

**Barriers to Voting**

The right to vote is a vital part of democratic governance. Despite this, many barriers to voting exist. Legislators have enacted laws limiting access to voting. Furthermore, the Supreme Court has weakened laws designed to protect the right to vote. Some of the most egregious examples of current barriers to voting are discussed below. Given the fundamental importance of voting, these barriers to voting should be removed, and the right to vote should be accessible to all eligible people.

**Weakening of the Voting Rights Act**

The Voting Rights Act of 1965 made substantial contributions to ensuring the right to vote.<sup>1</sup> For example, Section 4(b) provided a formula for the federal government to use in identifying jurisdictions with histories of racial discrimination. Section 5 required those jurisdictions to notify voters and “to seek permission from the Justice Department or from a federal court before changing voting laws or procedures.”<sup>2</sup> This requirement protected minority voting rights because “when a town wanted to close polling places in black neighborhoods but keep them open in white areas, it had to seek approval in advance.”<sup>3</sup>

In *Shelby County v. Holder*, the Supreme Court held that Section 4(b) was unconstitutional.<sup>4</sup> In doing so, the Court “rendered the protection [of Section 5] unusable.”<sup>5</sup> In fact, since *Shelby*, over 1500 polling places in former Section 5 jurisdictions have closed.<sup>6</sup> *Shelby*

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<sup>1</sup> Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437 (1965).

<sup>2</sup> MICHAEL WALDMAN, THE FIGHT TO VOTE 229-30 (Simon and Schuster 2016) [hereinafter Waldman].

<sup>3</sup> Waldman at 230.

<sup>4</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

<sup>5</sup> Waldman at 232.

<sup>6</sup> The Leadership Conference Education Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote*, Sept. 2019 p.12, available at <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

presents a barrier to voting because it gutted two key provisions in the Voting Rights Act that had protected minority voting rights.

### **Voter ID Laws**

Many states require their citizens to show identification prior to voting.<sup>7</sup> In *Crawford v. Marion County Election Board*, the Supreme Court held that Indiana’s strict voter ID law, which required photo identification, did not violate the constitution.<sup>8</sup> However, strict voter ID laws are a barrier to voting for many, especially minorities or those with low incomes.<sup>9</sup> Government-issued IDs take time and money to obtain, leading some jurists to compare such laws with unconstitutional poll taxes.<sup>10</sup> Even Judge Posner, who wrote the appellate opinion for *Crawford*, admits the decision is widely regarded as a means of voter suppression rather than fraud prevention.<sup>11</sup>

### **Election Disinformation**

Moreover, the spread of false information is a common tactic used “to dampen turnout among targeted groups.”<sup>12</sup> For example, in 2005, Oklahoma counties gave incorrect information about when former felons would be permitted to register to vote. As a result, “thousands of people [were] deprived of the fundamental right to vote even when they [were] legally entitled to

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<sup>7</sup> ALLAN J. LICHTMAN, *THE EMBATTLED VOTE IN AMERICA: FROM THE FOUNDING TO THE PRESENT* 187 (Harvard University Press 2018) [hereinafter Lichtman].

<sup>8</sup> *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

<sup>9</sup> ARI BERMAN, *GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA* 254 (Farrar, Straus and Giroux 2015).

<sup>10</sup> Paul J. Weber, *Judge Again Throws Out Texas Voter ID Rules Backed by Trump, Compares Law to ‘Poll Tax’*, CHICAGO TRIBUNE, Aug. 24, 2017, available at <https://www.chicagotribune.com/nation-world/ct-texas-voter-id-law-20170823-story.html>.

<sup>11</sup> Lichtman at 193.

<sup>12</sup> FRANCES FOX PIVEN ET AL., *KEEPING DOWN THE BLACK VOTE: RACE AND THE DEMOBILIZATION OF AMERICAN VOTERS* 167 (The New Press 2009) [hereinafter Piven].

exercise that right.”<sup>13</sup> Another example includes a current Facebook policy that refuses to deny ad space for false 2020 election information.<sup>14</sup> “No federal law specifically criminalizes deliberately giving false information to the public about the requirements to register or vote, or misinforming voters about polling place locations, or the dates of elections, or the hours polling sites are open.”<sup>15</sup> Spreading false information to suppress voter turnout is a barrier to voting.

### **Gerrymandering**

Gerrymandering is the drawing of district lines so that one party has a greater electoral advantage. “In Florida[,] one congressional district was ninety miles long and no more than three miles wide.”<sup>16</sup> Recently, in *Rucho v. Common Cause*, the Supreme Court decided in a 5-4 opinion that federal courts have no authority to decide controversies regarding partisan gerrymandering.<sup>17</sup> The Court’s ruling is likely to “empower an explosion of extreme partisan gerrymandering.”<sup>18</sup> Gerrymandering undermines a person’s right to vote because it can dilute the impact of his or her vote when district lines are drawn to concentrate members of a specific group and is discriminatory when based on race.<sup>19</sup>

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<sup>13</sup> *Oklahomans Are Being Denied the Right to Vote Because of Misinformation, ACLU Charges*, ACLU (2005), available at <https://www.aclu.org/press-releases/oklahomans-are-being-denied-right-vote-because-misinformation-aclu-charges>.

<sup>14</sup> Mike Isaac and Cecilia Kang, *Facebook says It Won’t Back Down From Allowing Lies in Political Ads*, N.Y. TIMES, Jan. 9, 2020, available at <https://www.nytimes.com/2020/01/09/technology/facebook-political-ads-lies.html>.

<sup>15</sup> Piven at 167.

<sup>16</sup> Waldman at 227.

<sup>17</sup> *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

<sup>18</sup> Robert Barnes, *Supreme Court says Federal Courts Don’t Have a Role in Deciding Partisan Gerrymandering*, WASH. POST, June 27, 2019, available at [https://www.washingtonpost.com/politics/courts\\_law/supreme-court-says-federal-courts-dont-have-a-role-in-deciding-partisan-gerrymandering-claims/2019/06/27/2fe82340-93ab-11e9-b58a-a6a9afaa0e3e\\_story.html](https://www.washingtonpost.com/politics/courts_law/supreme-court-says-federal-courts-dont-have-a-role-in-deciding-partisan-gerrymandering-claims/2019/06/27/2fe82340-93ab-11e9-b58a-a6a9afaa0e3e_story.html).

<sup>19</sup> GLORIA J. BROWNE-MARSHALL, *THE VOTING RIGHTS WAR: THE NAACP AND THE ONGOING STRUGGLE FOR JUSTICE* 108 (Rowman & Littlefield 2016).

### **Limited Access to Voting by Mail**

Several states, such as Colorado, Washington, and Hawaii, routinely hold elections by mail.<sup>20</sup> Mail-in ballots provide numerous advantages, such as allowing people to vote without having to take time off of work. It also allows the public to practice social distancing for health reasons during the present Coronavirus Pandemic.<sup>21</sup> However, there is currently “litigation . . . , which has sought to block emergency measures related to covid-19, such as proactively mailing ballots to voters sheltering at home.”<sup>22</sup> Other lawsuits seek to ensure that every voter has access to mail-in ballots.<sup>23</sup> While it is unclear how these litigations will be decided, it is clear that in-person voting during a contagious pandemic presents a barrier to voting that will need to be addressed.

### **Ways to Protect and Expand Voting Rights**

Our society must protect and expand voting rights so that voting is accessible to all eligible voters. First, the Voting Rights Act should be strengthened to protect minority voters and prevent the unnecessary closing of polling places. Second, because “in the modern era, studies

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<sup>20</sup> Nathaniel Rakich, *Few States are Prepared to Switch to Voting by Mail. That Could Make for a Messy Election*, FIVETHIRTYEIGHT, Apr. 27, 2020, available at <https://fivethirtyeight.com/features/few-states-are-prepared-to-switch-to-voting-by-mail-that-could-make-for-a-messy-election/>.

<sup>21</sup> Elise Viebeck et al., *Trump, GOP Challenge Efforts To Make Voting Easier Amid Coronavirus Pandemic*, WASH. POST, Apr. 4, 2020, available at [https://www.washingtonpost.com/politics/trump-gop-challenge-efforts-to-make-voting-easier-amid-coronavirus-pandemic/2020/04/04/61f889fe-75bb-11ea-87da-77a8136c1a6d\\_story.html](https://www.washingtonpost.com/politics/trump-gop-challenge-efforts-to-make-voting-easier-amid-coronavirus-pandemic/2020/04/04/61f889fe-75bb-11ea-87da-77a8136c1a6d_story.html).

<sup>22</sup> Elise Viebeck, Amy Gardner, and Michael Scherer, *Trump, GOP Challenge Efforts to Make Voting Easier Amid Coronavirus Pandemic*, WASH. POST, Apr. 4, 2020, available at [https://www.washingtonpost.com/politics/trump-gop-challenge-efforts-to-make-voting-easier-amid-coronavirus-pandemic/2020/04/04/61f889fe-75bb-11ea-87da-77a8136c1a6d\\_story.html](https://www.washingtonpost.com/politics/trump-gop-challenge-efforts-to-make-voting-easier-amid-coronavirus-pandemic/2020/04/04/61f889fe-75bb-11ea-87da-77a8136c1a6d_story.html).

<sup>23</sup> Lauren Egan, *These Vote-by-Mail Lawsuits Could Help Decide the Presidential Election*, NBC News, May 30, 2020 available at <https://www.nbcnews.com/politics/2020-election/these-vote-mail-lawsuits-could-help-decide-presidential-election-n1217791>.

have debunked the notion of widespread voter fraud corrupting American elections,”<sup>24</sup> voter ID requirements present an unnecessary barrier to voting that should be abolished. Third, to combat election disinformation, it should be a crime to “deliberately giv[e] false information to the public about the requirements to register or vote” or the date and times of elections.<sup>25</sup> Fourth, to ensure a fair political climate in the future and to minimize gerrymandering, districts should be drawn by independent, bi-partisan commissions. Fifth, each district should have a reasonable number and distribution of polling places. Sixth, voting by mail should be widely available.

Finally, while the right to vote is discussed several times in the Constitution, the Constitution does not explicitly guarantee a right to vote.<sup>26</sup> This lack of an explicit guarantee has been used by the Supreme Court to refuse to decide voting cases based upon strict scrutiny,<sup>27</sup> leading to weakening of voting protections. Thus, the adoption of a Constitutional Amendment explicitly guaranteeing the right to vote would empower federal courts to provide strong protections to secure voting rights.

Voting gives people the ability to express their views through the ballot, making it a crucial link between the people and our government. Through implementing each of these solutions, the right to vote can be strengthened and made more accessible.

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<sup>24</sup> Lichtman at 189.

<sup>25</sup> Piven at 167.

<sup>26</sup> Lichtman at 188.

<sup>27</sup> *Id.*