about their overall impressions of voting, there is a broad consensus that voting is "important." But smaller majorities say it is "convenient," "straightforward" or "exciting".<sup>13</sup>



The table below presents national voter turnout rates for each federal election year from 2002 to 2018.<sup>14</sup>

Voter turnout rates in the United States, 2002-2018 (expressed as a percentage of eligible voters)		
Year	Total ballots cast	Total ballots cast for highest office
2018	50.30%	49.70%
2016	60.20%	59.30%
2014	36.70%	36.00%
2012	58.60%	58.00%
2010	41.80%	41.00%
2008	62.20%	61.60%
2006	41.30%	40.40%
2004	60.70%	60.70%
2002	40.50%	50.10%

Voter turnout rates in the United States, 2002-2018 (total ballots cast expressed as a percentage of eligible voters)									
State	2018	2016	2014	2012	2010	2008	2006	2004	2002
Alabama	47.30%	59.30%	33.20%	N/A	43.30%	61.00%	N/A	57.40%	NA
Alaska	54.60%	61.80%	54.80%	58.90%	52.90%	68.30%	51.20%	69.60%	54.50%
Arizona	49.10%	56.20%	34.10%	53.00%	41.60%	57.40%	39.60%	54.80%	36.70%
Arkansas	41.40%	53.10%	40.30%	51.10%	37.90%	52.90%	38.90%	54.40%	41.70%
California	49.60%	58.40%	30.70%	55.70%	45.90%	61.70%	41.20%	59.60%	37.30%
Colorado	63.00%	72.10%	54.70%	70.60%	51.70%	71.60%	48.10%	67.30%	46.60%
Connecticut	54.40%	65.40%	42.50%	61.40%	45.90%	N/A	47.70%	66.20%	45.10%

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Delaware	51.40%	64.60%	34.90%	N/A	49.00%	65.80%	42.90%	64.50%	NA
District of Columbia	43.70%	61.10%	35.70%	61.60%	29.60%	61.70%	28.70%	54.90%	NA
Florida	54.90%	65.70%	43.30%	63.30%	42.20%	66.60%	40.10%	64.70%	45.90%
Georgia	55.00%	59.90%	38.60%	59.30%	40.60%	62.70%	35.10%	56.40%	NA
Hawaii	39.30%	43.00%	36.50%	44.50%	40.30%	49.00%	38.40%	48.50%	44.20%
Idaho	50.00%	60.90%	39.80%	61.00%	42.90%	64.80%	46.20%	64.80%	45.20%
Illinois	51.40%	63.40%	40.80%	59.30%	43.10%	64.30%	41.40%	62.40%	42.80%
Indiana	46.90%	57.90%	28.70%	56.00%	38.10%	60.30%	37.70%	55.80%	NA
Iowa	57.70%	69.00%	50.30%	70.60%	50.70%	69.70%	49.20%	70.60%	48.70%
Kansas	51.20%	59.70%	43.30%	58.20%	42.60%	63.50%	44.30%	62.90%	44.90%
Kentucky	48.60%	59.70%	44.90%	56.20%	44.30%	59.00%	44.20%	59.40%	NA
Louisiana	44.80%	60.60%	44.90%	60.80%	40.00%	61.80%	31.40%	61.50%	40.10%
Maine	60.20%	72.80%	58.70%	69.30%	55.90%	71.80%	N/A	74.90%	NA
Maryland	54.20%	67.20%	42.00%	67.30%	46.70%	67.80%	47.20%	63.10%	46.80%
Massachusetts	54.60%	68.30%	44.70%	66.20%	49.40%	67.30%	49.30%	64.60%	49.80%
Michigan	57.80%	65.70%	43.20%	65.40%	45.10%	69.70%	52.80%	67.10%	45.00%
Minnesota	64.20%	74.80%	50.60%	76.40%	55.80%	78.10%	60.50%	78.80%	NA
Mississippi	42.70%	N/A	N/A	N/A	N/A	N/A	N/A	NA	NA
Missouri	53.40%	62.30%	33.60%	N/A	45.70%	68.20%	51.20%	66.10%	NA
Montana	62.00%	64.30%	47.50%	63.50%	48.40%	67.10%	57.10%	65.20%	49.70%
Nebraska	51.80%	63.80%	41.40%	61.10%	38.70%	63.70%	48.80%	64.10%	NA
Nevada	47.50%	57.30%	29.60%	56.50%	41.40%	57.20%	37.10%	55.40%	36.80%
New Hampshire	54.60%	72.50%	48.30%	70.90%	46.10%	72.50%	42.90%	71.50%	48.70%
New Jersey	53.10%	65.50%	32.50%	62.20%	37.70%	67.70%	40.60%	64.20%	38.90%
New Mexico	47.30%	55.20%	N/A	54.80%	44.70%	61.20%	43.10%	60.40%	40.00%
New York	45.20%	57.30%	29.00%	53.50%	36.30%	59.60%	36.50%	58.50%	37.00%
North Carolina	49.60%	65.20%	41.20%	65.40%	39.80%	66.10%	32.50%	58.70%	NA
North Dakota	58.60%	61.90%	45.00%	60.40%	46.60%	63.60%	45.40%	65.50%	49.80%
Ohio	50.90%	64.20%	36.20%	65.10%	46.20%	67.80%	49.50%	67.90%	40.30%
Oklahoma	42.50%	N/A	30.00%	N/A	39.10%	56.30%	N/A	NA	NA
Oregon	61.50%	68.30%	53.40%	64.20%	53.90%	68.30%	53.20%	72.60%	51.80%
Pennsylvania	51.40%	N/A	36.50%	N/A	42.40%	64.20%	N/A	NA	NA
Rhode Island	48.10%	59.70%	42.40%	N/A	45.40%	62.30%	52.10%	58.90%	45.40%
South Carolina	45.20%	57.30%	35.20%	56.80%	40.30%	58.20%	35.40%	53.20%	NA
South Dakota	53.30%	59.90%	44.70%	60.10%	53.90%	65.60%	58.80%	69.40%	61.20%
Tennessee	45.10%	N/A	29.80%	52.30%	35.10%	57.40%	42.10%	56.80%	NA
Texas	46.30%	51.60%	N/A	N/A	32.70%	N/A	N/A	NA	34.50%
Utah	52.00%	57.70%	30.30%	56.10%	36.80%	57.10%	35.00%	59.80%	37.80%
Vermont	55.90%	64.80%	40.80%	61.20%	49.80%	67.70%	55.00%	66.70%	49.40%
Virginia	54.80%	N/A	36.80%	66.60%	39.10%	67.60%	44.50%	61.10%	32.30%
Washington	58.90%	65.70%	43.10%	65.80%	54.30%	67.30%	47.30%	67.50%	43.50%
West Virginia	42.50%	N/A	32.00%	N/A	37.20%	51.20%	33.80%	55.10%	31.50%
Wisconsin	61.70%	N/A	56.90%	65.80%	52.40%	72.70%	53.70%	75.30%	NA
Wyoming	48.70%	60.40%	39.70%	59.00%	46.00%	63.10%	51.80%	66.30%	50.80%
United States	50.33%	60.20%	36.70%	58.60%	41.8%	62.2%	41.30%	60.70%	40.50%

**N/A: Information was unavailable for this state in this year.**

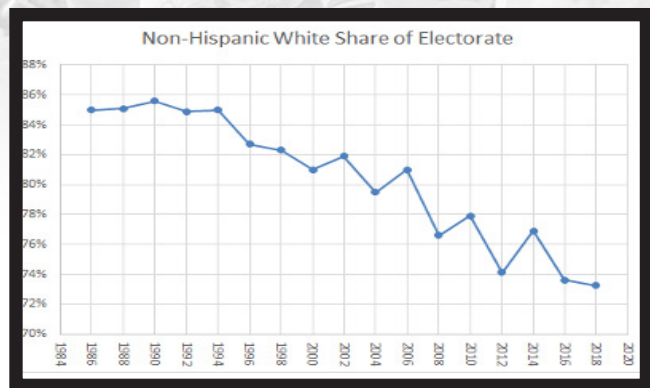
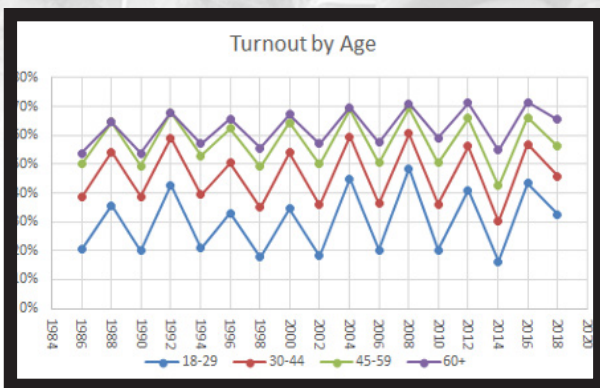
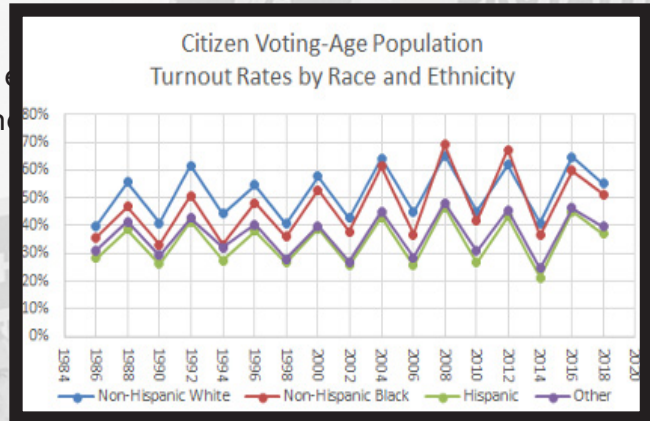
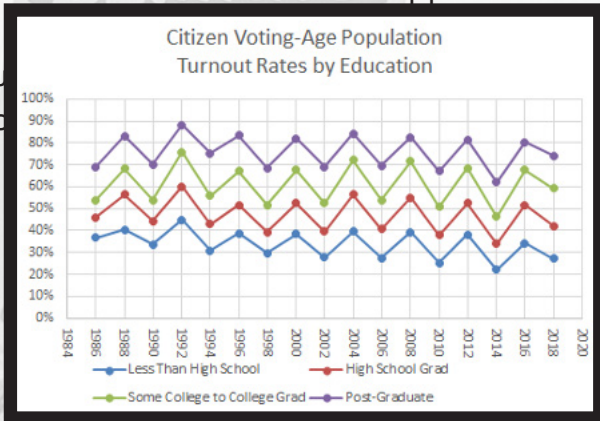
**Source: United States Elections Project, "Voter Turnout," accessed February 25, 2019.**

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Voter turnout differs by race, ethnicity, age and education.<sup>15</sup> People who are 60 plus years old are far more likely to vote than those who are between the ages of 18-29. The greater the educational attainment, the more likely the person is likely to vote. Blacks and non-Hispanic whites tend to vote in greater percentages than Hispanics and others. It is worthy to note that the non-Hispanic white share of the electorate has dropped from a high of 86% in 1990 to about 73% in 2018.



Even with less than optimal participation numbers, surveys and trends indicate that Americans generally view the right to vote and exercising that right as a fundamental part of American democracy.

## VOTER SUPPRESSION IS UN-AMERICAN

*Once a people begins to interfere with the voting qualification, one can be sure that sooner or later it will abolish it altogether. That is one of the most invariable rules of social behavior. The further the limit of voting rights is extended, the stronger is the need felt to spread them still wider, for after each new concession the forces of democracy are strengthened, and its demands increase with the augmented power. The ambition of those left below the qualifying limit increases in proportion to the number of those above it. Finally the exception becomes the rule; concessions follow one another without interruption, and there is no halting place until universal suffrage has been attained...*

*-Alexis de Toqueville, 1835<sup>16</sup>*

Anti-democratic efforts in the U.S., to limit voting power to assure non-democratic governance and

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outcomes should be reversed or stopped in order to avoid elites to entrench themselves in power through the constriction of voting power and the strategic use of the racial hierarchy as a political tool.<sup>17</sup> Counter measures must be identified and employed to expand voting rights in support of our representative democracy.<sup>18</sup>

America's long history of suppressing the vote for so many of its citizens remains a disturbing phenomenon that did not go away with the passage of the 15th or 19th constitutional amendments and has not gone away to this day. Just as the post-15th amendment strategies to suppress the vote of the freed men sought to ensure that political successes during reconstruction would be eradicated, so the post-Obama strategies to suppress the vote are to ensure that especially African Americans will not participate fairly in the democracy.

Voter suppression laws of today are a rehash of Jim Crow poll tax and other laws to keep blacks from voting. The Grand Old Party (GOP) has taken to voter suppression tactics like moths to a flame. One pundit declared "Voters deemed suspicious" by the GOP is a category that includes black people, Latinos, students, black people and also black people."<sup>19</sup>

No American that wants a democratic society can turn their heads away. No black person can turn their head away. The assault is clear and Black people are the clear target. We democratic loving Americans must be outraged and that rage must be heard at the voting booths across the country. We must support mail in voting and absentee ballots and we must fight vigorously against the tools of oppression endemic in voter suppression laws and strategies.

United States Supreme Court Justice Sotomayor has urged minority communities to act against the Roberts Court's efforts for disenfranchisement, stating: "Communities that are disproportionately affected by unnecessarily harsh registration laws should not tolerate efforts to marginalize their influence in the political process, nor should allies who recognize blatant unfairness stand idly by."<sup>20</sup>

While this article isn't written to enter the debate about voting as a right or privilege or even about the ruination of democracy, it is written to provide reasonable methods and strategies for counteracting disenfranchising influences that would deny Americans their vote. It is written to take up the challenge that Justice Sotomayor issued in her dissenting opinion in *Husted v. A. Philip Randolph Institute*. We will attempt to meet the challenge by providing strategies for overturning some of the voter suppression tactics being used by those who would deny voting rights or privileges to their fellow Americans.

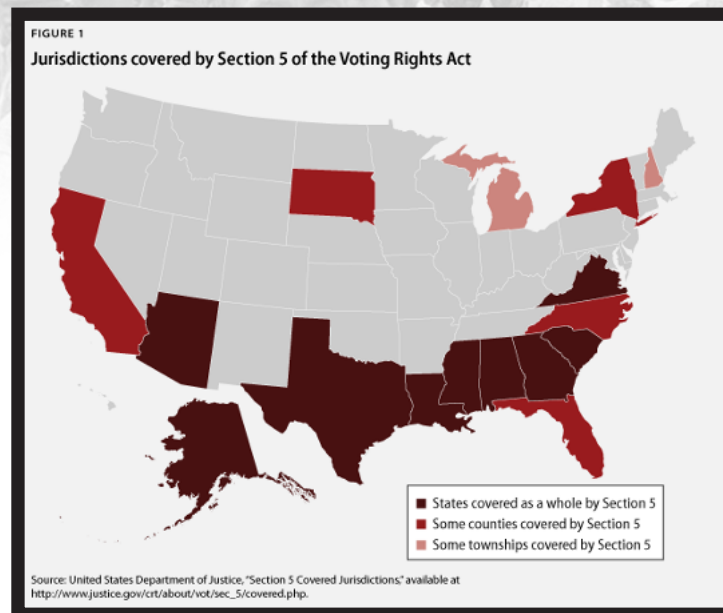
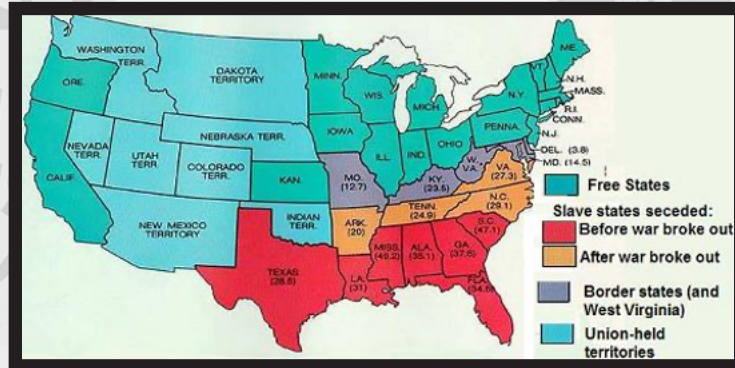
## STRATEGIES AND COUNTER-STRATEGIES

### PURGING VOTER ROLLS

After the United States Supreme Court struck down preclearance voting rights protections under the

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Voting Rights Act of 1965,<sup>21</sup> many states acted immediately to suppress voting rights. In Georgia, more than half a million registered voters were purged from the voter rolls generally because they had not voted in some of the prior elections.<sup>22</sup> Many of those purged would otherwise have been eligible to vote.<sup>23</sup>



Purging in its least controversial sense is a method that states take to maintain their voter rolls. Federal law requires the maintenance and further requires that the list maintenance occur well before an election.<sup>24</sup> What makes this process suspect to many is that hundreds of thousands of names are being removed from the voter rolls across the country, with strong evidence that many of the names removed were done so in error.<sup>25</sup> But republican advisers rely on voter suppression to foster election successes.<sup>26</sup> One adviser, Republican Justin Clark, political adviser and senior counsel to the Trump campaign was evidently caught on tape telling a group of Wisconsin Republicans that "it's always been Republicans suppressing votes in places. Let's start protecting our voters. We know where they are."<sup>27</sup> Whether his comments are accepted as stated or on the spin he later put to the comments, there is clear justification for the concern that purging and other voter suppression tactics need to be watched carefully to ensure a fair election system.<sup>28</sup> Earlier in 2012, the Palm Beach Post



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reported on another Republican leader who admitted that voter suppression was the tool they used to keep traditional democrats from the polls on election day.<sup>29</sup>

Studies indicate that concern over voter purges significantly impact election integrity and efficiency.<sup>30</sup> The Brennan Center reports that “in 2016, Arkansas’ secretary of state sent county clerks the names of more than 50,000 people who were supposedly ineligible to vote because of felony convictions. Those county clerks began to remove voters without any notice. The state later discovered the purge list was riddled with errors: it included at least 4,000 people who did not have felony convictions. [The list also included people] who once had a disqualifying conviction, up to 60 percent of those individuals were Americans who were eligible to vote because they had their voting rights restored back to them.” “In 2014 and 2015, the Brooklyn Board of Elections purged more than 110,000 voters who had not voted since 2008, and another 100,000 who had supposedly changed their addresses. There was no public announcement that this would be done.” After a lawsuit was filed the Board of Elections restored the registration records.”

A 2008 study revealed that “In 2004, Florida planned to remove 48,000 “suspected felons” from its voter rolls. Many of those identified were in fact eligible to vote. The flawed process generated a list of 22,000 African Americans to be purged, but only 61 voters with Hispanic surnames, notwithstanding Florida’s sizable Hispanic population. Under pressure from voting rights groups, Florida ordered officials to stop using the purge list.”<sup>31</sup>

## **SUPPORT THE JOHN LEWIS VOTING RIGHTS ADVANCEMENT ACT**



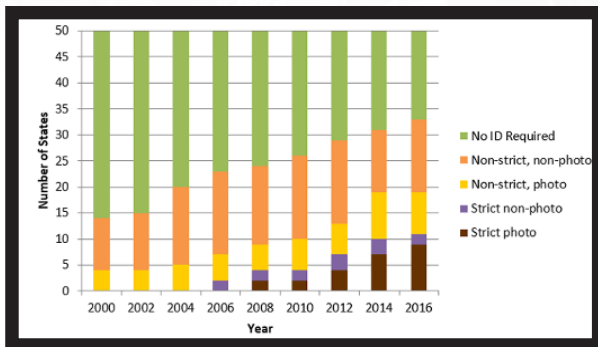
There are a number of strategies that can be pursued to eliminate the effect of a wrongful purge, particularly in high impact communities. They include:

1. Advocate for a congressional reenactment of the John Lewis Voting Rights Advancement Act to restore voting rights protections for every American.<sup>32</sup>
2. Vote as if every election counts because it probably does. If you vote regularly it will help avoid your being identified as inactive. Once you’re put on the inactive list you are subject to being purged from the rolls.
3. Routinely verify: At least once a year, verify that your name is listed as a registered voter. This process can be maintained through voter organizations’ and other regularly scheduled voter registration drives

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4. Make sure that your government officials publish their lists of prospective purges and widely distribute them on-line, through social media and in print media for at least 60 days before the purge will take effect.
5. Demand your government provide a clear process for prospective purges to correct their errors in order to be retained on the eligible voter lists
6. Support and advocate for same-day on-line registration and voting with paper trails
7. Demand your governments operate in the sunshine and not be permitted to purge voter rolls secretly or without notice
8. Contest the use of one's failure to vote as a trigger for purge
9. Do not allow voters to be turned away at the polls. Demand that provisional ballots be used in those cases where the voter does not appear on the registration rolls.
10. Require your government to perform an annual public audit of voter registration rolls, which audit must be made easily accessible to the public
11. Community and voter rights organizations must help maintain an informed electorate about the purging process. Who performs the purges? When are the purges conducted? Advocate for alternatives to purges that target black voters intentionally or effectively.

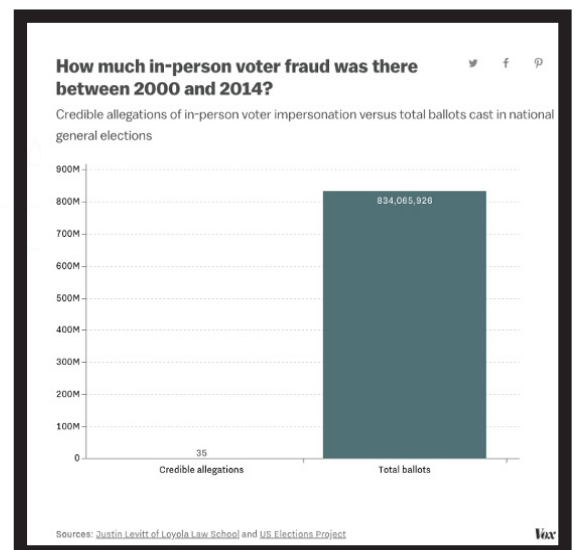


## VOTER ID

Voter Identification laws have been enacted across the country with increasing numbers since 2013.. The laws require registered voters to show official identification at the time they cast their ballot. Conceptually, voter identification seems like an unobtrusive vehicle for maintaining accurate voter registration records. But advocates across the country have argued that the generic intent of these laws is masked by its detrimental effects on already

disenfranchised and marginalized communities. Most directly voter ID laws have been compared to Jim Crow poll taxes because they may require eligible voters to pay money for the official forms of identification that are used to support the request for a voter identification card, like copies of birth certificates or court records. Further the types of voter ID laws vary from minimal to very strict requirements and vary widely from state to state.<sup>33</sup>

For many people, the idea that requiring specific voter ID is not asking much. After all, such IDs are used for applying for jobs, providing evidence of age or address,



# A CALL TO ADVOCACY

applying for loans or for proving identity for securing notary affirmations. But the facts indicate that more than 30 million people in the United States do not have a government issued photo id. That means about 11% of the US voter population could be excluded from voting on the basis that they did not carry an acceptable form of identification. In many cases, people do not have the proper identification because they cannot afford the price of getting one.

Voter Identification laws are also championed because they can ensure the integrity of the process. Only those persons qualified to vote will be able to vote. However, there is no report, no study that indicates that the integrity of the process is undermined by lack of voter identification. In fact one 2014 study found that strict voter ID laws can reduce voter turnout by up to 3%.<sup>34</sup> In effect, these laws have been found to muffle the voices of thousands of voters, who tend to be poor, people of color and democrats.<sup>35</sup>

Another study conducted between 2002 and 2006 revealed that voter ID laws decreased turnout between 1.6 and 2.2 percentage points. In other words the reporter stated, "this implies that voter ID laws disenfranchised between 3 and 4.5 million voters in 2006." These disenfranchised people are overwhelmingly

African American, racial minorities, elderly or poor.<sup>36</sup> This is a high price to pay to resolve a non-existent problem of voter fraud, which in fact, has not been found to any significant degree despite the various studies performed in search of voter fraud.<sup>37</sup> Moreover, the evidence supports that the primary reason for voter ID and other voter suppression initiatives are aimed at restricting access to the ballot to voters of color and low-income voters.<sup>38</sup>

**If liberty and equality are chiefly to be found in democracy, they will be best attained when all persons alike share in government.**

**-Aristotle**

There are a number of things that can be done to overcome the voter ID effect of disenfranchisement

1. Advocate removing barriers to voting including relaxation of voter ID laws
2. Those who support inclusion should work with community-based and voter rights organizations to identify potential voters who lack voter IDs and assist them in getting them
3. Support voter ID laws that are limited to ensuring voter integrity. Expose and denounce those voter ID laws that are used to disenfranchise people
4. Expand the types of identifications that may be used to encourage voting (including student IDs, driver licenses, government issued subsidy cards, tribal ID, military cards,

## FELONY DISENFRANCHISEMENT

Although the right to vote has always been considered one of the most fundamental rights of [American] citizens..., and in modern society, it has been considered inherent to almost every citizen, during every period of this nation's history, convicted criminals, in one form or another,



# A CALL TO ADVOCACY

have always been excluded from the election franchise.<sup>39</sup> America's criminal justice system holds almost 2.3 million people throughout its various detention systems and facilities.<sup>40</sup> But the system of criminal justice, including its subsystems, is one that is wrought with corruption, racial and gender discrimination.

*When you consider that much of the criminal justice system was built, honed and firmly established during the Jim Crow era — an era almost everyone, conservatives included, will concede rife with racism — this is pretty intuitive. The modern criminal justice system helped preserve racial order — it kept black people in their place. For much of the early 20th century, in some parts of the country, that was its primary function. That it might retain some of those proclivities today shouldn't be all that surprising.<sup>41</sup>*

It is the history of felony disenfranchisement itself that exposes the motives and intent of the post-Civil War laws that disenfranchised African Americans. The thirteenth Amendment to the US Constitution was enacted to end slavery but included an exception of persons convicted of a crime. The text of the amendment reads:

*"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*

*Section 2. Congress shall have power to enforce this article by appropriate legislation."*<sup>42</sup>

The language that excluded persons convicted of a crime from enslavement gave support to the enactment of black codes throughout the former confederate states. Black codes, among other things, criminalized actions for things like spitting on the street, loitering, associating in groups of 2 or more after hours. The intent of the black codes was to restore the pre-emancipation 'law and order' that supported slavery and denied human rights to African Americans. Using the conviction exception in the 13th amendment, the confederacy deployed its criminal justice system to deny the freedmen their constitutional rights.

*"First, in the wake of the Fifteenth Amendment, which gave Black Americans the right to vote, and then again after reconstruction. The self-evident purpose of these laws to limit the growing political power of former slaves was then made explicit."<sup>43</sup>*

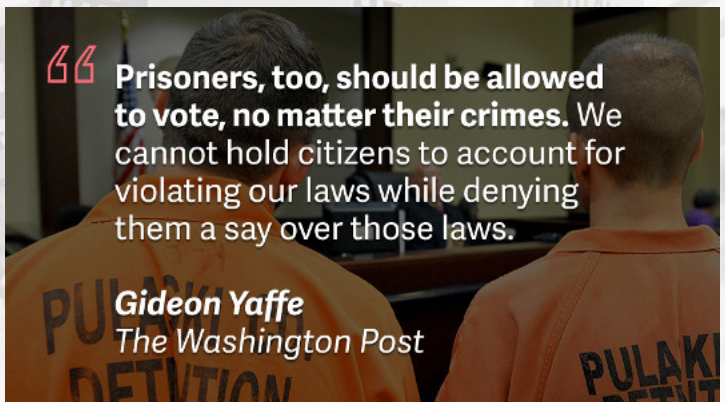
Mississippi enacted a new constitutional "under which the white race, inferior in number, but superior in spirit, in governmental instinct, and in intelligence, was restored to power."<sup>44</sup> The president

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of the constitutional convention according to the president of the 1890 constitutional convention, Judge Solomon Saladin "S.S." Calhoun, the convention was called specifically to disenfranchise the state's African American voters, restrict their rights, and to isolate and segregate them from the rest of society. He unabashedly stated that a constitution not doing this was unacceptable to the convention's members:

[...] Let's tell the truth if it bursts the bottom of the Universe. [...] *We came here to exclude the Negro.* Nothing short of this will answer.<sup>45</sup>

Rooted in racism, felony disenfranchisement has resulted in the loss of 6 million potential voters according to a 2016 report.<sup>46</sup> Individuals who have completed their sentences in the ... states that disenfranchise people post-sentence make up over 50 percent of the entire disenfranchised population, totaling almost 3.1 million people.<sup>47</sup> African Americans are more likely to be disenfranchised than any other racial group and in 2016, Florida accounted for 27% of the disenfranchised population nationally.<sup>48</sup>



Hope emerged in Florida on November 6, 2018, when the citizens of Florida voted to pass the Voting Restoration Amendment ("Amendment 4"), a measure supported by sixty-five percent of voters. Amendment 4 would restore voting rights to over 1.4 million convicted felons-- the largest voter expansion since the Twenty-sixth Amendment. The Amendment would restore voting rights to convicted felons who have "completed their prison term, parole and probation, except those with murder or felony sexual-assault convictions."<sup>49</sup> The Florida legislature altered the amendment to require that convicted felons would be required to complete all terms of sentence including full payment of restitution, any fines, fees or costs resulting from the conviction before they could regain the right to vote.<sup>50</sup> The governor signed the bill into law on June 28, 2019. Responding to lawsuits filed against the bill, U.S. District Judge Robert Hinkle, rule on May 24, 2020 that the state could prohibit felons from voting if they have outstanding legal financial obligations that they are able to pay, but that the state could not prohibit a person from voting if they have financial obligations they are unable to pay.<sup>51</sup>

## STRATEGIES TO ENFRANCHISE FELONS

1. Restore voting rights to convicted persons through elections and by legislation;
2. Don't allow conviction to be a basis for denying the right to vote;
3. Advocate for automatic restoration of the right to vote on a person's completion of his/her

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- sentence, probation or parole; and
4. Work against recidivism.

## **RESTRICTING EARLY VOTING**

Early voting is an often used convenience for registered voters to cast their votes without standing in long lines at polling places on election day. For anti-suffragettes, early voting and extended time for voting is too inclusive of a process. Restrictions on early voting is another tool in a long standing and too full arsenal of weapons to deny minorities their right to vote. In a representative democracy that is governed by the vote of the electorate, limiting access to voting is undemocratic. The fact that the United States permits so many random exclusionary limitations to access the vote is un-American.

Recent history shows that early voting is popular among American voters with over 50% of the voters casting their vote early in many states. This is particularly true for African American voters, a large percent of whom vote during early voting.<sup>52</sup>

### **STRATEGIES:**

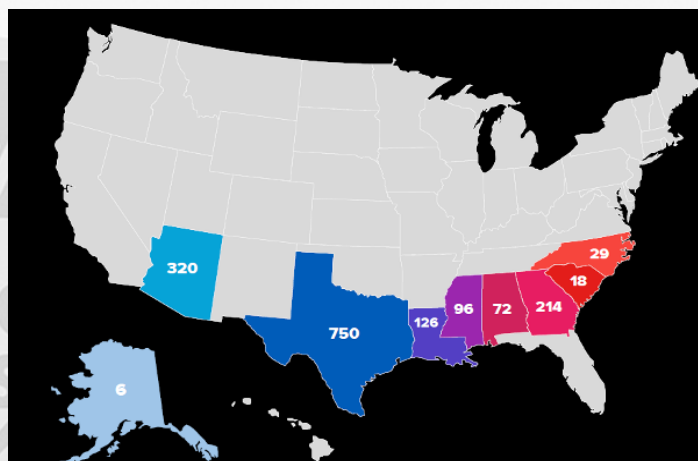
1. Extend voting periods to a minimum of two full weeks culminating on what is now called election day; and
2. Allow early voting on Sundays.

## **CLOSING POLLING PLACES**

The landmark United States Supreme Court decision in *Shelby County v Holder* opened the floodgate to voter suppression activity throughout the country.<sup>53</sup> Among the noticeable suppression activities was the closing of polling places. In 757 counties and county equivalents that formerly had to pre-clear voting practice changes with Washington, 1,173 polling places disappeared between 2014 and 2018.<sup>54</sup> The results have been staggering. For example in Texas, the closures were disproportionately in Black and Latinx areas.<sup>55</sup> The 50 counties that saw the highest growth in black and Latino population had 542 polling sites close between 2012 and 2018, while the 50 counties with the lowest black and Latino population growth saw just 34 closures. The closures came despite the population in the top 50 counties rising by 2.5 million while the 50 counties that had just 34 closures saw their population fall by 13,000.<sup>56</sup> Similar actions were taken in Arizona with 320 closures and Georgia with 214 closures.



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"Closing polling places has a cascading effect, leading to long lines at other polling places, transportation hurdles, denial of language assistance and other forms of in-person help, and mass confusion about where eligible voters may cast their ballot," the report said. "For many people, and particularly for voters of color, older voters, rural voters and voters with disabilities, these burdens make it harder – and sometimes impossible – to vote." Closing polling places exclude voters from exercising their right to vote instead of expanding access in as convenient ways as plausible. "The myriad tactics now used to restrict electoral participation are just as pernicious as the poll taxes and literacy taxes of the 20th century."<sup>57</sup>

## STRATEGIES TO COUNTER CLOSING POLLING PLACES

1. Advocate for the expansion of the number of polling places and dissent from any additional closings
2. Demand transparency. All polling locations should be widely advertised as well as indications that a polling place has been closed
3. Demand voter input in the decisions to close polling places before the closings take effect
4. Encourage free public transportation to polling places on election day

## RESTRICTING VOTER REGISTRATION

In order to cast a vote in American elections, the voter must be registered to vote. While some states may permit same day registration, most states require registration occur prior to the voting day. Many registrations are conducted through governmental agencies, like the Department of Motor Vehicles or the applicable clerk's office. Another method of registering voters is through third party voter registration drives. These voter registration efforts help to reach out and increase the numbers of voters. Often these non-partisan voter registration drives reach traditionally underrepresented people of color and limited-English proficient.<sup>58</sup>

## STRATEGIES TO ENHANCE VOTER REGISTRATION

1. Develop and Expand Voter registration drives on a consistent and continuing basis
2. Routinely make voter registration a part of community activities

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3. Encourage extended access through on-line registration

## CONCLUSION

One undeniable commonality between the various voter suppression strategies is that the explicit intent or the effect is to limit the rights of people, particularly African Americans, other people of color and limited English populations from voting. Since a fundamental right of citizenship is voting which is a basic element of democracy, voter suppression laws are crudely masked efforts to deny civil rights as have been made since the country's existence, but especially since the passage of the 15th Amendment. If traditionally marginalized people want to participate actively in America's political system and thus their own futures, we must not permit these suppression efforts to be successful. We, too, must continue our efforts to ensure and secure our right to vote and enthusiastically exercise our voting privileges.

It is apparent that without an enforceable and enforced law of protection of individuals' rights to vote, their votes will be suppressed and denied. When the United States Supreme Court gutted the enforcement of key protections of the voting right, it fell to Congress to reenact a law that would revive the Voting Rights Act of 1965. Before the Voting Rights Act of 1965, African Americans effectively could not vote. The Act opened the doors to massive voter registrations. When the United States Supreme Court closed that door, it became incumbent upon us to ensure the door be reopened by Congress. That is why, along with actions endorsed herein, we must engage the United States Congress to pass the John Lewis Voting Rights Advancement Act of 2020.

As Americans, we have long struggled for the right of African and other Americans to vote and the ability to exercise that right unfettered by oppressive suppression efforts. Our non-violent fights did not end with the passage of the Voting Rights Act, but continues and we must be resolute in the struggle for what is ours. Our vigilance must be evidenced by the efforts of our institutions, our organizations, churches, businesses and individuals.

Power concedes nothing without a demand. It never did and it never will.<sup>59</sup> If we want it, we must fight for it.

VOTE! WE CAN NOT ALLOW OUR  
VOTES OR OUR VOICES TO BE SUPPRESSED

VOTE! OUR LIVES DEPEND ON IT!

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## ENDNOTES

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1 See e.g. Annalisa Merelli, A history of paper ballots shows the evolution of US democracy, Quartz, 2020 retrieved from <https://www.msn.com/en-us/news/world/a-history-of-paper-ballots-shows-the-evolution-of-us-democracy/ar-BB-16g0uf>

2 Lani Guinier, Supreme Democracy: Bush v Gore Redux, 34 Loy.U.Chi.L.J. 23; 24 (2002)

3 Id at 25 and see Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886) acknowledging that the right to vote is the cornerstone of democracy and is preservative of all rights.

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7 Garrett Epps, Voting: Right or Privilege?, The Atlantic, September 18, 2012 retrieved from <https://www.theatlantic.com/national/archive/2012/09/voting-right-or-privilege/262511/> Note that the 15, 19, 23, 24 and 26 amendments all involve voting and the freedom to do so.

8 Id. stating that "Linguistically, our Constitution is more in the rights-preserving than in the right-proclaiming business."

9 Supra n. 8 stating "In those terms, it ought to mean something that the right to vote is singled out more often than any other. Section 2 of the Fourteenth Amendment imposes a penalty upon states that deny or abridge "the right to vote at any [federal or state] election ... to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, ... except for participation in rebellion, or other crime." The Fifteenth states that "[t]he right of citizens of the United States to vote" can't be abridged by race; the Nineteenth says that the same right can't be abridged by sex; the Twenty-Fourth says that "the right of citizens of the United States to vote" in federal elections can't be blocked by a poll tax; and the Twenty-Sixth protects "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote."

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17 Steven A. Ramirez and Neil G. Williams, Deracialization and Democracy, 70 Case W.Res.L. Rev. 81 (Fall, 2019).

18 Id.

19 Paul Waldman, Republicans are serious about voter suppression. Here's how to stop them., The Plum Line:Opinion, March 18, 2020, the Washington Post retrieved from <https://www.washingtonpost.com/opinions/2020/05/18/republicans-are-serious-about-voter-suppression-heres-how-stop-them/>

20 Id. citing Justice Sotomayor's dissent in Husted v. A. Philip Randolph Institute, 584 U.S. \_\_\_\_, 138 S.Ct. 1833, 201 L.Ed. 2d 141 (2018) where an Ohio law that provided a process to remove an inactive voter from the voter registration rolls was challenged. The United States Supreme Court, in a 5-4 decision ruled in Ohio's favor. Justice Alito wrote the court's opinion joined by Chief Justice Roberts along with Justices Kennedy, Gorsuch and Thomas. The dissenters were Justices Breyer, Ginsburg, Kagan and Sotomayor. Justice Sotomayor wrote: "the majority does more than just misconstrue the statutory text. It entirely ignores the history of voter suppression". Indeed the majority did seem to ignore statistics from Reuters that found 144,000 voters were removed from the rolls ahead of the 2016 elections with a disproportionate number occurring in predominantly Black neighborhoods.

21 Shelby County v Holder, 570 U.S. 529, 590 (2013)

22 Angela Caputo, Geoff Hing and Johnny Kauffman, They Didn't Vote...Now They Can't, APM Reports, retrieved from <https://www.apmreports.org/story/2018/10/19/georgia-voter-purge>

23 Id.

24 National Voter Registration Act of 1993, 52 U.S.C. §§ 20501–20511

25 For e.g. in Georgia, Governor Kemp purged 106,000 overwhelmingly voters of color, from the voter registration rolls based on an interstate crosscheck list that was shown to be 99.9% wrong [see Georgia State Conference of the National Association for the Advancement of Colored People et.al. vs DeKalb County Board of Registration and Elections, et.al. filed in the USDC for the Northern District of Georgia-Atlanta Division] also see the Wisconsin lawsuit where the state chose to wait until after the 2020 elections to purge some 200,000+ names from its voter registration rolls. Following the state's announced intent, a lawsuit was filed on behalf of three voters by the Wisconsin Institute for Law and Liberty to seek judicial intervention and order the purge immediately. [State of Wisconsin ex.rel. Zignego, Opitz, Luehrs v Wisconsin Election Commission, et.al. Appeals Nos 2019AP2397; 2020AP112, Court of Appeals, District IV]

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29 Dara Kam, Former Florida GOP leaders say voter suppression was reason they pushed new election law, The Palm Beach Post, Nov. 27, 2012 retrieved from <https://www.palmbeachpost.com/article/20121125/NEWS/812021098>

30 Jonathan Brater, Voter Purges: The Risks in 2018, Brennan Center for Justice, February 27, 2018 retrieved from <https://www.brennancenter.org/our-work/research-reports/voter-purges-risks-2018>

31 Myrna Perez, Voter Purges, Brennan Center for Justice, September 30, 2008, retrieved from <https://www.brennancenter.org/our-work/research-reports/voter-purges>. The report also showed that In Mississippi

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earlier this year, a local election official discovered that another official had wrongly purged 10,000 voters from her home computer just a week before the presidential primary. In Muscogee, Georgia this year, a county official purged 700 people from the voter lists, supposedly because they were ineligible to vote due to criminal convictions. The list included people who had never even received a parking ticket. In Louisiana, including areas hit hard by hurricanes, officials purged approximately 21,000 voters, ostensibly for registering to vote in another state, without sufficient voter protections.

32 H.R. 4 would reinstate key components of the Voting Rights Act of 1965, many of which were gutted by the 2013 Shelby ruling

33 See generally, Natalie Regoli, 18 Pros and Cons of Enacting Voter ID Laws, ConnectUs, Jun 16, 2019 retrieved from <https://connectusfund.org/18-pros-and-cons-of-enacting-voter-id-laws> and see Wendy Underhill, Voter Identification Requirements/Voter ID Laws, July 9, 2020, National Conference of State Legislatures retrieved from <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Table%201>

34 Elections: Issues Related to State Voter Identification Laws, US Governmental Accountability Office, Report to Congressional Requestors, September 2014, and may be retrieved from <https://www.gao.gov/products/GAO-14-634>

35 For e.g. See Ramirez and Williams, *supra* n. 17 stating that according to a University of Wisconsin study, in Wisconsin, which Donald Trump won by about 22,000 votes statewide, a new voter-ID law deterred or prevented about 25,000 predominantly lower-income citizens from casting their ballots in Milwaukee and Dane Counties alone. The study also found that “8.3% of white registrants were deterred, compared to 27.5% of African Americans.”

36 See Jenee Desmond-Harris, 6 questions about voter ID laws you were too embarrassed to ask, Nov 4, 2014, retrieved from <https://www.vox.com/2014/11/4/7151587/6-questions-about-voter-id-laws-you-were-too-embarrassed-to-ask#:~:text=There%27s%20been%20a%20recent%20rise%20in%20state%20laws,passport%2C%20at%20the%20polls%20in%20order%20to%20vote.> and citing statements from at least one governmental official supporting voter ID in order to suppress the vote stating “In 2012, Pennsylvania House Majority Leader Mike Turzai, a Republican, bragged that the voter ID law he’d helped pass was “gonna allow Governor Romney to win the state of Pennsylvania.”

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39 Matthew E. Feinberg, Suffering Without Suffrage: Why Felon Disenfranchisement, 8 Hastings Race & Poverty L.J. 61,62 (Summer, 2011)

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42 United States Constitution, 13th Amendment, retrieved from <https://constitution.congress.gov/constitution/>

43 Nonprofit Vote, Background and History of Felony Disenfranchisement Laws in the U.S., retrieved from <https://www.nonprofitvote.org/background-and-history-of-felony-disenfranchisement-laws-in-the-u-s/>

44 Ratliff v. Beale, 74 Miss. 247, 266-67, 20 So. 865, 868-69 (1896). After a campaign of terrorism, Mississippi adopted its fourth and current constitution in 1890 specifically to disenfranchise, isolate, and marginalize the State’s African American population. Mississippi Governor James K. Vardaman declared, “if it is necessary



# A CALL TO ADVOCACY

every Negro in the state will be lynched; it will be done to maintain white supremacy." See American Experience: James K. Vardaman retrieved from <http://www.pbs.org/wgbh/americanexperience/features/biography/flood-var-daman/>

45 Solomon Saladin "S.S." Calhoon, Mississippi Constitutional Convention of 1890, (emphasis added). Similar sentiments were expressed throughout the confederate states in support of denying the right to vote to the freedmen. See for e.g. Jeffery Robinson, The Racist Roots of Denying Incarcerated People their right ot Vote, ACLU (May 3, 2019) retrieved from <https://www.aclu.org/blog/voting-rights/racist-roots-denying-incarcerated-people-their-right-vote> reporting that in 1894, a white South Carolina newspaper argued that amendments to the voting laws were necessary to avoid whites being swept away at the polls by the Black vote. In 1901, The president of the Alabama constitutional convention argued that manipulating the ballot to exclude Blacks was justified because of the need to avoid the "menace of Negro domination," especially since Blacks were inferior to whites. Also reporting that in the north, New York required blacks to be property owners to vote.

46 Christopher Uggen, Ryan Larson and Sarah Shannon, 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016, The Sentencing Project, October 16, 2016 retrieved from <https://www.sentencing-project.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>

47 Id.

48 Id. and see Background and History of Felony Disenfranchisement Laws in the US, reporting that as of March 2020, "20 states and the District of Columbia restore voting rights to all citizens upon release; 28 states continue post-release restrictions for all persons on probation, parole, or any kind of supervised release. In some states, people can lose their voting rights permanently and 2 states have post-release restrictions only on completion of parole." Retrieved from <https://www.nonprofitvote.org/background-and-history-of-felony-disenfranchisement-laws-in-the-u-s/>

49 Ramirez and Williams, *supra* n. 17 pg 123

50 Florida Senate Bill 7066, The Florida Senate, retrieved from <https://www.flsenate.gov/Committees/Bill-Summaries/2019/html/2038>

51 See Florida Senate Bill 7066 (2019), Ballotpedia retrieved from [https://ballotpedia.org/Florida\\_Senate\\_Bill\\_7066\\_\(2019\)](https://ballotpedia.org/Florida_Senate_Bill_7066_(2019))

52 See generally, Claire Foster martin, Block the Vote: How a new Wave of State Election Laws is Rolling Unevenly over Voters & the Dilemma of how to Prevent it, 43 Cum L R 95

53 *Supra* n. 21

54 Tom McCarthy, More than 1,000 US polling sites closed since supreme court ruling, report finds, The Guardian, Sept. 11, 2019 retrieved from <https://www.theguardian.com/us-news/2019/sep/11/us-polling-sites-closed-report-supreme-court-ruling>, citing The Leadership Conference Education Fund, Democracy Diverted: Polling Pace Closures and the Right to Vote, September 2019 retrieved from <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

55 Igor Derysh, Voter Suppression, plain and simple": Texas closed hundreds of polling sites in black, latino areas, Salon, march 3, 2020 retrieved from <https://www.salon.com/2020/03/03/voter-suppression-plain-and-simple-texas-closed-hundreds-of-polling-sites-in-black-latino-areas/>

56 Id.

57 McCarthy *supra* n.50

58 Terry Ao Minnis and Niyati Shah, Voter Registration in Today's Democracy: Barriers and Opportunities, 45 Hum Rts 2,3 (2020)

59 Frederick Douglass, If there is no Struggle, There is no Progress" 1857 retrieved from <https://www.black-past.org/african-american-history/1857-frederick-douglass-if-there-no-struggle-there-no-progress/>