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“Preservative of All Other Rights”: Voting and Social Justice in the Post-Trump Era

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As social justice advocates rejoice over Donald Trump’s defeat and look for paths forward, the biggest lesson comes from the 2020 presidential election itself. The right to vote is “[preservative of all other rights\[,\]](#)” and this past year underscored its importance more than ever. In the midst of the COVID-19 pandemic, high voter turnout—and especially high Black voter turnout—propelled Joe Biden to victory. Even as the Electoral College and partisan gerrymandering continue to undermine the popular will, America’s changing demographics favor people of color and progressives. Moreover, the elected branches of government have become more significant because Trump packed the federal judiciary with conservative judges. Social justice advocates should not expect too many revolutionary legal rulings such as [Brown v. Board of Education \(1954\)](#). Most progressive change for the next generation will begin at the ballot box rather than the courthouse.

There are many barriers to expanding the franchise. With its ruling in [Shelby v. Holder \(2013\)](#), the U.S. Supreme Court greatly compromised the [Voting Rights Act of 1965](#) (VRA). Section 5 of VRA requires the covered jurisdictions to gain preclearance: federal authorization before enacting any laws that affect voting qualifications or procedures. The covered jurisdictions included states and localities with a particularly egregious history of discrimination in voting. Section 4 of VRA contained the coverage formula for Section 5, setting the criteria for preclearance to be applicable. The Court ruled that the coverage formula in Section 4 was unconstitutional because Congress had not updated it since 1975. Although the Court did not rule on the constitutionality of Section 5, its holding eliminated preclearance, allowing previously covered jurisdictions to enact restrictive voting laws.¹

States have passed restrictions on the franchise, especially through purging of voter rolls and requiring voter identification. Through its ruling in [Husted v. A. Phillip Randolph Institute \(2018\)](#), the Supreme Court made it easier for localities to remove registered voters from their rolls. And even before Shelby, the Supreme Court had upheld strict voter ID laws in [Crawford v. Marion County Election Board \(2008\)](#), citing the state’s interest in preventing voter fraud. The Court made reference to voter ID provisions in the [National Voter Registration Act of 1993](#) and the [Help America Vote Act of 2002](#), although Congress intended these laws to make voting easier. With Trump’s numerous, baseless accusations of voter fraud in the 2020 presidential election, the climate is set for conservative state legislatures to pass more restrictions on voting.

Nevertheless, the state of Georgia provides hope and vision for social justice advocates. Georgia’s voter registration law is

the most stringent in the nation, mandating an [exact match of all required documents](#). Georgia also has a strict photo identification requirement at the polls. [An ACLU report from September 2020 found that Georgia had wrongfully removed 200,000 voters from its voting rolls](#). But in spite of these restrictions, Georgia voters—especially Black voters—turned out in huge numbers, lifting Joe Biden to victory in the state. Biden became the first Democratic presidential candidate to win Georgia since 1992, and only the third since 1960. Turnout for the Georgia Senate runoffs in January was also excellent, leading Democrats Raphael Warnock and Jon Ossoff to surprising victories.

Former Georgia House Minority Leader and 2018 gubernatorial candidate Stacey Abrams deserves the most credit here. Abrams, who believed that voter suppression cost her the 2018 gubernatorial race, founded Fair Fight Action—an organization which fights voter suppression. Abrams and Fair Fight Action were extremely effective in registering and turning out Georgia voters. They serve as a model for stopping voter suppression and increasing the franchise. And this is particularly important in Georgia, as it becomes a swing state and eventually a Democratic-leaning state. Similar political trends have begun in other Southern states, such as North Carolina and Texas. Social justice advocates in these states should follow Stacey Abrams’ lead.

There have also been other positive developments for voting rights. Although some states have made voting more difficult in particular ways, the polls have become more accessible in other ways. An increasing number of states now have [automatic voter registration](#). [Forty-two states allow some form of early voting](#), and [35 have either automatic or “no excuse” absentee voting](#). States do vary in the [level of authentication required for absentee and mail-in ballots](#), and progressives should work to ensure that voters are not disenfranchised for minor errors. In the wake of Trump’s baseless claims, social justice advocates will also need to continue fighting for liberal registration and mail-in/absentee ballot laws. In the wake of Trump’s baseless claims, social justice advocates will also need to continue fighting for liberal registration and mail-in/absentee ballot laws. Additionally, advocates should ensure that there are a sufficient number of accessible polling places in all jurisdictions.

Advocates should also capitalize on growing support to end felon disenfranchisement. [Forty-one states allow all felons to have their voting rights restored, and 48 allow this for at least some felons](#). In 2018, [Florida voters approved, by a 2:1 margin, an amendment to the Florida Constitution that restored voting rights for most felons when they completed their sentences](#). Soon thereafter, the Florida legislature made this standard

more difficult to meet by including payment of fines and fees as part of a “sentence.” Nevertheless, Florida does illustrate that even in states which have recently favored Republicans, restoration of felon voting rights can gain traction among the electorate.

Voting technology can also affect the franchise. [After the fiasco with Florida’s recounts in the 2000 presidential election](#),² the [Help America Vote Act of 2002](#) aimed to modernize voting machines across the nation. But all of its goals have not been met, and [many states still use old voting machines](#). Modernization of voting technology across jurisdictions is another important undertaking to ensure that votes are properly cast and counted.

Finally, although conservative judges now dominate the federal courts, social justice advocates can still look to state courts. Historically, state supreme courts, including some from traditionally conservative states, have rendered groundbreaking rulings on issues ranging from [school desegregation](#) to [same-sex marriage](#) to [education funding](#). Voting rights are no exception: even as the [U.S. Supreme Court continues to rule that partisan gerrymandering is non-justiciable, state high courts in Pennsylvania and North Carolina struck down gerrymandered districts on state constitutional grounds](#). With a conservative federal judiciary in place for many years, state courts provide an alternative judicial venue to increase the franchise.

Social justice advocates have always needed to be flexible in their approaches. It will take a combination of political engagement, impact litigation, direct action, and voter education and enthusiasm to expand voting for marginalized groups in our society. And while this will not be an easy undertaking, [it is the first step in securing all other basic rights](#).

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Endnotes

¹Although Congress could still make new findings and use that evidence to create a new coverage formula, this would be difficult to accomplish in the current political climate. Moreover, the Supreme Court also noted in *Shelby* that Section 5 raises federalism issues. With its new conservative appointees, the Court could rule that Section 5 itself is unconstitutional.

²In *Bush v. Gore (2000)*, the U.S. Supreme Court halted the Florida recounts on equal protection grounds, due to the variation in recounting standards used by different localities. Although the Supreme Court’s ruling was widely critiqued on federalism grounds, seven Justices and many commentators agreed that there were equal protection problems with the recounts.