

January 14, 2022

RE: The Senate Must Debate and Pass H.R. 5746, the Freedom to Vote: John R. Lewis Act

Dear Senator:

The American Civil Liberties Union (ACLU) strongly urges you to support passage of H.R. 5746, the Freedom to Vote: John R. Lewis Act. The House of Representatives passed the bill yesterday. If the Senate passes the bill next week—during the week of Martin Luther King, Jr. Day—it will be signed by the President and become law with sufficient time to protect the right to vote during the 2022 elections.



**National Political
Advocacy Department**
915 15th Street, NW, 6th Floor
Washington, DC 20005-2112
[aclu.org](https://www.aclu.org)

Ronald Newman
National Political Director

Anthony D. Romero
Executive Director

Deborah N. Archer
President

There likely will be multiple votes towards passage of H.R. 5746. After full consideration of the bill, the ACLU urges you to vote “YES” on cloture to end debate and allow the Senate to vote on the bill, vote “YES” on any and all Senate rule changes that clear the unwarranted supermajority obstacle to Senate passage of the bill, and vote “YES” on final passage. The ACLU will score each of these votes.

Particularly as state legislatures go back into session and the nation confronts the possibility of even more proposals to undermine voting—and as election officials begin to prepare for the 2022 elections—the Senate must act now and pass this legislation. The Senate cannot permit its rules to be used, as they were so dishonorably used during the Jim Crow period, to block this legislation. Rules blocking a majority of the Senate, who today represent a majority of the population, cannot stand in the way.

The Freedom to Vote: John R. Lewis Act is part of a long and historic fight to protect the most fundamental of all rights, the right to vote.

More than a century ago, the Supreme Court described the right to vote as the one right that is preservative of all others.¹ Unfortunately, our nation has a long and well-documented record of fencing out certain voters, in particular Black, Native, and other voters of color. The Fourteenth and Fifteenth Amendments, which respectively guarantee the right to due process and equal protection under the law and the right to vote without discrimination based on race, expressly give Congress the power to enforce their guarantees.² Although this

¹ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (“[The right to vote] is regarded as a fundamental political right, because [it is] preservative of all rights.”).

² U.S. Const. amends. XIV § 5, XV § 2.

country has made incredible progress since the enactment of the Reconstruction amendments, this obligation is ongoing.³

The landmark Voting Rights Act of 1965—which has been reauthorized, amended, and updated with overwhelming bipartisan support five times since 1965⁴—has been crucial in combatting the persistent and widespread problem of racial discrimination in voting. However, in the 2013 *Shelby County v. Holder* decision,⁵ the Supreme Court struck down the formula used to determine which jurisdictions were covered by a federal preclearance process. This meant that the most effective part of the Voting Rights Act—the requirement that jurisdictions with a long history of voter suppression submit proposed changes to election laws to federal officials *before* they went into effect—functionally ended. Many jurisdictions took *Shelby County* as a green light to enact with impunity discriminatory voting laws that disproportionately impact voters of color.

In *Shelby County*, the Supreme Court’s reasoning in dismantling preclearance was premised in part on the idea that plaintiffs could still challenge discriminatory voting laws under Section 2 of the Voting Rights Act and win relief before an election occurs with a discriminatory practice in effect.⁶ Last year, however, the Supreme Court narrowed the interpretation of Section 2 at odds with the statute’s intent of eradicating all voting practices that have racially discriminatory effects in *Brnovich v. Democratic National Committee*.⁷ The decision effectively raises the already high bar to successfully challenge racially suppressive laws, reinforcing the need for Congress to take up Chief Justice John Roberts on his call in *Shelby County* for Congress to update the Voting Rights Act’s protections based on current conditions of discrimination in voting.⁸

The ACLU has fought to enforce the provisions of our country’s voting laws and Constitution in the courts for over half a century. Congress must restore the protections of the Voting Rights Act included in the Freedom to Vote: John R. Lewis Act and pass this combined legislation to respond to the current voting rights landscape.⁹

³ See ERIC FONER, *THE SECOND FOUNDING* xx (2019) (“All three [Reconstruction] amendments end with a clause empowering Congress to enforce their provisions, guaranteeing that Reconstruction would be an ongoing process, not a single moment in time. ... The Bill of Rights said nothing about how the liberties it enumerated would be implemented and protected”).

⁴ Voting Rights Act of 1965, 79 Stat. 437; Voting Rights Act Amendments of 1970, 84 Stat. 315; Voting Rights Act Amendments of 1975, 89 Stat. 400; Voting Rights Act Amendments, 96 Stat. 131 (1982); Voting Rights Language Assistance Act of 1992, 106 Stat. 921; Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act, 120 Stat. 577 (2006), as amended, 52 U.S.C. § 10301 *et seq.*

⁵ 570 U.S. 529 (2013).

⁶ 570 U.S. at 537 (“Both the Federal Government and individuals have sued to enforce § 2, ... and injunctive relief is available in appropriate cases to block voting laws from going into effect.”).

⁷ 141 S. Ct. 2321 (2021).

⁸ 570 U.S. at 557 (“Our country has changed, and 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.”).

⁹ See Sophia L. Lakin et al., *The Case for Restoring and Updating the Voting Rights Act: A Report of the American Civil Liberties Union 2021* (Jul. 14, 2021), <https://www.aclu.org/report/aclus-2021-report-case-restoring-and-updating-voting-rights-act> (highlighting how voting practices denying or abridging the right to vote on account of race, ethnicity, and language minority status persist); *Oversight of the Voting Rights Act: Potential Legislative Reforms: Hearing Before the H. Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the U.S. House Committee on the Judiciary*, 117th Cong. (2021) (statement of Sophia Lin Lakin, Deputy Director of the ACLU’s Voting Rights Project).

In addition to supporting the John Lewis Voting Rights Advancement Act and now the Freedom to Vote: John R. Lewis Act, the ACLU has long supported many of the federal voting rights protections included in this combined legislation, and in several places has helped develop the policies themselves. The ACLU believes that our voting system should give all eligible voters the greatest opportunities to participate in our democracy and ensure that more people who want to cast a ballot are able to do so unimpeded. However, in 2021 alone, over 400 anti-voter measures were introduced by states across the country. Many of these bills blatantly targeted voters of color, from mass purges of voter rolls to racially gerrymandered electoral maps that systematically disenfranchise Black voters.¹⁰

This bill includes responses to address these threats to minority voting rights, such as provisions to clarify under federal law that states cannot remove voters from the rolls simply for not voting for a period of time, provisions outlining federal redistricting reforms standards to draw constitutional and fundamentally fair political districts, and provisions to reinstate the right to vote in federal elections to people who were formally incarcerated. Other common sense proposals include modernizing voter registration—including same day voter registration, online voter registration, and automatic voter registration—and uniform federal standards that establish an early voting period and no excuse absentee voting.

However, we have significant concerns that the bill includes the DISCLOSE Act, which would unconstitutionally infringe on the freedom of speech and the right to associational privacy.¹¹ As we explained when the DISCLOSE Act previously was considered by Congress, while the ACLU shares the DISCLOSE Act's goal of fairer elections through a more informed electorate, this provision's overbroad public disclosure requirements would chill the speech of nonprofit organizations engaged in pure issue advocacy and hamper the associational and privacy rights of their donors. Despite these concerns, we support H.R. 5746 because of our confidence that, while courts will address the problems with the DISCLOSE Act, the Supreme Court's decisions to gut the most important protections of the Voting Rights Act make clear that Congress cannot rely on the Judicial Branch to address the multiplying challenges to voting. The Senate must act and pass this bill.

With core protections of the Voting Rights Act gutted by the Supreme Court, the most immediate result has been that the right to vote is once again under attack by state legislatures and governors determined to pass legislation that will disproportionately burden voters of color and threaten their ability to exercise the right to vote and have each vote count equally. Although tactics used by officials to discriminate have shifted in light of legal developments and political conditions, the strategies have remained the same, such as efforts to limit voting opportunities, diminish the collective power of minority voting strength, and advance laws that, while neutral on their face, would disproportionately deny or abridge the rights of minority voters.

¹⁰ Brennan Center for Justice at NYU School of Law, *Voting Laws Roundup: December 2021* (last updated Jan. 12, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

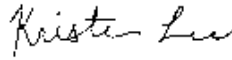
¹¹ See, e.g., Letter to Senate Committee on Rules and Administration on S. 2156, the DISCLOSE Act (Jul. 22, 2014) (opposing S. 2156), available at <https://www.aclu.org/other/aclu-letter-commenting-s-2516-disclose-act-2014>; Press release, Bill Will Compromise Free Speech (Jul. 26, 2010) (opposing H.R. 5628, the DISCLOSE Act) available at <https://www.aclu.org/news/aclu-urges-no-vote-disclose-act>; Letter to Senate on S. 3628, the DISCLOSE Act (Jul. 23, 2010) (opposing S. 3628), available at <https://www.aclu.org/letter/aclu-letter-senate-urging-no-vote-disclose-act>; Letter to House of Representatives on H.R. 5175, the DISCLOSE Act (Jun. 17, 2010) (opposing H.R. 5175), available at <https://www.aclu.org/letter/aclu-letter-house-urging-no-vote-disclose-act>.

The Senate must act now to cement the legacy and restore the protections of the Voting Rights Act, and not allow its own rules to prevent it from carrying out its constitutional role. The ACLU urges you to vote “YES” on cloture to end debate on H.R. 5746, “YES” on each and every vote to remove obstacles to a vote on final passage, and “YES” on final passage of H.R. 5746. If you have any questions, please contact Kristen Lee at klee@aclu.org.

Sincerely,



Christopher E. Anders
Federal Policy Director



Kristen Lee
Senior Policy Analyst