

LAW, JUSTICE, AND ETHICS (LJE)

Resolution LJE-22-02

PROTECTING THE RIGHT TO VOTE FOR ALL CITIZENS

WHEREAS, the National Black Caucus of State Legislators had consistently maintained that voting is an American principle and a basic democratic right that should be protected, promoted, and practiced;

WHEREAS, the Fifteenth Amendment to the United States Constitution was ratified on February 3, 1870, prohibiting the federal government and states from denying a citizen the right to vote based on that citizen's "race, color, or previous condition of servitude;"

WHEREAS, more than half million Black men joined the voting rolls during Reconstruction in the 1870s, helping to elect nearly 2,000 Black men to public office at the state and federal level;

WHEREAS, many people are surprised to learn that while the U.S. Constitution bans the restriction of voting based on race, sex, and age, it does not explicitly and affirmatively state that all U.S. citizens have a right to vote; this leaves voting rights vulnerable to the whims of politicians;

WHEREAS, even as the rising American electorate gains momentum, new regressive laws, rulings, and maneuvers are threatening voting rights without facing the strict scrutiny that would come with an affirmative right to vote in the Constitution;

WHEREAS, in 2000, the Supreme Court ruled in *Bush v. Gore* that citizens do not have the right to vote for electors for president;

WHEREAS, the Voting Rights Act of 1965, signed 95 years after the ratification of the Fifteenth Amendment, outlawed most discriminatory voting practices in southern states such as literacy tests, poll taxes, and grandfather clauses; provided for federal oversight of voter registration in areas where less than 50 percent of the non-white population had not registered to vote, and authorized the U.S. Attorney General to investigate the use of poll taxes in state and local elections; and subsequently added protections for the voting rights for non-English speaking American citizens;

WHEREAS, a key provision of The Voting Rights Act was Section 5, which requires jurisdictions determined to have a history of racial discrimination in voting to preclear any proposed voting change with the U.S. Justice Department or federal court by showing that the change would not have a discriminatory effect on minorities before it could put it into place;

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WHEREAS, the impact of the Voting Right Act was swift: by the end of 1965, a quarter of a million new Black voters had been registered, and by the end of 1966, only 4 out of the 13 southern states had fewer than 50 percent of African Americans registered to vote, and Black registration rates in the former Confederate states soared from 30 percentage points below white registration rates in 1960 to equal or greater than white registration rates in 2010 (Black turnout in elections followed a similar pattern);

WHEREAS, in 2013, the Supreme Court struck down Section 4 of the Voting Rights Act; this stripped the Justice Department of the powers it had for five decades to curb racial discrimination in voting; the Election Assistance Commission was left without commissioners for years and frequently faced bills in Congress that would end its existence entirely;

WHEREAS, since then, several states have passed new laws that have made it more difficult for poor people, people of color, and elderly people to vote, including ID requirements, limits on early voting, mail-in voting, and more;

WHEREAS, voting rights for Americans convicted of felonies who have already completed their sentences vary substantially from state to state; and

WHEREAS, Americans living overseas have trouble registering in their home district because their state may not consider them residents anymore;

WHEREAS, many college students attempting to register at their college precinct have faced voter intimidation or were simply refused the ability to register to vote;

WHEREAS, many schools skip civics education, which contributes to the decline in voter turnout in local and primary elections;

WHEREAS, voter identification and registration requirements, as well as the machines that voters use, vary widely between states;

WHEREAS, the U.S. has a patchwork of inconsistent voting rules run independently by 50 states, 3,067 counties, and over 13,000 voting districts, all separate and unequal;
WHEREAS, 49 out of the 50 states have a right to vote amendment in their state constitutions; only Arizona lacks the right to vote;

WHEREAS, a right to vote amendment would empower Congress to enact minimum electoral standards to guarantee a higher degree of legitimacy, inclusivity, and consistency across the country;

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WHEREAS, including an explicit right to vote in the Constitution would guarantee the voting rights of every citizen of voting age, ensure that every vote is counted correctly, and defend against attempts to effectively disenfranchise eligible voters;

WHEREAS, in August 2021, U.S. Supreme Court further eroded the Act by making it more difficult to challenge voter suppression laws in *Brnovich v. Democratic National Committee*;

WHEREAS, after historic turnout and increased mail voting in 2020, a rash of baseless and racist allegations of voter fraud and election irregularities have led to a proliferation of laws to restrict voting access as compared to this time last year; as of June 21, 2021, 17 states enacted 28 new laws that restrict access to the vote, according to the Brennan Center for Justice;

WHEREAS, these include a Georgia law that goes so far as to make it a felony to give a bottle of water to someone waiting in line to vote and a Texas law that creates new criminal and civil penalties for people looking to help voters who need assistance.

WHEREAS, while other states are threatening voting rights, Virginia has taken action to protect voting rights for generations to come by passing The Voting Rights Act of Virginia in 2021, and Virginia is now the first state in the South with a state-level Voting Rights Act;

WHEREAS, the Voting Rights Act of Virginia joins a series of laws passed in 2020 that took Virginia from the second-hardest state five years ago to the 12th easiest state in which to vote in 2020, such as creating no-excuse absentee voting, repealing restrictive voter ID laws and passing temporary measures to make voting during COVID-19 easier and safer;

WHEREAS, in his final essay, the late Congressman John Lewis reminded us, “Democracy is not a state. It is an act, and each generation must do its part to help build what we called the Beloved Community, a nation and world society at peace with itself”, Congressman Lewis dedicated his life to expanding and protecting the right to vote for all American citizens; and

WHEREAS, Congress is working on various pieces of legislation like the Freedom to Vote Act, the For the People Act, and the John Lewis Voting Rights Advancement Act, all of which would expand and protect opportunities to vote, stop voter suppression efforts, provide redistricting reform, modernize voter registration, prevent election subversion, and promote election security.

THEREFORE BE IT RESOLVED , that the National Black Caucus of State Legislators (NBCSL) urges Congress to adopt an affirmative right to vote amendment to the United States Constitution to ensure the will and voice of the people are protected;

BE IT FURTHER RESOLVED, that the NBCSL condemn voter suppression efforts across states and at the federal level;

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BE IT FURTHER RESOLVED, that the NBCSL support efforts in states and at the federal level that expand and protect opportunities to vote, stop voter suppression efforts, provide redistricting reform, modernize voter registration, prevent election subversion, and promote election security;

BE IT FURTHER RESOLVED, that election of 2020 contained no widespread fraud, suggesting otherwise without evidence is detrimental to United States, and using such lies to perpetuate political gain is antithetical to democracy and the oath that we as elected officials are sworn to uphold;

BE IT FURTHER RESOLVED, that the NBCSL urges Congress to pass legislation like the John Lewis Voting Rights Advancement Act of 2021 (H.R. 4) to restore and strengthen parts of the Voting Rights Act of 1965 struck down by the U.S. Supreme Court and restore the preclearance requirement;

BE IT FURTHER RESOLVED, that the NBCSL encourages states to enact their own Voting Rights Act and other legislation to (1) ensure citizens can easily register to vote through expanding online and automatic voter registration; (2) expand voting access through early in-person voting, no-excuse absentee voting, and by mail; (3) make elections fair and transparent; (4) ensure voters can cast ballots freely and equally without intimidation or discrimination, and (5) restore voting rights for returning citizens;

BE IT FURTHER RESOLVED, that the NBCSL urges Congress to take action on voting rights quickly as the threat to voters is substantial and real, and without federal measures to protect voter access, we risk subversion of democracy and disenfranchisement of voters across the nation; and

BE IT FINALLY RESOLVED, that a copy of this resolution be transmitted to the President of the United States, the Vice President of the United States, members of the United States House of Representatives and the United States Senate, and other federal and state government officials and agencies as appropriate.

SPONSOR(S): Representative Kam Buckner (IL), Senator Jennifer McClellan (VA), and Delegate Marcia Price (VA)

Committee of Jurisdiction: Law, Justice, and Ethics (LJE) Policy Committee

Ratified in Plenary Session: December 2, 2021

Ratification certified by: Representative Billy Mitchell (GA), NBCSL President