

Breathing Life into One (Wo)Man One Vote: John Lewis Voting Rights Act Passage as a Means to Avert the Crisis Exacerbated by the U.S. Supreme Court with the *Brnovich V. DNC* and *Shelby County v. Holder* Decisions

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ABSTRACT

Critical protections afforded by the Voting Rights Act of 1965 [“VRA”] have deteriorated given U.S. Supreme Court decisions in *Brnovich v. Democratic National Committee, et. al.* (2021) and *Shelby County v. Holder* (2013). These decisions, on the backdrop of record-breaking voter participation in the 59th quadrennial presidential election, have enabled dozens of bills with restrictive provisions² to stifle democracy by disenfranchising voters.

The *Brnovich* and *Shelby County v. Holder* decisions scaffold reform measures alienating and instilling fear, rather than easing legitimate access to the ballot box. Millions, predominantly minorities, immigrants, and the underprivileged, remain without the full scope of protections afforded by the VRA as a result. VRA Section 2 has dovetailed with Sections 4 and 5 to protect historically disenfranchised voter classes by mandating jurisdictions with a record of discriminatory practices submit proposed election law changes to the USDOJ Civil Rights Division for review, with a finding they are non-discriminatory as the litmus test for “preclearance” *before* becoming effective.

Shelby County v. Holder obliterates VRA Section 4, claiming it is based on outdated evidence of discriminatory practices. Jurisdictions can now implement restrictive voting changes without USDOJ preclearance to ferret racial discrimination as a result. *Brnovich* significantly limits VRA Section 2 by imposing an extraordinary presumption plaintiffs must overcome to prevail on a vote denial claim. The John Lewis Voting Rights Act [“JLVRA”] retroactively prohibits restrictive provisions in a bevy of state laws enacted after the 2020 elections, to protect otherwise disenfranchised voters against a harsh tide.

This paper contributes to current scholarship by examining recently enacted state laws curtailing voting rights. It applies the Senate version of the JLVRA to these measures, working through how the JLVRA mechanistically functions to invalidate egregious provisions to restore access to the ballot box for millions of otherwise disenfranchised U.S. voters.

KEYWORDS: Voting Rights Act of 1965; U.S. Supreme Court; *Brnovich v. DNC*; *Shelby County v. Holder*; John Lewis; John Lewis Voting Rights Act; discrimination; preclearance; retroactive; state legislature; discriminatory practice; disenfranchise; civil rights; USDOJ; racial discrimination; election law

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² <https://www.brennancenter.org/our-work/research-reports/state-voting-bills-tracker-2021>

