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Protecting the Right to Vote



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In their Election Law column, Jerry H. Goldfeder and Myrna Pérez discuss several bills in Congress that would go a long way in addressing the domestic threats still faced by many in our country by making voting more accessible, our institutions more stable and responsive, and our country fairer and more equal.

As the insurrectionist attack on the U.S. Capitol demonstrated once again, the laws and norms that hold our democracy together are under persistent assault. Several bills in Congress would go a long way in addressing the domestic threats still faced by many in our country by making voting more accessible, our institutions more stable and responsive, and our country fairer and more equal.

The [For the People Act](#) (sometimes referred to H.R. 1 or S. 1) would fix many of the administration issues that have plagued our elections over the last 10 years. The [John Lewis Voting Rights Advancement Act](#) would protect voters against race-based discrimination in voting. Although these bills only passed one chamber of Congress during the last session, leaders in the new Congress have publicly pledged to push hard for their passage this session. These twin legislative actions would address many of the voting problems from the 2020 elections (and before)—including the unacceptably long lines from Wisconsin to Georgia (especially in the primaries); widespread efforts to [kick](#) voters off registration rolls; and rampant voter intimidation. The bills would also minimize the onslaught of frivolous lawsuits, of which there

were actually [at least 99 during the 2020 election](#), which in some way or another attempted to either restrict or invalidate the will of the voters.

Here's how H.R. 1 would improve voting rights: First, it would implement multiple measures to modernize voter registration, such as [automatic voter registration](#). Complications with registration hamper Americans' access to the ballot in a variety of ways—errors in data entry, erroneous deletions, and election boards' failures to update information when voters move to a new address. Automatic voter registration is already law in 19 states and the District of Columbia and would add tens of millions to the rolls, save money, and bolster security and accuracy. What's more, automatic voter registration has been [very successful](#) in getting Americans registered to vote in states where it has been implemented. For example, voter registration figures rose by 33.7% in Alaska, 26.8% in California 47.4% in Rhode Island, and a whopping 60.2% in Vermont and 93.7% in Georgia.

H.R. 1 would also restore voting rights to people with prior convictions. About five million Americans are denied the right to vote because of laws that originate primarily from the Jim Crow era. Because our laws disproportionately criminalize people of color, the share of voters left without a voice, these laws clearly embody and maintain discrimination. Restoring voting rights not only expands participation, but it also fosters a more robust democracy. Such reform also significantly codifies the principles of forgiveness and redemption. H.R. 1 would allow a citizen who is out of prison (or never went in) to vote in federal elections. And states would be required to provide written notice to individuals as to the procedures to have their voting rights restored, mitigating the confusion and lack of information that too often exists in such circumstances.

The bill would further expand voting through online registration, expanded [vote by mail](#) opportunities, and same-day registration. Clearly, these reforms will make voting easier. Indeed, same-day registration is an important tool already in place in many states and serves as a fail-safe for voters, allowing people to vote even if their name is inadvertently omitted from the rolls or because of improper voter purges that have plagued elections in recent years.

It would also institute minimum standards for early voting throughout the nation. Currently, 43 states and the District of Columbia already allow some form of early voting before Election Day. But too many Americans live in states with scarce opportunities to vote before Election Day, and some states have rolled back early voting in ways that disproportionately restrict opportunities for communities of color. Under H.R. 1, two weeks of early voting would be the federal floor, and the law would mandate a more equitable distribution of early polling sites.

The John Lewis Voting Rights Advancement Act would restore the Voting Rights Act to full strength. In a Supreme Court decision we have written about before, *Shelby v. Holder*, 570 U.S. 529 (2013), the court eviscerated a crucial part of the Voting Rights Act that required certain jurisdictions with histories of racial discrimination in elections to obtain certification in advance that a proposed change in election procedures would not discriminate against voters of color. This process was called “preclearance” and it worked to stop discriminatory acts before they passed. Indeed, as we have [reported before](#), several states—immediately after the Shelby

decision—enacted a variety of restrictive voting laws. The Brennan Center [estimated](#) that between 2016 and 2018, jurisdictions previously required to comply with the preclearance section of the VRA increased the rates of purging voters in a greater rate than jurisdictions not covered by the law.

The John Lewis VRAA would do this by modernizing which jurisdictions followed the preclearance process, monitoring particularly problematic election processes, implementing transparency and notice rules, reinstating on-the-ground federal observers, and fast-tracking discriminatory laws in court.

While taking different approaches, both of these bills offer important reforms to our voting procedures, and would facilitate a more robust democracy. Americans of all political stripes should be supportive.

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