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Issue: Voting Rights in Virginia

Protect Voting Rights from Republican Rollbacks

One of the main pillars of our democracy is the constitutional right to vote. When Republicans controlled the Virginia state legislature, they passed restrictive voting laws that prevented eligible voters from exercising that sacred right. Those laws disproportionately affected people of color, low-income citizens, and young voters. After taking control of both chambers of the legislature in 2019, Democrats successfully acted to ensure the right to vote for all eligible citizens.

Then, in 2021, Republicans won a slim majority of seats in the Virginia House of Delegates and a Republican was elected governor. Since then, they have dedicated themselves to reversing that restoration of democracy. Republicans have passed bill after bill in the House which would restrict voting, again particularly aimed at historically marginalized groups. Even some Senate Republicans have proposed bills to chip away at voting rights. Democrats in the state Senate have blocked every one of those proposed bills.

In areas under the control of Governor Youngkin and his administration actual reversals of voting progress have occurred. For example, a new policy has been implemented which does not provide for automatic restoration of the voting rights of ex-felons. Also, Virginia has withdrawn from the Electronic Registration Information Center (ERIC), which was formed to keep voter rolls up-to-date. Republicans justify their attempts to pass restrictive voting laws by making false claims of voter fraud.

In 2023, if Republicans are able to hold the House and manage to win a majority in the Senate, they will almost assuredly pass voter suppression laws.

Democrats Restored Democracy in Virginia in 2020-2021

In a study about the ease of casting a ballot in the U.S., Virginia ranked 49th in 2018 when the Republicans controlled the state legislature.¹ Virginia was second only to Mississippi as the state in which it was most difficult to exercise the right to vote.² In 2020, after the Democrats had gained a majority in both chambers of the legislature and had passed legislation to counteract the voter suppression policies of the Republicans, Virginia rose to the 12th easiest state in which to vote.³ In doing so, Democrats carried out the will of the people, as a recent survey revealed that 65 percent of Virginians support universal suffrage.⁴

Here is how the New York Times reported on Virginia's transformation:

“As states across the South race to establish new voting restrictions, Virginia is bolting in the opposite direction. The Democratic governor, Ralph Northam, this week capped a multiyear liberal movement for greater ballot access by signing off on sweeping legislation to recreate pivotal elements of the federal Voting Rights Act ...

“Alone among the states of the former Confederacy, Virginia has become a voting rights bastion, increasingly encouraging its citizens — especially people of color — to exercise their democratic rights. In the last 14 months, the state's Democratic-controlled General Assembly and Mr. Northam have together repealed the state's voter ID law, enacted 45 days of no-excuse absentee voting, made Election Day a state holiday and enacted automatic voter registration for anyone who receives a Virginia driver's license.



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“Virginia, which for nearly 50 years had to submit changes to its elections to the federal government for approval under the Voting Rights Act’s preclearance requirements, has now effectively imposed the same covenants on itself, an extraordinary step for a state with a long history of segregation and racially targeted voting laws.”⁵

Below are some of the more important Democrat-sponsored laws enacted in 2020 and 2021 to protect the right to vote.

Expanded Vote by Mail

- No-Excuse Absentee Voting, HB 1 and SB 111 (both in 2020)⁶
- Permanent absentee voter list, HB 207 (2020)⁷
- Drop-Off Boxes, SB 1245 (2021)⁸
- Process to Cure Errors on Absentee Ballots, SB 1245 (2021)⁹
- No Witness Signature Required During Pandemic, SB 1097 (2021)¹⁰

Expanded In-Person Voting

- Election Day Designated as Legal Holiday, HB 108 and SB 601 (both in 2020)¹¹
- Early Voting on Sundays, HB 1968 (2021)¹²

Repealed Photo ID Requirement, HB 19 and SB 65 (2020)¹³

Made Voter Registration Easier

- Automatic voter registration via DMV, HB 235 and SB 219 (both in 2020)¹⁴
- Same-day voter registration, HB 201 (2020)¹⁵

Promoted Voting Among People of Color

- Election material in minority languages, HB 1210 (2020)¹⁶
- Pre-registration for ages 16 and 17, HB 2125 (2021)¹⁷

Prohibited Partisan Gerrymandering, HB 1255 (2020)¹⁸

Adopted a State-Level Version of the Voting Rights Act, HB 1890 and SB 1395 (2021)¹⁹

Because of its long history of racially targeted voter discrimination, Virginia was one of nine states required under Section 5 of the Voting Rights Act of 1965 to get federal approval before changing any state voting-related laws. However, in 2013, a ruling by the U.S. Supreme Court (*Shelby County v. Holder*, 570 U.S. 529 (2013)) made the preclearance requirement unenforceable. The Republican-led Virginia legislature then enacted voter suppression laws. But after flipping both chambers of the state legislature in the 2019 election, the Democrats overturned the racially biased election policies of the Republicans. To address future attempts to adopt racially discriminatory voting rules, the Democrats enacted in 2021 a state-level version of the federal Voting Rights Act. Virginia was the first Southern state to do so.²⁰

Republican Attempts at Rollback

Since Republicans gained a slim majority in the House of Delegates in 2021, they have introduced one bill after another intended to roll back the democratic changes made by the bills listed above. These Republican attempts to obstruct voting would particularly impact voters who traditionally vote Democratic. All such bills introduced and passed in the House were killed in committee in the Democratic-controlled Senate. Below is a list of the most significant bills (others were essentially duplicates).



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HB 1444: Would require photographic ID in order to vote. Voters without acceptable ID would be allowed only a provisional ballot.²¹

HB 1467 would:

- Make the same requirement as HB 1444.
- Repeal the ability to register to vote to up to and including the day of the election and limit those who are entitled to register to vote after the close of registration records to uniformed service members on active duty, persons who are residing temporarily outside of the United States, and their spouses and dependents.
- Limit the period for absentee voting from 45 days preceding the date of the election to the Wednesday, Thursday, Friday, and Saturday immediately preceding the election date.
- Require that absentee ballots returned by mail be returned by the close of polls on election day and be postmarked on or before the Saturday preceding the date of the election.
- Eliminate the use of drop-off locations for the return of absentee ballots.
- Require absentee ballot applications to contain the last four digits of the applicant's social security number.
- Require a witness signature on an absentee ballot.²²

HB 1499: Would limit the availability of absentee voting in person to the two-week period immediately preceding an election, instead of the current 45 days.²³

HB 1680: Would require the Department of Elections to prescribe procedures making it more burdensome for persons to register to vote on the day of the election.²⁴

HB 1693: Would repeal the current law providing for the establishment of drop-off locations for the return of absentee ballots.²⁵

HB 1947: Would eliminate the permanent absentee voter list.²⁶

HB 2454: Would require the Department of Elections to conduct and complete voter list maintenance monthly except during the 90 days prior to a federal election.²⁷

SB 967: Would provide that only members of the armed services residing temporarily outside of the United States and their spouses or dependents could register to vote after the regular close of registration up to and including the day of the election, instead of the current provision allowing anyone to do so.²⁸

SB 1317: Would require that the Department of Elections provide the list of registered voters for any district in which he or she resides to any registered voter of the Commonwealth at cost.²⁹

As House Minority Leader Don Scott (D-Portsmouth) pointed out in January of 2023, “These bills are just the latest attempt by MAGA Republicans to roll back voting rights – making it harder for people to vote, and weakening our democracy.”³⁰

Republicans Have Successfully Thwarted Enfranchisement of Ex-Felons

Virginia’s Constitution permanently disenfranchises all individuals with a felony conviction, the only state to still do so. However, it does grant the governor authority to restore a felon’s voting rights once they have completed their sentence. The felony disenfranchisement policies disproportionately disenfranchise people of color.³¹ In 2021, the General Assembly passed a Proposed State Constitutional Amendment to Restore Voting Rights (HJ555 and SJ272.) The rules to amend Virginia’s Constitution require a majority vote in both chambers and then a second vote in the next legislative Session. If approved, the amendment would appear on the ballot in the General Election. However, in the 2022 legislative session under the newly held Republican-controlled House, the bill died in committee. Thus, the opportunity for Virginians to vote on the



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issue of voter restoration was lost.³² The only chance for it to reappear is for voters to give majorities to the Democrats in both the House and the Senate.

In a change from recent gubernatorial administrations, the formerly incarcerated now are dependent on the governor to restore their voting rights. Under three former Virginia governors, more than 300,000 former felons had their voting rights restored. These governors were Bob McDonnell, a Republican who in 2013 first made restoration automatic for some categories of ex-felons, and Democrats Terry McAuliffe and Ralph Northam, who went farther to include anyone freed from prison.³³ In contrast, Governor Youngkin implemented a new policy which does not provide for automatic restoration. Instead, it requires a separate application for each person, evaluated on *unspecified* criteria.³⁴ As a result, only 4,000 citizens had their voting rights restored in 2022.³⁵ The Fair Elections Center has filed a lawsuit on behalf of one felon, arguing that such discretion by one person violates the U.S. Constitution. The litigation director of the center, Jon Sherman, pointed out that "Gov. Youngkin has replaced what was a non-arbitrary system with objective rules with a purely discretionary, purely arbitrary system, where there are no rules, there are no criteria."³⁶

Withdrawal from ERIC

Back in 2012, a bipartisan group of chief election officials from seven states, including Virginia whose then-governor was Republican Bob McDonnell, formed the Electronic Registration Information Center (ERIC), for the following reasons:

"Keeping voter rolls up to date is a challenge because, every day, voters move or die. Voters don't always remember to update their registration. ERIC was created to address these challenges. ... The seven states that founded ERIC believed using state-of-the-art data matching technology, a robust data sharing program built on widely accepted information security standards, and an unprecedented commitment to cooperation would vastly improve their ability to maintain accurate voter rolls. It would also have the added benefit of allowing them to reach out to unregistered, but likely eligible, individuals more efficiently than anyone else."³⁷

The organization grew to include more than half the states and has been an effort to share voter information, and has been supported and praised on a bipartisan basis. However, starting last year, Republican led states began to withdraw from ERIC, citing right-wing conspiracy theories. The voting officials in those states had very recently praised ERIC as a "godsend" and "one of the best fraud-fighting tools we've got."³⁸ But then the right-wing groups and websites spreading election misinformation began describing ERIC as leftist and linked to billionaire George Soros. These are baseless claims, as are those of Donald Trump and others who say that ERIC is intended to falsely inflate voter rolls and could allow private voter data to become public.³⁹

In May of this year, Virginia, one of the founding members, became the eighth state to leave ERIC, a decision made by Governor Youngkin's administration.⁴⁰

Conclusion

If the Republicans are willing to draft legislation with virtually no chance of passing, just imagine what additional measures they might take if they were to control both the House and the Senate after the 2023 election.

Don't let the Republicans reverse the progress made in voting rights in 2020-21. By electing a majority of Democrats to both the Senate and House of Delegates in Virginia, the work can continue to advance democracy and the fundamental democratic institution of a citizen's right to vote.



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- ¹ <https://newsroom.niu.edu/2018/09/25/new-study-scrutinizes-time-and-effort-it-takes-to-vote-in-each-state/>
- ² <https://www.nbc12.com/2018/10/23/study-finds-theres-only-one-state-us-where-its-harder-to-vote-than-virginia/>
- ³ <https://newsroom.niu.edu/2020/10/13/how-hard-is-it-to-vote-in-your-state/>
- ⁴ <https://acluva.org/en/press-releases/research-poll-shows-two-thirds-virginia-voters-support-universal-suffrage>
- ⁵ <https://www.nytimes.com/2021/04/02/us/politics/virginia-voting-rights-northam.html>
- ⁶ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=HB1>
- ⁷ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=HB207>
- ⁸ <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+SB1245>
- ⁹ Ibid.
- ¹⁰ <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+SB1097>
- ¹¹ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB108&201+sum+HB108>
- ¹² <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HB1968>
- ¹³ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+hb19&201+sum+hb19>
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- ¹⁶ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+hb1210&201+sum+hb1210>
- ¹⁷ <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HB2125>
- ¹⁸ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+hb1255&201+sum+hb1255>
- ¹⁹ <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HB1890>
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- <https://www.nytimes.com/2021/04/02/us/politics/virginia-voting-rights-northam.html>
- ²¹ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=231&typ=bil&val=HB1444>
- ²² <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=231&typ=bil&val=HB1467>
- ²³ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=231&typ=bil&val=HB1499>
- ²⁴ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=231&typ=bil&val=HB1680>
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- ³⁰ <https://www.wric.com/news/politics/capitol-connection/virginia-house-passes-republican-proposals-for-tighter-voting-laws/>
- ³¹ <https://www.nytimes.com/2023/04/06/us/virginia-youngkin-voting-former-felons.html>;
<https://www.virginiamercury.com/2022/02/08/va-house-republicans-kill-felon-voting-rights-proposal-despite-bipartisan-support/>
- ³² <https://www.wric.com/news/politics/capitol-connection/virginia-republicans-block-proposal-to-make-felon-voting-rights-restoration-automatic/>
- ³³ <https://www.nytimes.com/2023/04/06/us/virginia-youngkin-voting-former-felons.html>
- ³⁴ <https://www.npr.org/2023/04/13/1169550479/youngkin-felon-voting-rights-virginia#:~:text=Youngkin%20reverses%20automatic%20restoration%20of%20voter%20rights%20Virginia%20Gov.,using%2C%20sparking%20a%20federal%20lawsuit>
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- ³⁶ <https://www.npr.org/2023/04/13/1169550479/youngkin-felon-voting-rights-virginia#:~:text=Youngkin%20reverses%20automatic%20restoration%20of%20voter%20rights%20Virginia%20Gov.,using%2C%20sparking%20a%20federal%20lawsuit>
- ³⁷ <https://ericstates.org/faq/>
- ³⁸ <https://www.npr.org/2023/05/11/1175662382/virginia-eric-withdrawal>
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- ⁴⁰ <https://www.npr.org/2023/05/11/1175662382/virginia-eric-withdrawal>