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Voter Suppression in Georgia

Eli Woods

As strange as it sounds, there was once a time in American history when Congress exercised bipartisanship and passed legislation aimed at making the republic more equitable for all. Almost fifty-six years ago, the Voting Rights Act of 1965 (VRA) was passed by 82% of the House of Representatives and 81% of the Senate. Signed into law on August 6, 1965 by President Lyndon Johnson, VRA aimed to overcome legal barriers at the state and local levels that prevented African Americans from exercising their right to vote as guaranteed under the 15th Amendment to the U.S. Constitution.¹ VRA outlawed the discriminatory voting practices adopted in many southern states after the Civil War. These practices included literacy tests as a prerequisite to voting, and provided for the appointment of Federal examiners who had the power to register qualified citizens to vote in jurisdictions that were “covered” according to a formula provided in the statute.² Section 4 of the Act established this formula that identified the areas of the country where racial discrimination in voting had been more prevalent and provided for more stringent remedies where appropriate.³ Section 5 of the Act required covered jurisdictions to obtain “preclearance” from either the District Court for the District of Columbia or the U.S. Attorney General for any new voting practices and procedures.⁴ Section 2, which closely followed the language of the 15th amendment, applied a nationwide prohibition of the denial or abridgment of the right to vote on account of race or color.⁵ VRA directed the Attorney General to challenge the use of poll taxes in state and local elections.⁶ In *Harper v. Virginia State Board of Elections*, the Supreme Court held Virginia’s poll tax to be unconstitutional under the 14th amendment.⁷ As a result, VRA is considered one of the most far-reaching pieces of civil rights legislation in U.S. history.⁸

¹ History.com Editors, Voting Rights Act of 1965, HISTORY (Jan. 26, 2021), <https://www.history.com/topics/black-history/voting-rights-act>.

² Voting Rights Act (1965), U.S. NAT’L ARCHIVES & RECS. ADMIN., <https://www.ourdocuments.gov/doc.php?flash=false&doc=100> (last visited Mar. 1, 2021).

³ Section 4 of the Voting Rights Act, THE U.S. DEP’T OF JUST., CIV. RTS. DIV. (May 5, 2020), <https://www.justice.gov/crt/section-4-voting-rights-act>.

⁴ U.S. NAT’L ARCHIVES & RECS. ADMIN., *supra* note 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*; see *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).

⁸ History.com Editors, *supra* note 1.

Since the passage of VRA, Congress readopted and amended the Act in 1970, 1975, 1982, 1992, and 2006, in order to extend the Act's coverage and increase the government's authority for determining where federal oversight was needed.⁹ In 2006, Congress reauthorized section 5 of VRA for another 25 years and strengthened it by broadening the purpose prong to any discriminatory purpose. However, a landmark Supreme Court decision in 2013 changed VRA forever and paved the way for states across the south to reinstitute previously barred voter suppression laws. In particular, *Shelby County v. Holder* Court held that the coverage formula in section 4(b) of VRA was unconstitutional and essentially rendered section 5 of VRA toothless. Chief Justice John Roberts wrote that the formula was "based on 40-year-old facts having no logical relation to the present day" and that "[C]ongress may draft another formula based on current conditions."¹⁰ The Chief Justice concluded that "[o]ur country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions."¹¹ Within hours of the Court's ruling, Texas announced plans to bring a previously barred voter ID law into effect with North Carolina, Mississippi, and Alabama soon to follow.¹² In 2018, five years after the ruling in *Shelby County*, the bipartisan U.S. Commission on Civil Rights found that at least 23 states had enacted "newly restrictive" laws and wrote that the federal government now "has limited tools to address. . . potentially discriminatory voting procedures and hardly any tools to prevent voting discrimination before it takes place."¹³ The panel recommended that Congress restore voter discrimination protections that existed prior to the decision in *Shelby County*.¹⁴

In response to the Chief Justice's contention that the formula in section 4 of the VRA was based on antiquated data, the Democratic-led House of Representatives passed the John Lewis Voting Rights Advancement Act (H.R.4) in

⁹ Erin Blakemore, *How the U.S. Voting Rights Act Was Won — And Why It's Under Fire Today*, NAT'L GEOGRAPHIC (Aug. 6, 2020), <https://www.nationalgeographic.com/history/article/history-voting-rights-act>.

¹⁰ *Shelby County, Ala. V. Holder*, 570 U.S. 529, 554, 557 (2013).

¹¹ *Id.* at 557.

¹² Blakemore, *supra* note 9.

¹³ *Id.* (quoting U.S. COMM'N ON CIV. RTS., 2018 STATUTORY ENFT REPORT: AN ASSESSMENT OF MINORITY VOTING RIGHTS ACCESS IN THE U.S. 9 (2018)).

¹⁴ Blakemore, *supra* note 9.

December 2019.¹⁵ Named after the Civil Rights icon who was brutally beaten in 1965 while demonstrating for voting rights in Selma, Alabama, the Act would reinstate federal oversight of state election laws and bolster protections against racial discrimination enshrined in the original VRA.¹⁶ However, unlike the original VRA and its subsequent amendments, H.R.4 received almost no bipartisan support with only one Republican supporting the bill.¹⁷

A second voting rights bill titled the For The People Act passed the House in March 2021 aimed at protecting and expanding voting rights and reforming campaign finance laws.¹⁸ The legislation aims “to expand Americans’ access to the ballot box, reduce the influence of big money in politics, strengthen ethics rules for public servants, and implement other anti-corruption measures for the purpose of fortifying our democracy, and for other purposes.”¹⁹ The act includes some notable changes, such as mandatory automatic voter registration, restoring voting rights to people with completed felony sentences, and a reversal of state voter ID laws that would allow citizens to make a sworn statement affirming their identity if they were unable to produce an ID.²⁰

As things currently stand, the Democrats have a narrow majority in the House with the Senate tied 50-50 along party lines. Since the Republicans can block any legislation using the filibuster, which requires 60 votes to overcome, any hopes of passing H.R.4 and H.R.1 are, for all intents and purposes, dead. To eliminate the legislative filibuster, Democrats need only a simple majority. However, Democratic Senators Joe Manchin of West Virginia and Krysten Sinema of Arizona have publicly defended the filibuster all but assuring H.R.4 and H.R.1 will fail in the Senate.

I. “THE BIG LIE”

As stated previously, many states immediately changed their election laws following the 2013 *Shelby County* decision. Each of these states had a Republi-

¹⁵ Luke Broadwater, *After Death of John Lewis, Democrats Renew Push for Voting Rights Law*, N.Y. TIMES (Jul. 21, 2020) <https://www.nytimes.com/2020/07/21/us/john-lewis-voting-rights-act.html>.

¹⁶ Broadwater, *supra* note 15.

¹⁷ Sheryl Gay Stolberg & Emily Cochrane, *House Passes Voting Rights Bill Despite Near Unanimous Republican Opposition*, N.Y. TIMES (Dec. 6, 2019), <https://www.nytimes.com/2019/12/06/us/politics/house-voting-rights.html>.

¹⁸ Alana Wise & Deirdre Walsh, *House Approves Major Election Reform And Voting Rights Bill*, NPR (Mar. 3, 2021), <https://www.npr.org/2021/03/03/972568115/house-approves-major-election-and-campaign-finance-reform-bill>.

¹⁹ For the People Act of 2021, H.R.1, 117th Cong. (1st Sess. 2021).

²⁰ Wise, *supra* note 18.

can majority in the legislature and a Republican governor. Despite numerous Republican-led states changing their election laws long before the 2020 election, former President Trump and his supporters repeatedly propagated lies that the election would be stolen from him because of widespread voter fraud, often characterized as “the Big Lie.” Following record turnout during the 2020 election and a substantial increase in mail-in voting due to the pandemic, former President Trump and his allies, led by former New York City mayor Rudy Giuliani, continued their assault on the integrity of the election claiming it was stolen. In particular, Trump and his allies lambasted the process of counting mail-in ballots, which were largely utilized by Democratic voters and took states such as Arizona and Georgia several days to count. The former President’s daily barrage on the legitimacy of the election culminated in a violent insurrection on January 6, 2021 when Trump’s supporters stormed the U.S. Capitol to prevent the certification of the electoral college vote.

Prior to the insurrection, allegations of widespread voting fraud were refuted by a variety of judges, state election officials, and an arm of the Trump Administration’s Homeland Security Department.²¹ In fact, Christopher Krebs, the director of the Cybersecurity and Infrastructure Security Agency, was unceremoniously fired by former President Trump for refuting Trump’s unsubstantiated claims of election fraud and vouching for the integrity of the vote.²² Krebs, a former Microsoft executive, tweeted out a report hours before his dismissal that cited 59 election security experts saying there was no credible evidence of computer fraud in the election outcome.²³ Similarly, many of Trump’s campaign lawsuits across the country were dismissed as no case established irregularities on a scale that would have changed the outcome of the election.²⁴ Furthermore, on December 1, 2020, former Attorney General William Barr, who was one of Trump’s most ardent allies, declared that the U.S. Justice Department uncovered no evidence of widespread voter fraud that could have changed the outcome of the election.²⁵

²¹ Calvin Woodward, *AP FACT CHECK: Trump Conclusively Lost, Denies the Evidence*, AP (Nov. 16, 2020), <https://apnews.com/article/ap-fact-check-trump-conclusively-lost-bbb9d8c808021ed65d91ace003a7bc64>.

²² Ben Fox, *Trump fires agency head who vouched for 2020 vote security*, AP (Nov. 17, 2020), <https://apnews.com/article/donald-trump-fires-christopher-krebs-dhs-5e63923e0c11c9155eb5af2362d78548>.

²³ Fox, *supra* note 19.

²⁴ Woodward, *supra* note 18.

²⁵ Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, AP (Dec. 1, 2020), <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

Regardless, states with Republican majorities in state legislatures across the country began drafting election reform bills aimed at imposing vast voting restrictions to combat the nonexistent voter fraud that former President Trump and his allies asserted. According to the Brennan Center for Justice at New York University, state legislatures in 43 states have introduced more than 250 bills with restrictive voting provisions.²⁶ Unlike states with Democratic governors, states with Republican governors are likely to sign any restrictive voting bills into law. Specifically, Iowa was one of the first states to overhaul its election law and Georgia later joined Iowa in signing its own election bill into law. This bill was signed by Republican Governor Brian Kemp and The Election Integrity Act of 2020, or SB 202, was put into law despite little to no evidence of voting fraud in Georgia during the 2020 election or the 2021 senatorial runoff election. The new law imposes voter identification requirements for absentee ballots, empowers state officials to take over local election boards, limits the use of ballot drop boxes, and makes it a crime to approach voters in line to give them food and water.²⁷

Ultimately, these restrictions disproportionately affect Black, minority, and poor voters because these voters are less likely to have valid IDs, which can cost considerable time and money to obtain. Additionally, ballot drop boxes make it easier to vote in areas that traditionally face hurdles and lines to vote can often be much longer for Black voters, who benefit from the provision of food and water. Regardless, Governor Kemp claimed that “alarming issues” with the 2020 election demonstrated a need for the changes, but as stated previously, no alarming issues have come to light that would require such drastic changes to the way Georgia elections have been conducted.²⁸

In response to the passage of SB 202, Bishop Reginald Jackson, who presides over more than 400 African Methodist Episcopal churches in Georgia, wrote a letter to more than 90,000 parishioners stating that the law is “racist and seeks to return us to the days of Jim Crow.”²⁹ Stacey Abrams, the founder of Fair Fight Action and a former Democratic gubernatorial nominee in Georgia, said the state’s Republicans showed they were intent on “reviving Georgia’s

²⁶ Kelly Mena, Fredreka Schouten, Dianne Gallagher and Pamela Kirkland, *Georgia Republicans speed sweeping elections bill restricting voting access into law*, CNN (Mar. 26, 2021), <https://www.cnn.com/2021/03/25/politics/georgia-state-house-voting-bill-passage/index.html>.

²⁷ Mena, Schouten, Gallagher & Kirkland, *supra* note 26.

²⁸ *Id.*

²⁹ Ben Nadler and Jeff Amy, *Georgia’s new GOP election law draws criticism, lawsuits*, AP (Mar. 29, 2021), <https://apnews.com/article/race-and-ethnicity-legislature-georgia-state-elections-lawsuits-c891cbbe5075b183835b945e16bd759a>.

dark past of racist voting laws.”³⁰ Even corporate America stepped up with several prominent American brands, including Major League Baseball, Coca-Cola, and Delta Air Lines, publicly condemning the law’s passage and general efforts of voter suppression.³¹ While corporate pressure to intervene was welcomed by many, it seemed as though corporations were too slow to react to the voting rights onslaught. Rather than proactively working to prevent the law’s passage, corporations were reactive and only released statements following public pressure to boycott them. For instance, Delta’s CEO Ed Bastian released a revised public statement in which he emphasized that “the final bill is unacceptable and does not match Delta’s values” after initially praising the law’s passage.³² Further, Bastian added that the “entire rationale for [SB 202] was based on a lie: that there was widespread voter fraud in Georgia in the 2020 elections.”³³ Major League Baseball decided to relocate the 2021 All-Star Game and the MLB draft out of Atlanta while executives of nearly 200 major companies, including HP, Target, and United Airlines, signed on to a statement that denounced voting bills in state legislatures similar to SB 202 in Georgia.³⁴

II. VOTING RIGHTS IS A CIVIL RIGHTS ISSUE

After public condemnation of SB 202 from civil rights leaders, religious leaders, prominent politicians, corporations, and President Biden, the ramifications of the law and those like it are still yet to be felt in Georgia and around the country. For instance, in a now famous video recording, twenty-nine-year-old Georgia state representative Park Cannon was arrested for knocking on Governor Kemp’s door as he signed the bill into law. In an interview with the British news outlet *The Guardian*, Rep. Cannon stated that she felt “as though a regression of our rights is happening.”³⁵ Rep. Cannon continued, “[t]he provisions in the bill that a Georgian is not able to bring water or food to their

³⁰ Mena, Schouten, Gallagher & Kirkland, *supra* note 26.

³¹ Terry Nguyen, *After Georgia, Companies Are Banding Together to Condemn Restrictive Voting Laws*, VOX (Apr. 12, 2021, 12:27 PM), <https://www.vox.com/the-goods/2021/4/5/22368566/corporate-response-georgia-sb202>.

³² *Id.* (quoting Ed Bastian, *Ed Bastian Memo: Your Right to Vote*, DELTA (Mar. 31, 2021, 9:40 AM), <https://news.delta.com/ed-bastian-memo-your-right-vote>).

³³ Ed Bastian, *Ed Bastian Memo: Your Right to Vote*, DELTA (Mar. 31, 2021, 9:40 AM), <https://news.delta.com/ed-bastian-memo-your-right-vote>.

³⁴ Nguyen, *supra* note 31.

³⁵ Sam Levine, *Lawmaker Park Cannon on Georgia Voting Law: ‘A Regression of Our Rights is Happening’*, THE GUARDIAN (Apr. 4, 2021, 8:46 AM), <https://www.theguardian.com/us-news/2021/apr/04/lawmaker-park-cannon-georgia-voting-law>.

friends or family when they're waiting in line – that's a human rights violation."³⁶ Regarding businesses taking a more hard line stance against these types of voting bills, Rep. Cannon stated that she is “glad people are watching” and “glad companies are hearing the people.”³⁷ Ultimately, Rep. Cannon wants people around the world to know that “[t]his is America. This is not about Republican or Democrat. This is about all of our rights. We must not lose sight of this issue. We must protect our right to vote.”³⁸

On the ground in Georgia, Ebony Carter is a resident of Atlanta and serves as one of Rep. Cannon's communications aides and the Chair of the Black Caucus of the Young Democrats of Georgia. Ms. Carter also manages Rep. Cannon's Facebook pages and Twitter, so she has the benefit and misfortune of reading the numerous comments and direct messages sent to Rep. Cannon. Therefore, Ms. Carter understands how many Georgians feel about SB 202. In describing the public comments on Rep. Cannon's posts, Ms. Carter states that many individuals generally criticize the Democrats by emphasizing the fact that Democrats “need to grow up and that they won't get all the things they want.”³⁹ Further, she characterizes the general sentiments towards Rep. Cannon as “you cannot throw a tantrum because you don't get your way.”⁴⁰ In describing the messages Rep. Cannon receives, Ms. Carter states that “people will [direct message] Park Cannon and ask why she thinks it is wrong to take away voting rights, why she is upset – that the bill is not taking away any rights and is expanding them, and there is no issue with the bill.”⁴¹ Although many people “are saying that this law will make elections more secure” and question why Rep. Cannon feels “so strongly about taking away people's rights,” Ms. Carter emphasizes that these individuals are “mostly conservatives.”⁴²

Conversely, it is not only conservatives who leave critical comments and messages for Rep. Cannon. “Some Democrats,” Ms. Carter explains, “don't believe that this election bill is a top priority.”⁴³ Ms. Carter believes that “a majority of Georgia voters don't get the problem” as elections occur almost

³⁶ Levine, *supra* note 35.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Interview with Ebony Carter, Commc'ns Aide for Rep. Park Cannon, Chair, Black Caucus of the Young Democrats of Ga. (April 16, 2021) [herein after Carter virtual interview].

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

every year in Georgia.⁴⁴ “We have to fix this now,” she explains, “not in five to ten years.”⁴⁵ Although “the Big Lie” is considered to be the catalyst for SB 202, Ms. Carter explains that this was a slow-moving movement across the South that culminated in this election law.⁴⁶ In particular, in 2018, Georgia election laws required a Georgian’s ID to match her voter registration or she could not vote, which left many absentee ballots excluded.⁴⁷ While many across the country saw the video of Rep. Cannon’s arrest as she tried to enter Governor Kemp’s chambers during SB 202’s signing, a similar, but less well-known event occurred during the 2018 election. Specifically, during a protest at the state capitol to count the excluded absentee ballots, a legislator was arrested for telling the Georgia Capitol Police and State Troopers to stop arresting protestors.⁴⁸ This arrest was due to a Georgia law that prohibits individuals from disrupting the process of lawmaking. The pertinent portion of the Code of Georgia reads:

It shall be unlawful for any person willfully and knowingly to enter or to remain in any room, chamber, office, or hallway within the state capitol building or any building housing committee offices, committee rooms, or offices of members, officials, or employees of the General Assembly or either house thereof with intent to disrupt the orderly conduct of official business or to utter loud, threatening, or abusive language or engage in any disorderly or disruptive conduct in such buildings or areas.⁴⁹

Subsequently, groups like Fair Fight Action and The New Georgia Project registered many people to vote resulting in more Georgians voting in the 2020 election.⁵⁰ As Ms. Carter puts it: “People in Georgia don’t vote. They often have to get pushed to vote.”⁵¹

Moreover, the worry for many in Georgia and nationally is whether the onslaught of new election laws will discourage persons of color and cause disillusionment. “Some people will be further discouraged from voting,” Ms. Carter says, but “some people felt like voting was too hard even despite voting taking place from 7am to 7pm [and] no excuse absentee voting.”⁵² Further,

⁴⁴ *Id.*

⁴⁵ Carter virtual interview, *supra* note 39.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Ga. Code Ann. § 16-11-34.1(f) (West 2010).

⁵⁰ Carter virtual interview, *supra* note 39.

⁵¹ *Id.*

⁵² *Id.*

Ms. Carter believes that “if people convinced you to vote last year and now they’re making it harder to vote, you may say ‘this is why I don’t vote. They’re always trying to keep us down.’”⁵³ Despite these concerns, Ms. Carter does see a glimmer of hope for the future. “Others may see [SB 202] as a rallying cry,” she says.⁵⁴

In fact, instead of protesting against Georgia Republicans, protesters assembled in Delta’s terminal at the Hartsfield-Jackson Atlanta International Airport.⁵⁵ As Ms. Carter puts it, “if people won’t listen to you, find out who will listen to you.”⁵⁶ Companies such as Delta, Coca-Cola, and Major League Baseball released statements deriding the new law with the latter moving the 2021 All-Star Game out of Atlanta. “These companies realized that if people refuse to give them business, then they will no longer be able to support the law. . . so they had to make public statements.”⁵⁷ Moreover, Ms. Carter believes that “the lack of money from these companies to fund the politicians’ campaigns may change the law.”⁵⁸

Furthermore, beyond pressure from corporations headquartered in Georgia, the film industry is another major economic power that conducts business in the state. With conservatives in the media regarding the film industry as a liberal bastion it could be assumed that the industry would be one of the first to condemn SB 202 and join the protest. In fact, during fiscal year 2019, three hundred and ninety-nine film productions filmed in Georgia spending \$2.9 billion in the state, according to Business Facilities Magazine.⁵⁹ In announcing the record haul from film production, Governor Kemp said “[t]he Peach State remains the Hollywood of the South, and companies across the globe have Georgia on their minds as a great place to invest, expand and relocate.”⁶⁰ However, many in the film industry have called for a Georgia film boycott with the likes of Mark Hamill and James Mangold voicing their sup-

⁵³ Carter virtual interview, *supra* note 39.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Business Facilities Staff, *Business Facilities’ 16th Annual Rankings: State Rankings Report*, BUSINESS FACILITIES (July 29, 2020), <https://businessfacilities.com/2020/07/business-facilities-16th-annual-rankings-state-rankings-report/>.

⁶⁰ *Id.* (quoting Gov. Kemp).

port.⁶¹ Some have already acted on their words as Antione Fuqua and Will Smith announced in a joint statement that they would no longer film the upcoming movie “Emancipation” in Georgia as a result of SB 202.⁶² As Ms. Carter says, it may take “economic solutions to change Georgia’s tune.”⁶³

The change that Ms. Carter, Rep. Cannon, and millions of others desire is a mere restoration to the way they were before SB 202 was signed into law. “Before this law, Georgia had early voting, no excuse absentee voting, longer election day voting. . . and those have been restricted, reduced, or changed.”⁶⁴ Ultimately, Ms. Carter and others believe that changing election laws was never about election integrity and had everything to do with “those in power want[ing] to hold on to power rather than giving people their rights.”⁶⁵ Big picture, Ms. Carter believes that a politician’s party allegiance should not matter, rather “legislators. . . who care about people and enfranchising people and getting people what they need” must prevail.⁶⁶ In the short term, many civil rights and voting rights organizations agree that H.R.1 and H.R.4 must pass the Senate so that state laws like SB 202 in Georgia are rendered unconstitutional. As Ms. Carter says, “H.R.1 is the best bet [because] nothing would have to be done” in the courts.⁶⁷ However, since SB 202 is the current law and the legislative filibuster guarantees H.R.1 will not pass the Senate, Georgians “can only take this to court, as many civil rights organizations have done, to challenge the viability and constitutionality of the law.”⁶⁸

III. LEGAL CHALLENGES

As civil rights and voting rights groups join to battle Georgia officials over SB 202 in court, it is important to mention a significant legislative victory for voting rights advocates that passed quietly in Virginia at the end of March. On March 31, 2021, Democratic Governor Ralph Northam signed the Voting Rights Act of Virginia (VRA of VA) into law. In a statement from the gover-

⁶¹ Ruth Kinane, *Mark Hamill, James Mangold Call for Georgia Filming Boycott in Response to New Election Laws*, ENTERTAINMENT WEEKLY (Apr. 1, 2021, 10:31 AM), <https://ew.com/movies/mark-hamill-georgia-boycott-voter-laws/>.

⁶² Brant Lang, *Will Smith, Antoine Fuqua Won’t Shoot ‘Emancipation’ in Georgia Because of Voting Restrictions*, VARIETY (Apr. 12, 2021, 5:51 AM), <https://variety.com/2021/film/news/will-smith-antoine-fuqua-runaway-slave-apple-georgia-voting-emancipation-1234949294/>.

⁶³ Carter virtual interview, *supra* note 39.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

nor's office, the landmark law provides "comprehensive protections against voter suppression, discrimination, or intimidation."⁶⁹ In a stark contrast to Republican-controlled legislatures seeking to restrict voting access across the country, Virginia's Democratic-controlled legislature and governorship passed VRA of VA to expand access to the ballot box. The statement continues that VRA of VA "prohibits discrimination in elections administration, requires local election officials to get feedback or pre-approval for voting changes, and allows individuals to sue in cases of voter suppression."⁷⁰ Additionally, VRA of VA "requires localities to seek public comment or pre-approval from the Office of the Attorney General on any proposed voting changes, and empowers voters and/or the Attorney General to sue in cases of voter suppression."⁷¹

While Virginia's Voting Rights Act did not receive the same national media attention as Georgia's voter suppression law, it is equally significant in its own right. Particularly, Virginia, a southern state with a lurid history of discrimination, is the first state in the country to approve its own Voting Rights Act. As legal challenges to Georgia's SB 202 take center stage in the months ahead, Virginia should be held up as a model to states seeking to expand and protect access to voting.

Currently, there are four lawsuits that claim parts of SB 202 are discriminatory and unconstitutional.⁷² The first is the New Georgia Project lawsuit filed on behalf of the New Georgia Project, Black Voters Matter Fund, and Rise Inc.⁷³ The Georgia NAACP filed a lawsuit joined by the Georgia Coalition for the People's Agenda, League of Women Voters of Georgia, GALEO, Common Cause, and the Lower Muskogee Creek Tribe.⁷⁴ The AME Church filed a lawsuit with a coalition of others, including the sixth district of the African Methodist Episcopal Church, Georgia Muslim Voter Project, Women Watch Afrika, Latino Community Fund of Georgia, and Delta Sigma Theta Sorority Inc.⁷⁵ Lastly, the fourth lawsuit was filed by the Asian Americans

⁶⁹ Alena Yarmosky, *Governor Northam Approves Voting Rights Act of Virginia*, OFF. OF THE GOVERNOR, VA. (Mar. 31, 2021), <https://www.governor.virginia.gov/newsroom/all-releases/2021/march/headline-894132-en.html>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Stephen Fowler, *Here Are All The Lawsuits Challenging Georgia's New Voting Law*, GA. PUB. BROAD. (Apr. 2, 2021, 11:42 AM), <https://www.gpb.org/news/2021/03/30/here-are-all-the-lawsuits-challenging-georgias-new-voting-law>.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

Advancing Justice – Atlanta.⁷⁶ All four lawsuits are assigned to Trump-appointed Judge J.P. Boulee and all four argue that many of the sweeping changes made to Georgia’s election administration disproportionately negatively affect nonwhite voters.⁷⁷

While each of these lawsuits may be analyzed in depth, the joint lawsuit filed by the Georgia NAACP and others serves as a good example of some of the arguments being made against SB 202. The Georgia NAACP suit alleges violations of the First and Fourteenth Amendments as undue burdens, and Section 2 of the Voting Rights Act as well as the Fourteenth and Fifteenth Amendments’ prohibitions on racially discriminatory purpose by state actors.⁷⁸ Bryan Sells, an attorney for the plaintiffs, wrote in the complaint that the changes would have a compounding negative effect for Black voters.⁷⁹ “The provisions of SB 202, viewed individually or collectively, threaten the fundamental right to vote of all Georgians, but their impact will be felt most intensely by persons of color, which is precisely what the legislature intended,” he wrote.⁸⁰ The complaint also identifies the disparate impact that restrictions on where voters can get food and water will have on Black voters. “More often than not, it is Black voters or other voters of color who are negatively impacted by long lines and delays at the polls and stand to suffer most when charitable organizations can no longer provide such items to voters waiting to vote,” he wrote.⁸¹

Ezra Rosenberg, another attorney for the plaintiffs, who serves as the co-director of the Voting Rights Project at Lawyers’ Committee for Civil Rights Under Law where he oversees all voting rights litigation. During a Zoom event hosted by the Lawyers’ Committee focused on countering voter suppression in the courts, Mr. Rosenberg was asked about the options available when it seems that the courts are stacked with judges who are sympathetic to voter suppression. Mr. Rosenberg responded:

It is the thing that keeps all of us up at night. Number one, we can’t give up and we have to keep fighting, but we have to be very strategic. We don’t want to make bad law. We have to focus on those cases where we can build

⁷⁶ Fowler, *supra* note 72.

⁷⁷ *Id.*

⁷⁸ *Id.*; Complaint for Injunctive & Declaratory Relief at - ¶ 126, ¶ 139, ¶ 146, *Ga. State Conf. of the NAACP v. Raffensperger*, No. 1:21-CV-01259-ELR, 2021 WL 1213491 (N.D. Ga. Mar. 28, 2021).

⁷⁹ Fowler, *supra* note 72.

⁸⁰ Complaint for Injunctive & Declaratory Relief, *supra* note 78, at ¶6.

⁸¹ *Id.* ¶ 4.

the sort of record that even those courts that may be hostile, at least kneejerk hostile to what we're looking for, that if we have a sound enough factual record, they may have to uphold it.

. . . We've won cases [too]. We won cases in the months leading up to the election in 2020 and then we won cases at a trial court, and. . . we wound up losing them almost overnight in some of the less friendly circuit courts of appeal. We also won cases in state supreme courts, so one of the things that all of us in this field are looking at is what sort of cases can be brought in state courts. Now, there is not necessarily a rosier picture in state courts. Many of the state supreme courts are in states where they've been appointed by either governors who are themselves hostile to expanding voting rights or protecting voting rights, or the electorate has elected judges who are not necessarily friendly. . . [But] many states have constitutional provisions that have broad constitutional right to vote provisions. So, we make use of those. We are strategic in where we sue. We know when to fold 'em. We know when to hold 'em in terms of whether or not we are going to go up to higher courts.

There is a case that is pending right now in the U.S. Supreme Court that came out of Arizona. . . [that] directly implicates Section 2 of the Voting Rights Act. . . [and] how that act is going to be applied. It is the first time in decades, more than 40 years, that a case like that has been before the Supreme court and we are all watching it and holding our breathe.⁸²

It remains clear that federal and state courts are the battleground for voting rights where judges wield incredible power in deciding whether voter suppression laws are unconstitutional or violate Section 2 of the VRA. While four cases currently sit on Judge J.P. Boulee's docket in Georgia, H.R.1 and H.R.4 wait in the halls of the Senate for a vote in Washington D.C. When asked about why there is need for federal legislation to protect voting rights when we already have the Fourteenth and Fifteenth Amendments, Mr. Rosenberg said:

The reality is. . . we do not necessarily have a federal appellate court system, particularly in those key circuit courts of appeal and at the Supreme Court, that's necessarily very friendly to voting rights. The more we can define what the parameters are, what is right or wrong through legislation that implements the Fourteenth and Fifteenth Amendments, the better.⁸³

Overall, the need for a permanent solution to voting rights through federal legislation appears to be the only indelible fix to voter suppression laws. As

⁸² Ezra Rosenberg, Co-Director of the Voting Rights Project of the Lawyers' Committee, Webinar on The Fight to Vote: Countering Suppression in the Courts and Coalition (Apr. 5, 2021) [herein after Rosenberg Zoom webinar.]

⁸³ *Id.*

Mr. Rosenberg states in his concluding remarks, “it makes it imperative that H.R.1 and H.R.4 are enacted.”⁸⁴

Despite the challenges of fighting an uphill battle in the courts, Mr. Rosenberg holds out some hope that judges will do the right thing when faced with the factual record. While Mr. Rosenberg acknowledges that “the judges that were selected by the Trump Administration clearly have had an effect on the federal courts [and] the circuit courts of appeal. . . there is a glimmer of hope.”⁸⁵ In the post-election litigation, state and federal judges dismissed more than fifty lawsuits of alleged electoral fraud and irregularities presented by Trump and his allies.⁸⁶ “Even those judges who were selected by Trump did the right thing,” Mr. Rosenberg said, “so, there are limits in terms of what bad people can try to do.”⁸⁷ It remains to be seen whether Judge J.P. Boulee will do the right thing and find SB 202 discriminatory and unconstitutional. While states like Virginia expand access to the ballot box, it remains clear for now that Georgia’s voter suppression efforts will be decided in court.

CONCLUSION

Federal legislation is the only real fix to stop the extensive assault on voting rights across the country. “The Big Lie” cultivated by Trump and his allies fueled a nationwide offensive against voting rights. States like Iowa and Georgia are only the start as Republican-controlled legislatures in Tennessee, Arizona, Michigan, Texas, and more craft their own election laws aimed at disenfranchising persons of color and the poor. Both H.R.4 and H.R.1 go a long way towards guaranteeing every citizen’s constitutional right to vote, but the legislative filibuster stands in the way of any real, long-lasting change. In Georgia, corporations and the film industry may use their considerable economic power to force some callous legislators to repeal SB 202, though that is unlikely. A more likely scenario is set to play out in court where four lawsuits filed with a Trump-appointed judge will decide whether the law is discriminatory and unconstitutional.

⁸⁴ Rosenberg Zoom webinar, *supra* note 82.

⁸⁵ *Id.*

⁸⁶ Reuters Staff, *Fact Check: Courts Have Dismissed Multiple Lawsuits of Alleged Electoral Fraud Presented by Trump Campaign*, REUTERS (Feb. 15, 2021, 9:41 AM), <https://www.reuters.com/article/uk-factcheck-courts-election/fact-check-courts-have-dismissed-multiple-lawsuits-of-alleged-electoral-fraud-presented-by-trump-campaign-idUSKBN2AF1G1>.

⁸⁷ Rosenberg Zoom webinar, *supra* note 82.