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## The Threat of Gerrymandering and Voter Suppression to American Democracy and Why Grassroots Activism is the Most Viable Solution

Sabrina Pickett

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# **The Threat of Gerrymandering and Voter Suppression to American Democracy and Why Grassroots Activism is the Most Viable Solution**

**Sabrina Pickett**

## ABSTRACT

*This Comment examines the threat of partisan gerrymandering, voter suppression, and election subversion in American elections. Specifically, this Comment details the development of federal voting legislation and acknowledges the limits of the executive branch to implement voter equity within constitutional structure. Consequently, this Comment argues that grassroots activism combined with executive enforcement of current federal law through the Department of Justice is the most viable solution to strengthen civic engagement and uphold democratic principles.*

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## I. INTRODUCTION

The right to vote is a central facet of American democracy.<sup>1</sup> In 2021, multiple Republican-led state legislatures passed restrictive voting laws that “critics say are designed to suppress votes in minority and poor communities.”<sup>2</sup> President Biden condemned these laws calling them “unconscionable”<sup>3</sup> and “the most dangerous threat to voting and the integrity of free and fair elections in [American] history.”<sup>4</sup> Moreover, President Biden verbally committed to reverse the damaging effects of these laws by signing two voter protection bills upon passage by Congress.<sup>5</sup> However, President Biden did not endorse abolishing the filibuster, which ultimately allowed the Republican minority in the Senate to block both bills from even reaching a debate.<sup>6</sup>

The combination of restrictive voting laws and pervasive partisan gerrymandering works to further impede Americans from exercising their right to vote at the local, state, and federal levels.<sup>7</sup> Gerrymandering generally takes the form of either “packing” or “cracking,” yet both approaches allow “politicians to pick their voters rather than allowing voters to elect their

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<sup>1</sup> Sheldon H. Jacobson, *Gerrymandering and Restricting Voting Rights: Flip Sides of the Same Coin*, THE HILL (July 1, 2021), <https://thehill.com/opinion/campaign/560995-gerrymandering-and-restricting-voting-rights-flip-sides-of-the-same-coin>. Jacobson states that “[v]oting rights ensure that every person eligible to vote can access ballots and express their constitutional right to have their vote counted.” *Id.*

<sup>2</sup> Susan Milligan, *Biden Calls Voting Laws the ‘Most Dangerous Threat to Voting’ in History*, U.S. NEWS (July 13, 2021), <https://www.usnews.com/news/politics/articles/2021-07-13/biden-calls-voting-laws-the-most-dangerous-threat-to-voting-in-history>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Jacobson, *supra* note 1. Jacobson argues that “[b]oth gerrymandering and restricting voting rights threaten our nation’s democracy as they restrict voters from having a say in their representation. Both are political lightning rods of controversy, affecting local, state and federal elections.” *Id.*

representatives.”<sup>8</sup> Packing a district involves grouping voters with similar political leanings together in a relatively small number of districts where they have a sizable majority.<sup>9</sup> Cracking a district groups voters with similar political leanings and spreads them into various districts preventing them from having the power to elect representation.<sup>10</sup> Both gerrymandering form function to dilute the voting power of certain groups, generally minorities, which can have drastic effects on an election.<sup>11</sup>

Another form of gerrymandering that taints the democratic process is prison gerrymandering, which is the process of counting inmates as residents of the prison for redistricting rather than residents of their home address.<sup>12</sup> Prison gerrymandering further distorts the voting process by artificially inflating the voting power of non-incarcerated individuals living in districts where prisons are located, thereby diminishing the voting power of urban areas.<sup>13</sup>

Section II of this article will examine the historical background of state and federal voting laws, the progression of gerrymandering, and current applicable legislation and jurisprudence in order to reveal the extent to which restrictive voting laws and partisan gerrymandering threaten American democracy. Section III looks at Georgia as a case study and discusses Georgia’s demographic shift and subsequent 2010 redistricting that failed to represent the state accurately.

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Jacobson, *supra* note 1. Jacobson argues that “[g]errymandering and restricting voting rights are both contributing to dysfunctional governments . . . leav[ing] a wide schism between the same politicians who must work together on the real problems that they are elected to address. *Id.*

<sup>12</sup> *The Problem*, PRISON POL’Y INITIATIVE, <https://www.prisonersofthecensus.org/impact.html> (last visited Nov. 17, 2021).

<sup>13</sup> *Id.*

Section III also discusses how grassroots activism successfully reversed the effects of voter suppression and gerrymandering efforts in Georgia, only to be quashed by election subversion and retaliatory restrictive voting laws aimed at silencing progressive action. Section IV examines potential legislation up for debate in other states that appear to follow Georgia’s path of voter suppression and partisan gerrymandering. Section V explores potential solutions to the nationwide trend of local legislation aimed at suppressing the vote and gerrymandering. Finally, Section VI explores the executive branch’s role in facilitating voter equality and equity. Potential solutions come in the form of federal legislation, constitutional amendments, and local grassroots activism. Due to the intricacies of the overlap between state and federal law in this field, grassroots activism combined with the executive branch diligently enforcing current voting laws is likely the most practical solution.

## II. HISTORICAL BACKGROUND AND MODERN JURISPRUDENCE

### A. VOTING AND ELECTION LAWS

The United States Constitution took effect in 1789; however, the text did not expressly incorporate the right to vote.<sup>14</sup> The Elections Clause delegates most of the power to regulate congressional elections to the states; however, under the federalist structure of the United States government, Congress has the power to preempt “any contrary state statutes, or enact its own regulations concerning those aspects of elections that states may not have addressed.”<sup>15</sup> The right

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<sup>14</sup> Angelys Torres McBride, *The Evolution of Voting Rights in America*, NAT’L CONST. CTR. (May 27, 2021), <https://constitutioncenter.org/interactive-constitution/blog/the-evolution-of-voting-rights-in-america>.

<sup>15</sup> Michael Morley & Franita Tolson, *Common Interpretation: Elections Clause*, NAT’L CONST. CTR., <https://constitutioncenter.org/interactive-constitution/interpretation/article-i/clauses/750> (last visited Oct. 20, 2021). Morley and Tolson state that “[t]he Framers of the Constitution were concerned that states might establish unfair election procedures or attempt to undermine the national government by refusing to hold elections for Congress. They empowered Congress to step in and regulate such elections as a self-defense mechanism.” *Id.*

to vote was primarily restricted to white men until the States ratified the 15th Amendment in 1870, outlawing voter discrimination based on race.<sup>16</sup> Congress enacted the Enforcement Act in 1870, declaring it illegal to interfere with the right to vote.<sup>17</sup> One year later, Congress passed the Force Act, “which provided for federal election oversight.”<sup>18</sup> Black Americans became elected government officials at the local, state, and federal levels for the first time.<sup>19</sup> However, the Hayes-Tilden Compromise of 1877 “resulted in a climate in which violence could be used to depress black voter turnout and fraud could be used to undo the effect of lawfully cast votes.”<sup>20</sup> As a result, White Americans regained control of state legislatures and used gerrymandering to further diminish the power of Black voters.<sup>21</sup> These newly elected legislatures continued to disenfranchise Black voters by passing measures that were facially “color-blind” yet functioned to suppress further the influence of Black votes.<sup>22</sup>

Native Americans were not recognized as American citizens and were unable to vote until Congress passed the Snyder Act in 1924.<sup>23</sup> Women were ineligible to vote until ratification of the

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<sup>16</sup> Torres McBride, *supra* note 14. Multiple terrorist groups, including the Ku Klux Klan and the Knights of the White Camellia, strongly resisted efforts to franchise Black voters and “attempted to prevent the 15th Amendment from being enforced by violence and intimidation.” *Before the Voting Rights Act*, U.S. DEPT. OF JUST., <https://www.justice.gov/crt/introduction-federal-voting-rights-laws> (last visited Oct. 20, 2021).

<sup>17</sup> *Before the Voting Rights Act*, *supra* note 16.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Torres McBride, *supra* note 14.

Nineteenth Amendment in 1920, which prohibited voter discrimination based on sex.<sup>24</sup> Ratification of the Twenty-fourth Amendment in 1964 prohibited both Congress and the states from implementing poll taxes for all federal elections.<sup>25</sup> Seven years later, the Twenty-sixth Amendment outlawed voter discrimination based on age for all citizens eighteen and older.<sup>26</sup>

Despite the historical trend of expanding the right to vote, several states retaliated against the progressive movement by enacting literacy tests, poll taxes, and “‘grandfather clauses,’ which made voter registration in part dependent upon whether the applicant was descended from men enfranchised before the enactment of the Fifteenth Amendment.”<sup>27</sup> The laws were facially neutral but “‘designed to exclude [B]lack citizens disproportionately by allowing [W]hite election officials to apply the procedures selectively.”<sup>28</sup> Political parties attempted to circumvent the Fifteenth Amendment by conducting White primaries, in which only White party members could vote in primary elections.<sup>29</sup> Due to the prevalence of the Democratic Party throughout the South in the early twentieth century, White primaries functioned so that White party members controlled election results.<sup>30</sup> By 1910, discriminatory voting practices in former Confederate states worked as de facto methods to disenfranchise almost every Black American from exercising their right to

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

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

<sup>28</sup> *Before the Voting Rights Act, supra* note 16.

<sup>29</sup> *Id.*

<sup>30</sup> *Smith vs. Allwright: White Primaries*, TEX. POL. PROJECT, [https://texaspolitics.utexas.edu/archive/html/vce/features/0503\\_01/smith.html](https://texaspolitics.utexas.edu/archive/html/vce/features/0503_01/smith.html) (last visited Dec. 21, 2022).



vote.<sup>31</sup> In 1915, The Supreme Court held that grandfather clauses violate the Fifteenth Amendment.<sup>32</sup> White primaries remained legal until 1944 when the Supreme Court held the White primary in Texas violated the Fifteenth Amendment.<sup>33</sup> In the 1960s, “[W]hite voter registration in some states was fifty percentage points greater than Black voter registration.”<sup>34</sup> Many of these discriminatory voting practices remained in effect until Congress passed the Voting Rights Act (“VRA”) in 1965, which intended to ensure that neither state nor federal governments could deny citizens of their right to vote “based on race or other ‘immutable characteristics.’”<sup>35</sup> The Act has a specific provision targeted at the most historically discriminatory congressional districts and required all changes governing elections to filter through either the Department of Justice (“DOJ”) or a federal court before taking effect with the intention of eliminating discrimination before it “had the chance to work.”<sup>36</sup> Congress expanded the VRA in 1975 to “protect language minorities, [and] in 1982 to require accommodations and protections for voters with disabilities.”<sup>37</sup>

Congress passed the National Voter Registration Act (“NVRA”) in 1993, known as the Motor Voter Act, which distinguishes voter registration requirements for election to federal

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<sup>31</sup> *Before the Voting Rights Act*, *supra* note 16.

<sup>32</sup> *Guinn v. United States*, 238 U.S. 347, 364-65 (1915).

<sup>33</sup> *Smith v. Allwright*, 321 U.S. 649, 661-62 (1944).

<sup>34</sup> Carrie Johnson, *How the Voting Rights Act Came to be and How It’s Changed*, NPR (Aug. 26, 2021), <https://www.npr.org/2021/08/26/1026457264/1965-voting-rights-act-supreme-court-john-lewis>.

<sup>35</sup> Torres McBride, *supra* note 14. McBride states that footage of armed state troopers “viciously beat[ing] a group of nonviolent marchers in Selma . . . shocked the conscience of the country and helped then-President Lyndon B. Johnson make the case for the Voting Rights Act.” Johnson, *supra* note 34.

<sup>36</sup> *Where Are the Lines Drawn?*, ALL ABOUT REDISTRICTING, <https://redistricting.ils.edu/redistricting-101/where-are-the-lines-drawn/> (last visited Oct. 20, 2021).

<sup>37</sup> Torres McBride, *supra* note 14.

office.<sup>38</sup> The Act requires states to allow eligible voters to register at motor vehicle agencies, at certain public offices (including public assistance and disability offices), and by mail.<sup>39</sup> Furthermore, the Act “requires [s]tates to implement procedures to maintain accurate and current voter registration lists.”<sup>40</sup> Congress also passed the Help America Vote Act of 2002, which “1. creat[ed] a new federal agency to serve as a clearinghouse for election administration information; 2. provid[ed] funds to states to improve election administration and replace outdated voting systems; and 3. creat[ed] minimum standards for states to follow in several key areas of election administration.”<sup>41</sup>

In 2013, the Supreme Court severely weakened the VRA via its decision in *Shelby County v. Holder*.<sup>42</sup> Through a 5-4 conservative court majority, the Supreme Court “effectively derailed the Justice Department’s system for preapproving election changes in jurisdictions with a history of discrimination, putting a heavy burden on the federal government to identify any such changes and sue to prevent them from taking effect.”<sup>43</sup> This ruling made it easier for states with histories of voter discrimination to pass restrictive and discriminatory voting laws.<sup>44</sup> In 2021, The Supreme Court further weakened the remaining provisions of the VRA in *Brnovich v. Democratic National*

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<sup>38</sup> *The National Voter Registration Act of 1993 (NVRA)*, U.S. DEPT. OF JUST., <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra> (last visited Feb. 20, 2022).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *The Help America Vote Act of 2002*, THE U.S. DEPT. OF JUST., <https://www.justice.gov/crt/help-america-vote-act-2002> (last visited Feb. 20, 2022).

<sup>42</sup> *Shelby County v. Holder*, 570 U.S. 529, 593–94 (2013).

<sup>43</sup> Johnson, *supra* note 34.

<sup>44</sup> *Id.*

*Committee*.<sup>45</sup> In another conservative-majority opinion, the Court “concluded that some inconvenience to voters would not run afoul of the Constitution”<sup>46</sup> and “gave states a powerful defense: [t]hey could raise concerns about voter fraud to justify their election changes without having to prove any such fraud existed.”<sup>47</sup>

Lower courts have also chipped away at the protections granted in the VRA. In December of 2021, the U.S. District Court for the Eastern District of Arkansas, Central Division, held that private plaintiffs could not sue states under the VRA reserving such suits for the U.S. Attorney General.<sup>48</sup> In March of 2022, the Fifth Circuit Court of Appeals upheld Texas’ voting restrictions passed by Republican lawmakers.<sup>49</sup> The Court reasoned that the Secretary of State was not the proper defendant because he was not responsible for enforcing the provisions and had sovereign immunity.<sup>50</sup> Although neither of these rulings is binding in all jurisdictions, the current Supreme Court would likely uphold both decisions, which would substantially inhibit the ability of private citizens to challenge voting law legislation.<sup>51</sup>

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Ark. State Conf. NAACP v. Ark. Bd. of Apportionment, No. 4:21-cv-1239 (E.D. Ark. 2021).

<sup>49</sup> Tex. All. for Retired Americans. v. Scott, 28 F.4<sup>th</sup> 669, 674 (5th Cir. 2022).

<sup>50</sup> *Id.* at 670.

<sup>51</sup> Ian Millhiser, *A Trump Judge’s New Decision Would Undo More Than 50 Years of Voting Rights Law*, VOX (Feb. 18, 2022), <https://www.vox.com/22940875/voting-rights-act-supreme-court-trump-judge-lee-rudofsky-section-2-private-right-of-action>.

Congress passed the Electoral Count Act in 1887, which governs the procedures for counting the Electoral College votes.<sup>52</sup> The law intended to limit Congress from inserting itself into the procedure; however, its “vague” and “inaccessible language of a different era” lends itself to ambiguities that could be construed to increase Congress’s role in the election of the President and Vice President in a way that runs afoul of the Constitution.<sup>53</sup> The Act permits state legislatures to override the state’s popular vote by declaring a “failed election,” a term not defined by law.<sup>54</sup> However, “the law was not an issue for more than a century because of the restraint of the people who exercised the serious, but limited, constitutional responsibility of counting the votes [who] sustained the will of the people — even when they did not like the result.”<sup>55</sup> In 2020, President Trump attempted to subvert the language of the Electoral Count Act to overturn the 2020 Presidential Election results.<sup>56</sup> Consequently, Congress passed the Electoral Count Reform and Presidential Transition Improvement Act in December of 2022.<sup>57</sup> The reform affirms the Vice President’s role in the counting of electoral votes as “ministerial” and removes the language

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<sup>52</sup> *Electoral Count Act*, PROTECT DEMOCRACY (Dec. 20, 2022), <https://protectdemocracy.org/work/electoral-count-act/>.

<sup>53</sup> Susan Collins, *Susan Collins: Our Democracy Shouldn’t Rest on a Rickety Law*, THE N.Y TIMES (Mar. 23, 2021), <https://www.nytimes.com/2022/02/18/opinion/politics/susan-collins-eca-reform.html>.

<sup>54</sup> Amy B. Wang & Liz Goodwin, *Congress Moves Ahead on Electoral Count Act Reforms in Response to Jan. 6*, WASH. POST (Dec. 20, 2022) <https://www.washingtonpost.com/politics/2022/12/19/electoral-count-reform-omnibus/>.

<sup>55</sup> *Id.* Despite losing the presidential election by narrow margins, Vice Presidents Richard Nixon and Al Gore presided over the counting the Electoral College votes in 1961 and 2001 respectively “in a fair and dignified manner.” *Id.* Additionally, “Vice President Gore even refused to hear Democratic objectors who were trying to make him president.” *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Electoral Count Reform Act Heads to President Biden for His Signature*, DEMOCRACY DOCKET (Dec. 23, 2022), <https://www.democracymatters.com/news-alerts/electoral-count-reform-act-heads-to-president-biden-for-his-signature/>.

allowing the declaration of a “failed election.”<sup>58</sup> Additionally, the bill raises the number of senators and representatives required to object to a state’s electoral votes from 1 member of the House and Senate to at least one-fifth of both the House and Senate.<sup>59</sup> President Biden signed the reforms into law on December 23, 2022, as part of the bipartisan year-end omnibus.<sup>60</sup>

## B. PARTISAN GERRYMANDERING

As with voting rights, the Supreme Court has taken a lackluster approach to rid the democratic process of the effects of gerrymandering. Historically, challenging the apportionment of voting districts drawn by state legislatures was nearly impossible as the Supreme Court held these challenges as nonjusticiable political questions.<sup>61</sup> However, in *Baker v. Carr*, the Supreme Court held that challenges to the apportionment of state legislatures brought under the Equal Protection Clause are justiciable claims, not political.<sup>62</sup> This landmark case opened the door for litigating redistricting cases in federal court.<sup>63</sup> Just two years later, the Supreme Court revisited the topic of redistricting in two cases and held that congressional districts must be comprised of approximately equal populations in order to prevent a disparity in voting power from a citizen in

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<sup>58</sup> Wang & Goodwin, *supra* note 54.

<sup>59</sup> *Id.*

<sup>60</sup> *Statement from President Joe Biden on Passage of the Bipartisan Year-End Omnibus*, THE WHITE HOUSE (Dec. 23, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/12/23/statement-from-president-joe-biden-on-passage-of-the-bipartisan-year-end-omnibus/>.

<sup>61</sup> Ellis Champion, *Nine Redistricting Cases that Shaped History*, DEMOCRACY DOCKET (Aug. 17, 2022), <https://www.democracymocket.com/explainers/nine-redistricting-cases-that-shaped-history/>.

<sup>62</sup> *Baker v. Carr*, 369 U.S. 186, 208-09 (1962).

<sup>63</sup> Champion, *supra* note 61.

one district to another.<sup>64</sup> These rulings forced state legislatures to redraw numerous congressional districts.<sup>65</sup>

The Supreme Court weighed in on the legality of gerrymandering again in *Thornburg v. Gingles* shortly after Congress amended Section 2 of the VRA in 1986 to clarify that election laws lacking discriminatory intent but yielding discriminatory effects violate the Act.<sup>66</sup> In *Shaw v. Reno*, the Supreme Court ruled that racial considerations in redistricting are subject to strict scrutiny.<sup>67</sup> Two years later, the Supreme Court affirmed *Shaw* in *Miller v. Johnson*, holding that the shape of a congressional district is not the only factor to consider when analyzing racial gerrymandering cases.<sup>68</sup> The Court further clarified that plaintiffs must show “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.”<sup>69</sup> The Court expanded its jurisprudence in racial gerrymandering cases when it held that Section 5 of the VRA does not require jurisdictions to maintain its percentage of minority voters and instead “requires the jurisdiction to maintain a minority’s ability to elect a preferred candidate.”<sup>70</sup>

In 2019, the Supreme Court effectively halted federal jurisdiction over partisan gerrymandering cases with its ruling in *Rucho v. Common Clause*.<sup>71</sup> The Court held that partisan

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<sup>64</sup> See *Wesberry v. Sanders*, 376 U.S. 1 (1964); See *Reynolds v. Sims*, 377 U.S. 533 (1964).

<sup>65</sup> *Champion*, *supra* note 61.

<sup>66</sup> *Thornburg v. Gingles*, 478 U.S. 30, 74 (1986).

<sup>67</sup> *Shaw v. Reno*, 509 U.S. 630, 653 (1993).

<sup>68</sup> *Miller v. Johnson*, 515 U.S. 900, 912-13 (1995).

<sup>69</sup> *Id.* at 916.

<sup>70</sup> *Ala. Legis. Black Caucus v. Ala.*, 575 U.S. 254, 275 (2015).

<sup>71</sup> See *Rucho v. Common Clause*, 139 S. Ct. 2484 (2019).

gerrymandering claims are nonjusticiable because they present political questions beyond the reach of federal courts.<sup>72</sup> As a result, federal courts cannot strike down partisan gerrymandered districts. In order to combat gerrymandered districts, Congress must pass legislation banning the antidemocratic practice.<sup>73</sup>

Prison gerrymandering is another tactic many states employ to influence election outcomes.<sup>74</sup> Historically, the Census Bureau counted incarcerated individuals to ensure each state received equal representation in Congress.<sup>75</sup> However, now that the Bureau collects data used for all levels of redistricting, “the specific location of populations is critical.”<sup>76</sup> With the explosion of the prison population in recent decades, counting incarcerated individuals in congressional districts where they do not reside undermines the Supreme Court’s requirement that political power be apportioned based on population.<sup>77</sup>

Prison gerrymandering disproportionately affects people of color.<sup>78</sup> Since “Black and Brown people are disproportionately arrested and sentenced to prison, mass incarceration leads to the geographic transfer of significant populations of people out of urban communities of color to rural prison districts.”<sup>79</sup> The Census Bureau then counts these incarcerated individuals, who are

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<sup>72</sup> *Id.* at 2506–07.

<sup>73</sup> Champion, *supra* note 61.

<sup>74</sup> *The Problem*, *supra* note 12.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

disproportionately people of color from urban areas, as residents of the predominately white rural districts in which the prisons are located.<sup>80</sup> This system increases the political power of rural districts housing prisons and decreases the political power of the urban districts where most of the incarcerated population is from.<sup>81</sup> This antidemocratic policy fails to account for the fact that most prison sentences are shorter than the 10 years between redistricting.<sup>82</sup> Furthermore prison gerrymandering insinuates that “the site of their incarceration [is their home,] rather than their home communities, even though in most cases they have no meaningful connection to that area.”<sup>83</sup> For instance, North Carolina has two congressional districts where incarcerated people make up more than 40% of the population.<sup>84</sup> In Illinois, almost 50% of the state’s prison population is from the Chicago area, but nearly 90% are counted elsewhere in the state.<sup>85</sup> In Texas, both Dallas County and Harris County (encompassing Houston) would likely have an extra state House seat if incarcerated people were counted at their previous home address.<sup>86</sup> Ultimately, prison gerrymandering “distorts our system of representative government” by counting incarcerated

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<sup>80</sup> *The Problem*, *supra* note 12.

<sup>81</sup> *Id.*

<sup>82</sup> Garrett Fisher, Taylor King & Gabriella Limón, *Prison Gerrymandering Undermines Our Democracy*, BRENNAN CTR. FOR JUST. (Oct. 22, 2021) <https://www.brennancenter.org/our-work/research-reports/prison-gerrymandering-undermines-our-democracy>.

<sup>83</sup> *Id.*

<sup>84</sup> Sanya Mansoor & Madeleine Carlisle, *When Your Body Counts but Your Vote Does Not: How Prison Gerrymandering Distorts Political Representation*, TIME (July 1, 2021), <https://time.com/6077245/prison-gerrymandering-political-representation/>.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*



individuals as members of communities they have no significant ties to for the purpose of electing community representatives.<sup>87</sup>

In the 2011 case, *Fletcher v. Lamone*, the Supreme Court upheld the constitutionality of Maryland’s “No Representation Without Population Act” which counts incarcerated individuals as residents of their last home address for districting.<sup>88</sup> Presently, eleven states have passed similar legislation, including California, Nevada, Washington, Colorado, New York, Pennsylvania, New Jersey, Virginia, Maryland, Delaware, and Connecticut.<sup>89</sup> However, even with the Supreme Court’s decision in *Fletcher* and more states continuing to pass legislation, in the 2020 census, most states continued to determine residency for incarcerated people based on prison location.<sup>90</sup> Moreover, racial gerrymandering continues to threaten the American democratic process in multiple states where the percentage of incarcerated individuals is upwards of 30% in some districts.<sup>91</sup>

### III. GEORGIA: A CASE STUDY

For nearly thirty years leading up to the 2020 election, Georgia was a Republican stronghold.<sup>92</sup> Before a majority of Georgians elected President Biden in 2020, the last Democratic

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<sup>87</sup> Fisher, King & Limón, *supra* note 82.

<sup>88</sup> *Fletcher v. Lamone*, 831 F.Supp.2d 887, 890 (D.Md. 2011), *aff’d*, 567 US. 930 (2012).

<sup>89</sup> Hansi Lo Wang, *Most Prisoners Can’t Vote, But They’re Still Counted in Voting Districts*, NAT’L PUB. RADIO, INC. (Sept. 26, 2021), <https://www.npr.org/2021/09/22/1039643346/redistricting-prison-gerrymandering-definition-census-congressional-legislative>.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Caitlyn Stroh-Page, *When Was the Last Time Georgia Voted Blue? It’s Been Nearly 30 Years*, ONLINE ATHENS (Nov. 5, 2020), <https://www.onlineathens.com/story/news/politics/elections/2020/11/06/when-was-last-time-georgia-voted-blue-itrsquos-been-nearly-30-years/43004695/>.

presidential candidate Georgians elected was President Clinton in 1992.<sup>93</sup> Not only did Georgians elect a Democratic presidential candidate in the 2020 general election, but Georgians successfully flipped both Senate seats by electing Democrats Jon Ossoff and Raphael Warnock.<sup>94</sup> In 2022, Senator Warnock defeated Republican challenger Herschel Walker and will serve his first full Senate term representing Georgia.<sup>95</sup> Multiple factors contributed to Georgia turning blue; however, the main reasons all relate to demographic shifts, relief from voter suppression, and increased voter registration and turnout.<sup>96</sup>

#### A. GEORGIA'S DEMOGRAPHIC SHIFT

When analyzing Georgia's shift from red to blue, Atlanta is the first place to look. Roughly 45% of Georgia's population lives in the ten counties that make up the Atlanta Regional Commission.<sup>97</sup> Georgia's population has increased by 30% since 2000, and since then, the Atlanta metropolitan area has increasingly voted Democratic.<sup>98</sup> A large percentage of Georgia's new eligible voters are people of color and liberal White folks.<sup>99</sup>

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<sup>93</sup> *Id.*

<sup>94</sup> Katarina vanden Huevel, *How Georgia Went Blue*, WASH. POST (Nov. 17, 2020), <https://www.washingtonpost.com/opinions/2020/11/17/how-georgia-went-blue/>.

<sup>95</sup> *Georgia U.S. Senate Runoff Election Results*, N.Y. TIMES (last updated Dec. 19, 2022), <https://www.nytimes.com/interactive/2022/12/06/us/elections/results-georgia-us-senate-runoff.html>.

<sup>96</sup> Vanden Huevel, *supra* note 94.

<sup>97</sup> Perry Bacon Jr., *How Georgia Turned Blue*, FIVETHIRTYEIGHT (Nov. 18, 2020), <https://fivethirtyeight.com/features/how-georgia-turned-blue/>; Katanga Johnson & Heather Timmons, *How Stacey Abrams paved the way for a Democratic victory in 'New Georgia'*, REUTERS (Nov. 9, 2020), <https://www.reuters.com/article/usa-election-georgia/how-stacey-abrams-paved-the-way-for-a-democratic-victory-in-new-georgia-idUSKBN27P197>.

<sup>98</sup> *Id.*

<sup>99</sup> Johnson & Timmons, *supra* note 97.

In the 2012 presidential election, Democratic candidate Barack Obama and Republican candidate Mitt Romney each won five of the ten counties in the Atlanta Regional Commission.<sup>100</sup> In the 2016 presidential election, Democratic candidate Hillary Clinton won eight of those ten counties, while Republican candidate Donald Trump only won two.<sup>101</sup> In the 2020 presidential election, President Biden won the same eight counties as Secretary Clinton, most by increased margins.<sup>102</sup> Atlanta's increasingly liberal vote significantly contributed to President Biden's narrow win in Georgia and helped Democrats flip Georgia's Senate seats.<sup>103</sup> The following section explores the progression of Georgia's congressional redistricting, which in many cases, does not follow the natural progression of Georgia's ideological shift.

#### B. GEORGIA'S GERRYMANDERED 2010 REDISTRICTING

Redistricting processes vary by state.<sup>104</sup> After Georgia received a fourteenth congressional district per the 2010 census results, the Republican-led state legislature unilaterally departed from Georgia's traditional method of drawing new districts<sup>105</sup> and instead created Georgia's Legislative

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<sup>100</sup> Bacon, *supra* note 97.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Sue Sturgis, *Extreme Partisan Gerrymandering Sent Marjorie Taylor Greene to Congress*, FACING S. (Feb. 12, 2021), <https://www.facingsouth.org/2021/02/extreme-partisan-gerrymandering-sent-marjorie-taylor-greene-congress>.

<sup>105</sup> Prior to 2010, Georgia's legislature drew congressional districts in conjunction with the University of Georgia's nonpartisan Carl Vinson Institute of Government. *Id.*

and Congressional Reapportionment Office.<sup>106</sup> Anne W. Lewis, the acting general counsel to the Georgia Republican Party, served as advisor to the Reapportionment Office.<sup>107</sup>

The Republican-led redistricting committee placed Georgia's fourteenth district in the northwest of the state and "drew the lines in a way that didn't reflect the state's growing demographic diversity."<sup>108</sup> The 2010 census reflected Georgia's non-white population at 44%, with Hispanic people accounting for almost a quarter of the state's population growth from 2000 to 2010.<sup>109</sup> Yet the Republican-led redistricting effort created the fourteenth district to be 88% White, 12% Latino, and 8.7% Black.<sup>110</sup> The Georgia House and Senate approved the congressional map along a party-line vote and Republican Governor, Nathan Deal, signed the map into law.<sup>111</sup>

The DOJ approved Georgia's redistricting map in 2011 despite calls to reject it from the Georgia Legislative Black Caucus on the grounds that it "re-segregate[s] the state of Georgia, polarize[s] communities of color and isolate[s] them into enclaves."<sup>112</sup> Georgia's new

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<sup>106</sup> *Id.* Sturgis states that "Democrats . . . criticized the change. Stacey Abrams . . . said 'that [not including] Democrats in this decision raises some serious questions about transparency and accountability . . . Senate Democratic Leader Robert Brown . . . said the office is "obviously not nonpartisan.'" *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* Sturgis argues that "Georgia, having been governed by a Republican trifecta controlling the House, Senate, and governor's office since 2005, didn't need help from REDMAP—but legislative Republicans there still took steps to further consolidate their party's control of the map-drawing process." Sturgis, *supra* note 104.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* Republicans denied Democrats requests for a separate reapportionment office arguing that the newly instated office "would serve all members of the General Assembly." *Id.*

<sup>112</sup> *Id.* (quoting Stacey Abrams).

congressional district map allowed Republicans to take the majority in the state’s congressional delegation, with Representative Tom Graves outperforming Daniel Grant 72-27 after “[being] drawn into the state’s new Fourteenth Congressional District from his former seat in the 9<sup>th</sup>.”<sup>113</sup> Republicans have held firm control of the Fourteenth District since its emergence, with Representative Marjorie Taylor Greene winning the district in 2020 and 2022 despite losing her committee appointments in 2021 “for endorsing violence against Democratic politicians . . . and for spreading harmful and hateful disinformation.”<sup>114</sup>

Georgia also counts a county’s incarcerated individuals as residents for redistricting purposes despite this practice directly contradicting Title 21 of the Georgia Code, which states: “A person shall not be considered to have gained a residence in any county or municipality of this state into which such person has come for temporary purposes only without the intention of making such county or municipality such person’s permanent place of abode.”<sup>115</sup> In counties with large prison populations, like Calhoun County, where 29% of the population is incarcerated, incarcerated individuals are not counted when drawing local voting districts but are counted when drawing federal districts.<sup>116</sup> The rationale for excluding incarcerated individuals when drawing local districts is that the prison population will skew redistricting far more locally than federally because local districts generally have significantly fewer voters than federal districts.<sup>117</sup>

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<sup>113</sup> Sturgis, *supra* note 104; Katy Stech Ferek, *Marjorie Taylor Greene Easily Wins Re-Election in Georgia*, THE WALL ST. J. (Nov. 8, 2022), <https://www.wsj.com/livecoverage/election-midterms-2022/card/marjorie-taylor-greene-easily-wins-re-election-Csh8HdSkSGqp2w77bsRP>.

<sup>114</sup> Sturgis, *supra* note 104.

<sup>115</sup> GA. CODE ANN. § 21-2-217 (2010).

<sup>116</sup> Maya T. Prabhu, *Inmate Population Tilts Political Representation in Rural Georgia*, THE ATLANTA J. CONST. (Nov. 11, 2021), <https://www.ajc.com/politics/inmate-population-tilts-political-representation-in-rural-georgia/Z7KMKMLTNVFLBDWQUODKL7ZSJQM/>.

<sup>117</sup> *Id.*

Georgia’s approach is problematic under the democratic principle of equal voting power between citizens, which is central to American democracy.<sup>118</sup> Counting incarcerated Georgians as residents of the district where the prison is located creates a disparity of voting power, with Georgians living in urban areas having less voting power than Georgians in rural areas where most prisons are located.<sup>119</sup> However, removing incarcerated individuals from the redistricting process ultimately further disenfranchises incarcerated people by denying them representation on top of being legally ineligible to vote<sup>120</sup> or practically ineligible, given the obstacles incarcerated people face attempting to cast a ballot from jail.<sup>121</sup>

C. REVERSING VOTER SUPPRESSION AND INCREASING VOTER REGISTRATION/TURNOUT

Leading into the 2020 elections, many organizations emerged aiming to register voters and increase voter turnout in Georgia.<sup>122</sup> In 2014, former gubernatorial candidate, Stacey Abrams, co-founded the New Georgia Project “a year after the Supreme Court gutted the VRA, removing safeguards and reducing federal oversight of states.”<sup>123</sup> The Project focused on the “New

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<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Matthew Peljovich, *Can People Vote in Jail? Yes, But It’s Very Challenging*, CAMPAIGN LEGAL CTR. (Aug. 1, 2022), <https://campaignlegal.org/update/can-people-vote-jail-yes-its-very-challenging>. Peljovich explains that “[w]ithout internet access, voters in jail must rely on the prison’s administration to provide paper registration forms or vote-by-mail applications, which can get stuck in bureaucratic delays or discarded by uninformed prison staff.” *Id.* Furthermore, incarcerated people “may lack the necessary identification to register or vote and may find their forms stuck in the jail’s mail processing department, causing them to miss election deadlines. Additionally, many states that require an excuse to vote by mail do not count being incarcerated as a valid excuse.” *Id.*

<sup>122</sup> Vanden Huevel, *supra* note 94.

<sup>123</sup> Johnson & Timmons, *supra* note 97.

American Majority,” which consists of unmarried women, people of color, and voters between the ages of eighteen and twenty-nine.<sup>124</sup> The Project has helped register over 500,000 voters.<sup>125</sup>

In 2018, Abrams founded Fair Fight, an organization dedicated to ending “illegal voter purges, unjust poll closures, the long lines that seemed to crop up largely in neighborhoods of color and other underhanded tactics.”<sup>126</sup> Fair Fight engages in “voter mobilization and education activities and advocate[s] for progressive issues,”<sup>127</sup> and the Fair Fight Political Action Committee “initiate[s] programs to support voter protection programs at state parties around the country and engag[es] in partnerships to support and elect pro-voting rights, progressive leaders.”<sup>128</sup>

These initiatives, combined with community outreach, played a prominent role in the increased voter turnout Georgia experienced during the 2020 election by encouraging all eligible Georgians to vote, specifically those from traditionally marginalized communities. Georgia’s liberal-led grassroots organizing paid off for Democrats in the Senate runoff elections, evidenced by the 92% voter turnout in districts carried by President Biden compared to only 88% in districts carried by former President Trump.<sup>129</sup> Activists in Georgia, like Abrams, successfully flipped the state from red to blue by registering “New Georgia”<sup>130</sup> voters and getting them to the polls.

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Vanden Huevel, *supra* note 94.

<sup>127</sup> *Our Story: About Fair Fight Action*, FAIR FIGHT, <https://fairfight.com/about-fair-fight/> (last visited Oct. 20, 2021).

<sup>128</sup> *Id.*

<sup>129</sup> Nate Cohn, *Why Warnock and Ossoff Won in Georgia*, N.Y. TIMES (June 7, 2010), <https://www.nytimes.com/2021/01/07/upshot/warnock-ossoff-georgia-victories.html>.

<sup>130</sup> Johnson & Timmons, *supra* note 97.

#### D. RETALIATORY RESTRICTIVE VOTING LAWS AND ELECTION SUBVERSION

In response to the Democratic gains in the 2020 election, Georgia Republicans signed a measure to restrict voting rights throughout the state.<sup>131</sup> Supporters of the legislation justify the measure as necessary to combat the election fraud President Trump claimed cost him the 2020 election, despite the absence of evidence to support the claim.<sup>132</sup> The bill imposed an identification requirement on individuals voting by mail, restricted deadlines on mail ballots and drop-off boxes, discounted provisional ballots cast in the wrong precinct, permitted the state to take over election administration from county election boards, prevented third parties from providing food or drinks to individuals in voting lines, and prevented ballots from being counted until the polls close.<sup>133</sup> Overall, the bill disproportionately impacts urban areas and communities of color, which tend to lean Democratic.<sup>134</sup> During the primary election, voters in poor, densely populated communities waited in line for over two hours at multiple voting locations in temperatures above eighty degrees with high humidity.<sup>135</sup> Georgia's bill does not permit the counting of ballots until after the polls

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<sup>131</sup> Ed Kilgore, *Georgia Republicans Take Revenge on Voting Rights*, N.Y. MAG. INTELLIGENCER (Mar. 26, 2021), <https://nymag.com/intelligencer/2021/03/georgia-gop-passes-election-bill-slashing-voting-rights.html>.

<sup>132</sup> Zachary B. Wolf, *How Trump's Election Fraud Lie Turned Into Law in Georgia*, CNN (Mar. 26, 2021, 3:04 PM EDT), <https://www.cnn.com/2021/03/26/politics/trump-election-fraud-lie-georgia/index.html>.

<sup>133</sup> Kilgore, *supra* note 131.

<sup>134</sup> *Id.* Kilgore states that “[w]hile [the bill is] not the ‘Jim Crow 2.0’ critics feared—and that earlier versions threatened—the new law shows a determined effort by Republicans to restrict voting in order to claw back power.” *Id.*

<sup>135</sup> Nick Corasaniti & Reid J. Epstein, *What Georgia's Voting Law Really Does*, N.Y. TIMES (Apr. 2, 2021), <https://www.nytimes.com/2021/04/02/us/politics/georgia-voting-law-annotated.html>. Corasaniti and Epstein state that “[n]umerous studies have shown that long lines deter people from voting. According to research by the Bipartisan Policy Center, an independent research group, over 560,000 voters did not cast ballots in 2016 ‘because of problems related to polling place management, including long lines.’” *Id.*



close, which will undoubtedly prolong the declaration of the winner.<sup>136</sup> President Trump’s election fraud claims relied in part on the fact that it took more than two weeks to count the votes and declare a winner, and Republicans used the delay to disseminate “doubts about the election’s validity by baselessly arguing that fraud must have taken place.”<sup>137</sup> Therefore, without implementing reforms, it is foreseeable that other politicians could employ the same tactics to subvert election results and disenfranchise the electorate.

#### IV. RESTRICTIVE VOTING LAWS: A NATIONWIDE TREND

Prominent political figures contesting elections led to a large portion of the national electorate lacking confidence in the electoral process and questioning President Biden’s legitimacy.<sup>138</sup> When elected officials deliberately spread misinformation, they are not only opening the floodgates for voter suppression laws, but also enticing fraud accusations.<sup>139</sup> Accordingly, Republicans introducing voter suppression bills “fueled by rampant disinformation campaigns . . . successfully invalidating the election results in the minds of millions of Americans”<sup>140</sup> became a nationwide trend.<sup>141</sup> As a result, “more than 440 bills with provisions that restrict voting access [were] introduced in 49 states in the 2021 legislative sessions.”<sup>142</sup> Many of these

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<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *A Threat to Our Democracy: Election Subversion in the 2021 Legislative Session*, THE VOTING RIGHTS LAB (Sept. 29, 2001), <https://votingrightslab.org/a-threat-to-our-democracy-election-subversion-in-the-2021-legislative-session/>.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Voting Laws Roundup: December 2021*, BRENNAN CTR. FOR JUST. (Dec. 21, 2021, last updated Jan. 12, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

bills mainly focus on voting by mail, voter identification, voter purges,<sup>143</sup> increasing barriers to voter registration, and limiting the ability of state and county agencies to settle lawsuits arising out of voting processes or election results.<sup>144</sup> Some of these bills even allow for partisan state legislatures to overturn elections and conduct partisan reviews of election results targeting certain counties.<sup>145</sup>

Distrust in the electoral process significantly contributed to the January 6, 2021 insurrection, when a mob of President Trump supporters stormed the Capitol Building and called upon Vice President Pence to reverse the presidential election results, a power the Vice President does not obtain.<sup>146</sup> Politicians must answer to two groups: those most affected by voter suppression laws and those who succumb to the antidemocratic and “win-at-all-costs political strategy” of election subversion.<sup>147</sup> Representatives on both sides of the aisle called for reforming the Electoral Count Act to combat election subversion, likely because “[u]nlike voter suppression

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<sup>143</sup> The Brennan Center for Justice defined voter purges as “an often-flawed process of cleaning up voter rolls by deleting names from registration lists.” *Voter Purges*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/issues/ensure-every-american-can-vote/vote-suppression/voter-purges> (last visited Feb. 20, 202). This process can often be discriminatory and disenfranchise eligible voters. *Id.*

<sup>144</sup> *Voting Laws Roundup: May 2021*, BRENNAN CTR. FOR JUST. (May 28, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-may-2021>.

<sup>145</sup> *A Threat to Our Democracy: Election Subversion in the 2021 Legislative Session*, *supra* note 137.

<sup>146</sup> Dan Barry, Mike McIntire & Matthew Rosenberg, ‘Our President Wants Us Here’: The Mob That Stormed the Capitol, N.Y. TIMES (Sept. 29, 2021 updated Nov. 10, 2021), <https://www.nytimes.com/2021/01/09/us/capitol-rioters.html>. Barry, McIntire, and Rosenberg describe the insurrection as follows: “A mob overran the nation’s Capitol, as lawmakers hid in fear. Wholesale vandalism. Tear gas. Gunfire. A woman dead; an officer dead; many injured. Chants of ‘U.S.A.! U.S.A.!’” *Id.*

<sup>147</sup> Charlotte Hill, Jake Grumbach, Hakeem Jefferson & Adam Bonica, *Democrats Must Reform the Electoral Count Act and Pass Comprehensive Voting Rights Legislation.*, DEMOCRACY DOCKET (Jan. 19, 2022), <https://www.democracydocket.com/news/democrats-must-reform-the-electoral-count-act-and-pass-comprehensive-voting-rights-legislation/>.

and gerrymandering, subversion is a relative newcomer to the ‘rigging elections’ playbook.”<sup>148</sup> Election subversion, or deliberately subverting the people’s will, is one of the most “quintessentially authoritarian” political strategies.<sup>149</sup> Despite Congress passing reforms to the Electoral Count Act, legislators should not “abandon the fight” to codify voting rights and fair redistricting practices.<sup>150</sup> Election subversion should not be ignored; however, reforming the Electoral Count Act to make it more difficult to overturn election results is less impactful when the results are “structurally biased toward minority rule.”<sup>151</sup> If pro-democracy representatives focus solely on minimizing election subversion, anti-democracy representatives need not resort to election subversion in the first place because voter suppression and gerrymandering will effectively overpower the people’s will.<sup>152</sup>

With numerous state legislatures working to pass restrictive voting bills, it is likely that issues currently plaguing the democratic voting process in Georgia, voter suppression and gerrymandering, will replicate throughout the country. Therefore, maintaining fair and just elections will require affirmative efforts to combat widespread voter suppression.

## V. SOLUTIONS TO THE VOTING DILEMMA

There are two potential federal solutions to the current American voting crisis, passing a federal law preempting discriminatory state voting laws and all forms of gerrymandering or

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<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*; *Electoral Count Reform Act Heads to President Biden for His Signature*, *supra* note 57.

<sup>151</sup> Hill, Grumbach, Jefferson & Bonica, *supra* note 147. Antidemocratic practices like “voter suppression, gerrymandering and electoral subversion are not in zero-sum competition for attention or legislative capacity. Democracy advocates who stress the importance of voting rights, fair districting and even campaign finance regulation are not downplaying the need for Electoral Count Act reform.” *Id.*

<sup>152</sup> *Id.*

ratifying a constitutional amendment; however, both solutions are highly impractical.<sup>153</sup> An executive order could also serve as a solution; however, executive orders are easily reversible and limited in scope, making this solution largely non-permanent.<sup>154</sup> Thus, the most viable solution remains grassroots activism, essentially replicating much of the work carried out by activist groups in Georgia.

#### A. FEDERAL LEGISLATION

Since the Constitution grants Congress the power to preempt contrary state laws, in theory, Congress can pass legislation nullifying discriminatory state voting laws. In 2021, Democrats in Congress attempted to push two different voting rights bills through the Senate; however, Democrats faced “mathematical challenges.”<sup>155</sup> Senate Republicans repeatedly blocked Democrats’ efforts to pass the John Lewis Voting Rights Act to reinstate long-accepted voting rights that the Supreme Court struck down in *Shelby*.<sup>156</sup> Democrats needed 60 votes to break the filibuster, which would need to include at least 10 Republicans.<sup>157</sup> Given the severity of polarization between Democrats and Republicans in Congress, this feat is essentially impossible.<sup>158</sup> When the extent of polarization is so severe, “common ground recedes and political

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<sup>153</sup> Collier Fernekes, Owen Bacskai & Matthew Weil, *What Presidents Can and Cannot Do for Voting Policy in Executive Orders*, BIPARTISAN POLICY CTR. (Mar. 23, 2021), <https://bipartisanpolicy.org/blog/presidential-voting-executive-orders/>.

<sup>154</sup> *Id.*

<sup>155</sup> Johnson, *supra* note 34.

<sup>156</sup> Nicholas Reimann, *John Lewis Voting Rights Act Fails to Pass Senate*, FORBES (Updated Apr. 21, 2022, 9:32 AM EDT), <https://www.forbes.com/sites/nicholasreimann/2021/11/03/john-lewis-voting-rights-act-fails-to-pass-senate/?sh=3a05752db3d2>.

<sup>157</sup> *Id.*

<sup>158</sup> Robert B. Talisse, *The Polarization Dynamic*, DISCOURSE (Jan. 26, 2021), <https://www.discoursemagazine.com/ideas/2021/01/26/the-polarization-dynamic/>.

opponents can find no basis for compromise and cooperation, leading to frustration, animosity and deadlock.”<sup>159</sup> Ultimately, this deadlock prevents Congress from passing legislation to preempt discriminatory state voting laws. There is likely no resolution when discriminatory state voting laws and gerrymandered districts in question play a significant role in electing the legislators refusing to preempt them.

#### B. CONSTITUTIONAL AMENDMENT

The alternative federal solution is ratifying a constitutional amendment which is even more impractical than passing federal legislation for similar reasons. Article V of the Constitution provides two methods for proposing an amendment for ratification: either by a two-thirds vote in both houses of Congress or by a national convention.<sup>160</sup> Congress can request a national convention to propose an amendment so long as two-thirds of the state legislatures call for the convention.<sup>161</sup> So far, Congress has proposed all amendments via a two-thirds vote of the House and Senate.<sup>162</sup> Amending the Constitution requires ratification by three-fourths of the states, through either the state legislatures or special state conventions.<sup>163</sup> Sending amendments to state legislatures is the more popular route, as Congress has only sent the Twenty-First Amendment to special state conventions to be ratified.<sup>164</sup> The Framers intentionally made the process of amending

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<sup>159</sup> *Id.*

<sup>160</sup> U.S. CONST. art. V.

<sup>161</sup> Ruth Bader Ginsberg, *On Amending the Constitution: A Plea for Patience*, 12 U. ARK. LITTLE ROCK L. REV. 677, 680 (1989).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* at 681.

<sup>164</sup> *Id.* at 685 n.66.

the Constitution difficult in order to ensure stability and prevent “experiments” and “frequent innovations.”<sup>165</sup> Today, amending the Constitution is nearly impossible, given the increasing polarization between the two parties. Even if Congress were to draft an Amendment, it would need to be ratified by the same state legislatures that actively gerrymander congressional districts to ensure members of their party are elected and continue the antidemocratic process.<sup>166</sup>

### C. EXECUTIVE ORDER

On March 7, 2021, President Biden signed an executive order to promoting voting access.<sup>167</sup> The order came in direct response to the restrictive voting bills moving through multiple state legislatures directing “federal agencies to develop a strategic plan for promoting voter registration and participation, including potentially applying to be a state-designated voter registration agency and providing recommendations on leave for federal employees to vote or to serve as poll workers.”<sup>168</sup> Essentially, the order directs federal agencies to comply with the NVRA.<sup>169</sup> This is not the first executive order to touch on voting; Presidents Clinton, Obama, and Trump all signed executive orders related to voting and elections.<sup>170</sup> Although President Biden’s

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<sup>165</sup> *Id.* at 681.

<sup>166</sup> See Jill Lepore, *The United States Unmendable Constitution*, NEW YORKER (Oct. 26, 2022), <https://www.newyorker.com/culture/annals-of-inquiry/the-united-states-unamendable-constitution>.

<sup>167</sup> *Executive Order on Promoting Access to Voting*, THE WHITE HOUSE (Mar. 7, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/07/executive-order-on-promoting-access-to-voting/>. “It is the responsibility of the Federal Government to expand access to, and education about, voter registration and election information, and to combat misinformation, in order to enable all eligible Americans to participate in our democracy.” *Id.*

<sup>168</sup> Felicia Sonmez and Amy Gardner, *Biden Signs Executive Order Promoting Voting Rights on 56th Anniversary of ‘Bloody Sunday’*, WASH. POST (Mar. 7, 2021, 1:22 PM EST), [https://www.washingtonpost.com/politics/biden-voting-bloody-sunday-order/2021/03/07/ce45b082-7f60-11eb-9ca6-54e187ee4939\\_story.html](https://www.washingtonpost.com/politics/biden-voting-bloody-sunday-order/2021/03/07/ce45b082-7f60-11eb-9ca6-54e187ee4939_story.html).

<sup>169</sup> Fernekes, Bacskai, & Weil, *supra* note 153.

<sup>170</sup> *Id.*

executive order goes further than the previous orders, the order is still limited in scope because executive orders can only “direct executive agencies to produce reports and prioritize certain tasks. . . . Yet, most of the real reforms that improve voting outcomes need to be implemented through legislation at the state or federal levels.”<sup>171</sup>

President Biden’s order is also limited in its practical effect.<sup>172</sup> Even though the order intends to expand voter registration opportunities, it is limited in its practical function because “[e]xpanding voter registration opportunities at points of service transactions with federal agencies . . . would only increase voter registration if states chose to work with those agencies.”<sup>173</sup> Forcing states to collaborate with federal agencies would require Congress to pass legislation.<sup>174</sup> Thus, executive orders are not a feasible solution to restoring democratic voting procedures.

#### A. GRASSROOTS ACTIVISM

The remaining solution arises in the form of grassroots activism. This solution, albeit not without challenges, presents itself as the most viable remedy to restore and protect the democratic voting process and fair elections.

##### I. THE IMPORTANCE OF HIGH VOTER TURNOUT

One of the most effective methods of diversifying the political sphere is to elect different representatives.<sup>175</sup> As discussed above, gerrymandering occurs in many districts nationwide to

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<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Sheldon H. Jacobson, *How Voting—or Choosing Not to—Might Slow Gerrymandering*, THE HILL (Nov. 16, 2021), <https://thehill.com/opinion/civil-rights/581826-how-voting-or-choosing-not-to-might-slow-gerrymandering>.

enable the party in power to maintain an electoral stronghold.<sup>176</sup> This process leaves voters with few options to mitigate gerrymandering’s antidemocratic effects, however; the most powerful weapon voters have is their vote.<sup>177</sup> Voters residing in heavily gerrymandered districts “can overwhelm the historical data by voting at unprecedented levels” and force opposing candidates to produce exceptionally higher voter turnout to maintain or flip seats.<sup>178</sup> As long as gerrymandering remains underregulated, high voter turnout is likely the only effective way to mitigate the intended effects of partisan gerrymandering.

Combatting the effects of gerrymandering through high voter turnout requires multiple strategies, and it is crucial that eligible voters in highly gerrymandered districts are registered to vote.<sup>179</sup> States can increase voter registration by implementing portable and same-day registration.<sup>180</sup> Portable voter registration allows registered voters to cast valid ballots after changing addresses, so long as they still reside in the state, without updating their information.<sup>181</sup> Same-day registration allows eligible voters to register on election day or update their information on election day.<sup>182</sup> One study found that implementing portable registration can increase turnout

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<sup>176</sup> *Id.* Jacobson explains that “[o]rganizations, like the League of Women’s Voters, have worked to support state legislation to create independent redistricting commissions. The problem is that the very people who must pass such laws have nothing to gain by them.” *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> Kelly Born, *Increasing Voter Turnout: What, If Anything, Can Be Done*, STAN. SOC. INNOVATION REV. (Apr. 25, 2016), [https://ssir.org/articles/entry/increasing\\_voter\\_turnout\\_what\\_if\\_anything\\_can\\_be\\_done](https://ssir.org/articles/entry/increasing_voter_turnout_what_if_anything_can_be_done).

<sup>180</sup> *Id.*

<sup>181</sup> *VRM in the States: Portability*, BRENNAN CTR. FOR JUST. (Feb. 3, 2017), <https://www.brennancenter.org/our-work/research-reports/vrm-states-portability>.

<sup>182</sup> *Id.*



by 2%, and implementing same-day registration can increase turnout by 5-7%.<sup>183</sup> Other strategies involve conducting in-depth inquiries to ascertain why some voters are less likely to vote and implementing voter mobilization efforts highlighting “three key factors influencing voting behavior: impact, convenience, [and] community.”<sup>184</sup> Grassroots organizations are likely to have a deep demographic understanding of the communities they serve and are uniquely equipped to undertake inquiries into their communities’ voting patterns and practices and develop strategies to increase local voter turnout.

## II. VOTER EDUCATION

Another way to increase civic engagement is to improve voters’ understanding of candidates’ policies and other political matters by making information outlining the candidates’ positions more accessible.<sup>185</sup> The Democratic and the Republican Parties spend large sums of money each election cycle, but these funds mainly go towards mobilizing interest groups and voters the parties believe will vote in their favor.<sup>186</sup> However, this method “leaves a lot of ground uncovered,” opening up the door for philanthropy to “make a distinctive impact by helping better inform both voters and nonvoters about policy issues, [and] helping improve the representativeness of the electorate or increasing turnout in America’s ill-attended but increasingly important primary elections.”<sup>187</sup>

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<sup>183</sup> Michael P. McDonald, *Portable Voter Registration*, POL. BEHAVIOR, 30 no. 4 (2008).

<sup>184</sup> Born, *supra* note 179.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

Local philanthropy efforts and grassroots activism are likely better equipped to educate voters on candidates and policy issues for multiple reasons. First, the sheer number of elections throughout the country would make it extremely difficult and costly for a federal organization to keep up with candidates' policy leanings at all levels of the government and provide the electorate with the requisite information to be an educated voter.<sup>188</sup> Contrarily, grassroots organizations can tailor voter education to localized populations, specifically to eligible voters with a low propensity to vote.<sup>189</sup> Moreover, local activist efforts are more familiar with their communities and are better equipped to provide the communities they serve with helpful and educational information.<sup>190</sup>

Grassroots organizations are more likely to incentivize the local electorate to vote in increasingly important primary elections in the modern era of highly gerrymandered districts.<sup>191</sup> Approximately 80% of congressional districts are either safely Democratic or Republican, meaning voters who participate in the primaries in those districts basically decide the election.<sup>192</sup> In a sense, “primaries have become the ‘de facto’ general elections.”<sup>193</sup> Voting in primary

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<sup>188</sup> Before the November 2022 elections, the Texas secretary of state's office allocated \$3.5 million for the two-year budget cycle exclusively to educate Texas voters on the voter identification requirements under Senate Bill 1. Nusaiba Mizan, *Texas Has Less to Spend on Voter Outreach as Election Approaches Under New Rules*, AUSTIN AMERICAN-STATESMAN (Sept. 21, 2022), <https://www.statesman.com/story/news/politics/state/2022/09/21/texas-election-2022-voter-education-campaign-has-less-money-spend/69506679007/>.

<sup>189</sup> Thalia Beaty, *Nonprofits Strain to Support Voters in Georgia Senate Race*, AP NEWS (Dec. 2, 2022), [https://apnews.com/article/georgia-senate-voting-grassroots-nonprofits-ab01100192b21062a804bef94dc3c364?taid=638a3cf01bba080001f1c960&utm\\_campaign=TrueAnthem&utm\\_medium=AP&utm\\_source=Twitter](https://apnews.com/article/georgia-senate-voting-grassroots-nonprofits-ab01100192b21062a804bef94dc3c364?taid=638a3cf01bba080001f1c960&utm_campaign=TrueAnthem&utm_medium=AP&utm_source=Twitter).

<sup>190</sup> Born, *supra* note 179.

<sup>191</sup> *Id.* Born states that “[p]rimary elections routinely see lower and even less representative turnout than general elections—and therefore may offer a particularly good opportunity for philanthropy to make a difference.” *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

elections is one of the most effective ways to circumvent the effects of gerrymandering and elect representatives who will work to prevent gerrymandering from permeating the redistricting process and the passage of restrictive voting laws.<sup>194</sup> In short, “an effective government remains the most viable mechanism for achieving social impact at scale.”<sup>195</sup> Therefore, voter turnout continues to be increasingly important in terms of electing representatives who support the interests of their constituency.<sup>196</sup>

For the reasons discussed above, grassroots activism is the most viable means of combatting the antidemocratic effects of gerrymandering and restrictive voting laws. Grassroots activism is the most effective way to increase voter registration, bring registered voters to the polls for both general and primary elections, and inform voters about the candidates’ policy views.

### III. COMBATTING PRISON GERRYMANDERING WITH STATE LEGISLATION

State legislatures will likely need to continue passing legislation to prevent prison gerrymandering from having a disparate impact on the redistricting process. Currently, the Census Bureau continues to count incarcerated individuals as residents of the country where they are imprisoned rather than their last legal address.<sup>197</sup> However, the Census Bureau implemented steps to make the data count easier for states that have passed such measures.<sup>198</sup> In *Fletcher*, the Supreme Court upheld Maryland’s anti-prison gerrymandering measure holding that legislatures count incarcerated individuals as residents of the district where the prison is located “for pragmatic

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<sup>194</sup> *Id.*

<sup>195</sup> Born, *supra* note 179.

<sup>196</sup> *Id.*

<sup>197</sup> Wang, *supra* note 89.

<sup>198</sup> *Fletcher*, 831 F.Supp.2d at 896.

and administrative reasons, not legal ones.”<sup>199</sup> The Court furthered by addressing that the Census Bureau has previously stated that counting individuals as residents of their last address before incarceration could cost \$250 million and “although the Census Bureau was not itself willing to undertake the steps required to count prisoners at their home addresses, it has supported efforts by States to do so.”<sup>200</sup>

Eleven states have successfully passed legislation to prevent the harmful effects that prison gerrymandering poses to American democracy, with Illinois in line to pass legislation to be implemented before redistricting in 2030.<sup>201</sup> Considering the Supreme Court’s precedent in *Fletcher* and the Census Bureau’s support for States to count incarcerated people at their previous known address, it is clear that the most efficient method of eradicating the antidemocratic effects of prison gerrymandering is to pass legislation at the state level through grassroots activism.

## VI. THE ROLE OF THE EXECUTIVE BRANCH

Although the grassroots activism solution largely presents itself at the state and local level, the executive branch nonetheless plays a crucial role in maximizing the impact of grassroots efforts. The executive branch needs to support local efforts to increase voter turnout and remedy the antidemocratic effects of gerrymandering and election subversion. Ultimately, the executive must spearhead efforts to expand civic engagement and foster democracy, “goal[s] that transcends state borders and party lines.”<sup>202</sup>

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<sup>199</sup> *Id.*

<sup>200</sup> *Id.* Citing U.S. Census Bureau, *Tabulating Prisoners at Their “Permanent Home of Record” Address*, at 10 (2006).

<sup>201</sup> Andrea Fenster, *How Many States Have Ended Prison Gerrymandering? About a Dozen!*, PRISONERS OF THE CENSUS (Oct. 26, 2021), [https://www.prisonersofthecensus.org/news/2021/10/26/state\\_count/](https://www.prisonersofthecensus.org/news/2021/10/26/state_count/).

<sup>202</sup> Martin Luther King III, Arndrea Waters King & Taifa Smith Butler, *As We Honor a Voting Rights Milestone, Biden’s Executive Order Has New Urgency*, THE HILL (May 21, 2022 10:00 AM EST),

The power of executive orders to implement voting equity is intentionally limited following the system of checks and balances, and Congress is the preferred domain for passing laws regulating voting.<sup>203</sup> Despite the executive branch not having the power to enact voting policy, the executive branch does have the power to enforce current federal legislation<sup>204</sup> to help alleviate the effects of voter suppression and gerrymandering and facilitate the peaceful transition of power to the democratically elected administration.<sup>205</sup> Furthermore, the executive must properly implement the executive order enacted on March 7, 2021 that builds on the NVRA to make voter registration more accessible.<sup>206</sup> Agency-based voter registration has proven effective.<sup>207</sup> Over thirty million Americans have registered to vote through registration methods the NVRA implemented.<sup>208</sup> To maximize the benefits of the executive order, President Biden must ensure that “federal agencies fully play their intended role in advancing voter access.”<sup>209</sup>

The DOJ is responsible for upholding federal laws and protecting civil rights<sup>210</sup> and plays a significant role in implementing voting rights. In July of 2021, The DOJ sued the Oneida County

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<https://thehill.com/opinion/white-house/3495965-as-we-honor-a-voting-rights-milestone-bidens-executive-order-has-new-urgency/>.

<sup>203</sup> Bacskai, Fernekes & Weil, *supra* note 153.

<sup>204</sup> *Branches of Government*, U.S. HOUSE OF REP., <https://www.house.gov/the-house-explained/branches-of-government> (last visited Feb. 20, 2022).

<sup>205</sup> *Id.*

<sup>206</sup> King, Waters King & Smith Butler, *supra* note 202.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *About DOJ*, U.S. DEP’T OF JUST., <https://www.justice.gov/about> (last visited Dec. 21, 2022).

Board of Elections for violating both the NVRA of 1993 and the Help America Vote Act of 2002 because the Board failed to process 2400 voter registration applications and rejected 1800 provincial ballots without verifying voters' eligibility and counting provisional ballots of eligible voters.<sup>211</sup> The Justice Department and the Oneida County Board of Elections reached an agreement providing that the Board implement a process by which election officials undertake a nondiscriminatory review of all timely voter registration applications in accordance with the NVRA.<sup>212</sup> The agreement stipulates that the Board train all election personnel on the requirements of the Help America Vote Act and submit reports to the DOJ to ensure compliance with the agreement.<sup>213</sup> The DOJ also filed complaints in both Texas and New Jersey under the VRA and the NVRA, respectively.<sup>214</sup> Furthermore, throughout 2021 and 2022, the DOJ also issued guidance under the Americans with Disabilities Act, Section 2 of the VRA, and the Civil Rights Act.<sup>215</sup>

Even though the most effective methods of counteracting voter suppression and gerrymandering lie at the state level, the DOJ is nonetheless responsible for enforcing current federal laws to thwart antidemocratic voting and election practices.<sup>216</sup> Despite the enforcement of current legislation being insufficient to combat voter suppression and

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<sup>211</sup> *Justice Department and Board of Elections of Oneida County, New York, Reach Agreement under National Voter Registration Act and Help America Vote Act*, THE U.S. DEPT. OF JUST., <https://www.justice.gov/opa/pr/justice-department-and-board-elections-oneida-county-new-york-reach-agreement-under-national> (last visited Feb. 20, 2022).

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Recent Activities of the Voting Section*, U.S. DEPT. OF JUST., <https://www.justice.gov/crt/recent-activities-voting-section> (last visited Feb. 20, 2022).

<sup>215</sup> *Id.*

<sup>216</sup> *About DOJ*, *supra* note 210.

gerrymandering, the President must utilize every tool available to the executive branch to ensure elections are fair and democratic. Therefore, the President must ensure that the appointments to the DOJ are competent and dedicated to upholding the values of American democracy.

## VII. CONCLUSION

Voting is a fundamental right. However, many groups, including racial minorities and women, have had to fight for their right to vote and participate in the American democratic process.<sup>217</sup> Currently, gerrymandering and the recent surge of restrictive voting laws are suppressing the votes of those same groups that fought so hard throughout the nineteenth and twentieth centuries to exercise their right to vote.<sup>218</sup>

Voter suppression functions by minimizing voter turnout, particularly voters likely to vote against the party currently governing the state.<sup>219</sup> Gerrymandering functions by drawing congressional districts in a way that distorts the actual demographics of a state to ensure the party in power can maximize the number of representatives elected from the party.<sup>220</sup> More often than not, the vote of marginalized groups is most diluted.<sup>221</sup>

Multiple states are enacting restriction voting bills disguised as voter protection bills to suppress the people's will.<sup>222</sup> Support for these bills largely stems from distrust of the election

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<sup>217</sup> *See supra* Section II.a.

<sup>218</sup> *See supra* Section II.b.

<sup>219</sup> Jacobson, *supra* note 1.

<sup>220</sup> *Id.*

<sup>221</sup> *Where Are the Lines Drawn*, *supra* note 36.

<sup>222</sup> *See supra* Section IV.

process from misguided beliefs surrounding the prevalence of election fraud.<sup>223</sup> This distrust is valid for communities that the political process has historically disenfranchised; however, the majority of rampant voter fraud rhetoric is a product of deliberate election subversion tactics intended to cause a distrust of the election processes.<sup>224</sup> This way, antidemocratic representatives can continue passing voter suppression laws to ensure their parties maintain power rather than allowing democracy to function as intended under the Constitution.

The Biden Administration utilized executive orders to make clear that it intended to protect and prioritize the right to vote.<sup>225</sup> However, the executive branch is restricted in terms of the practical solutions it can implement as the Constitution largely reserves the power to regulate voting to the states.<sup>226</sup> As a result, administrative solutions are limited.<sup>227</sup> The executive branch's most important role in the election process is to uphold current federal voting legislation through the DOJ and diligently facilitate the peaceful transfer of power from one administration to the next.<sup>228</sup>

Solutions at the federal level are also largely impractical due to the extent of polarization between the Democratic and Republican Parties.<sup>229</sup> Democrats in Congress proposed the For the People Act, a pervasive bill aimed at protecting voting rights; however, the likelihood of bipartisan

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<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *See supra* Section V.c.

<sup>226</sup> Bacskai, Ferneres & Weil, *supra* note 153.

<sup>227</sup> *See supra* Section VI.

<sup>228</sup> *See Supra* Section VI.

<sup>229</sup> Talisse, *supra* note 157.



support for this bill is dubious considering the amount of Republican-sponsored bills at the state level with opposing measures.<sup>230</sup> Passing a constitutional amendment is also unfeasible considering the high bar required to pass amendments.<sup>231</sup>

Thus, grassroots activism is the most viable solution because local organizations are the best suited to combat gerrymandering and voter suppression.<sup>232</sup> Grassroots activism has proven successful at increasing voter turnout for both the general and primary elections through targeted voter education measures and mass voter registration efforts that have helped reverse gerrymandering's antidemocratic effects.<sup>233</sup> The executive branch must also play an active role in upholding the legitimacy of a democratic election and enforcing current legislation aimed at dismantling voter suppression and partisan gerrymandering through the DOJ. In addition, the executive branch can follow through on the executive orders President Biden signed on March 7, 2021, by ensuring that federal agencies comply with the order to implement voter accessibility.<sup>234</sup>

Voter suppression, partisan gerrymandering, and election subversion are three of the biggest threats to American democracy. These antidemocratic tactics serve to benefit the party in power, not the people. As a result, incentives to eliminate such threats force representatives to choose between a functioning American democracy or their own prolonged political control. Elected officials advocating for voter suppression bills, spreading false voter fraud rumors, and gerrymandering districts to the point that they no longer accurately represent the electorate choose

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<sup>230</sup> See *Voting Laws Roundup: May 2021*, *supra* note 144.

<sup>231</sup> See *supra* Section V.b.

<sup>232</sup> See *supra* Section V.d.

<sup>233</sup> *Id.*

<sup>234</sup> King, Waters King & Smith Butler, *supra* note 202.

their own political power over American democracy. Thus, the most valuable tool the electorate has is its vote. Voting is the key to ensuring that antidemocratic practices largely unsupported by the general population are abolished and that voter suppression bills built upon false claims of rampant voter fraud,<sup>235</sup> absent evidence,<sup>236</sup> are quashed.

These threats will not rectify themselves. However, with Georgia as a model,<sup>237</sup> the American electorate can be heard at all levels of government through large-scale grassroots activism and support from the President and federal executive agencies. Substantial local efforts throughout the nation, supported by the DOJ and President Biden's prolonged oversight over executive orders, are essential if America intends to successfully remedy the threat posed by gerrymandering, voter suppression laws, and election subversion by restoring just and equitable voting practices that marginalized groups fought so hard to obtain.<sup>238</sup> The right to vote is the heart of American democracy. All attempts to silence voters should be met with immediate scrutiny as the people's voice should be the driving force of American policy.

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<sup>235</sup> See *supra* Section III.d.

<sup>236</sup> Wolf, *supra* note 132.

<sup>237</sup> See *supra* Section III.

<sup>238</sup> See *supra* Section II.

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