

## Hearing Before the U.S. Senate Committee on Rules and Administration

### Testimony of Eric H. Holder, Jr., the 82<sup>nd</sup> Attorney General of the United States

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Chairwoman Klobuchar, Ranking Member Blunt, and members of the committee, thank you for the opportunity to appear before you today.

For as long as this country has existed, there have been two opposing forces that have fought over how we define and confer the rights and privileges of citizenship, freedom, and equality. Every step that has brought us closer to universal suffrage has been met by those — often those who are in power — who want to maintain an unjust status quo. Much in the same way that Reconstruction was followed by the era of Jim Crow, the progress won by the Civil Rights Movement, including the Voting Rights Act of 1965, has faced a multi-pronged assault that has sought to take us back to an era in which politicians, not the people, pick who wins, and who can participate, in elections.

The events of the past few months have brought into stark focus what has been true for too long: there is a large and powerful faction in this country intent on retaining power and who will bend or break the rules of our democracy in order to do so. The attack on our system of government did not begin or end with the insurrection at the Capitol on January 6<sup>th</sup>. For years now, politicians have spread the same lies about voter fraud and advanced baseless claims about the integrity of our electoral system. The fact is that there is no evidence of widespread or systemic fraud during the 2020 election or at any other time. To the contrary, federal experts have called 2020 the [most secure election](#) in history and state election officials from both parties, as well as judges, have affirmed the results. The same is true of other elections. In a landmark report conducted by the non-partisan Brennan Center, researchers found that an individual is more likely to be [struck by lightning](#) than cast a fraudulent ballot.

Despite the fact that no credible evidence exists, state legislators around the country have used these baseless assertions as a pretext to introduce more than [250 bills in 43 states](#) that would restrict who can vote. The intensity with which politicians are pushing these bills is, again, not without recent precedent. Over the past decade, partisan actors intent on holding onto power have systematically chipped away or outright eliminated key protections for voters in a way that has undermined our representative democracy. Too many Americans, particularly people of color, face discriminatory and onerous barriers to vote.

To better understand why the For the People Act is such a necessary reform, it's helpful to have a fuller understanding of all that has been done in the past decade to erode voting rights and tip the scales toward powerful special interests.

In 2011, state legislators and governors used the power they had over redistricting to launch what two professors from Princeton deemed to be the most egregious partisan gerrymandering of the [past half-century](#). In 2012, after that gerrymander, Democrats won 1.4 million more votes than Republicans in races for the U.S. House of Representatives, but Republicans engineered a 33-

seat majority. [A study](#) following the election in 2018 found that despite a historic wave election, gerrymandering alone prevented Democrats from winning an additional 16 seats in the U.S. House of Representatives and flipping seven state legislative chambers. To be fair, both parties have been guilty of gerrymandering throughout our history, but that does not make it right. Nor does it mean that we have to let the practice exist in perpetuity.

Gerrymandering has corrupted our electoral system and weakened our democracy by making some votes count more than others. The politicians who represent these manipulated districts know that their biggest obstacle to re-election lies in the primary, not the general election, which means they are incentivized to cater to the extremes of their base instead of reaching across the aisle to find common ground. The result is polarization and gridlock. The elimination of truly competitive elections allows them to vote for unpopular laws that put the desires of special interests before the well-being of all. Cynicism is bred into the American electorate because citizens do not see action being taken on things that matter most to them and see the enactment of policies that have little popular support.

In 2013, the conservative majority on the Supreme Court incorrectly deemed unconstitutional the preclearance requirement in Section 5 of the Voting Rights Act. As Justice Ginsburg so presciently wrote in her dissent, “Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.” The Court’s short-sighted decision allowed state legislatures to put into effect a new round of discriminatory voter ID laws, voter purges, and poll closures.

Starting almost immediately after the decision, nine states that had previously been covered jurisdictions subject to the preclearance requirement of Section 5, enacted or attempted to enact voting restrictions. It’s not a coincidence that the most gerrymandered state legislatures that also would have been covered under Section 5 have passed some of the most restrictive voter ID laws. In North Carolina, a federal judge found one such law targeted African Americans with “[almost surgical precision](#).” In Texas, in order to satisfy the voter ID requirement, people are allowed to vote using a state-issued handgun permit, but not a state-issued University of Texas student ID, leaving little doubt on who the legislators were targeting.

In sum, the results of the *Shelby County* decision have been disastrous for our democracy, particularly for Black and other nonwhite voters. There have been nearly [1,700 poll closures](#) across the country since the decision, many of which occurred in previously covered jurisdictions including 750 in Texas, 320 in Arizona, and 214 in Georgia. [One study](#) completed in 2017 found that nonwhite voters are seven times more likely than white voters to wait in line for more than an hour to vote. Another study found that residents of [entirely-Black neighborhoods](#) waited 29 percent longer to vote and were 74 percent more likely to spend more than 30 minutes voting.

In Georgia, [voters casting](#) a ballot after 7 P.M. waited 51 minutes in polling places that were 90% nonwhite, but only 6 minutes in places that were 90% white. The long lines and unnecessary barriers that fall the hardest on communities of color send a clear message about how little some actually value the bedrock principles of equality and “one person, one vote.”

In 2019, five Justices struck another blow against voting rights when they ruled in *Rucho v. Common Cause* that partisan gerrymandering claims were non-justiciable in federal courts. This was another landmark ruling for all the wrong reasons. As Justice Kagan pointed out in the first line of her dissent, “For the first time ever, this Court refuses to remedy a constitutional violation because it thinks the task beyond judicial capabilities.”

Along with the Court’s majority opinion in *Citizens United* that allowed a torrent of dark money to flood our elections, this disastrous suite of decisions has given politicians around the country license to abuse their power through an amalgam of undemocratic behavior that is inextricably linked. Politicians from gerrymandered districts insulate themselves from the people they are supposed to represent. That emboldens them to push discriminatory voter suppression bills and cater to the special interests who fund their campaigns. There is ample evidence that without action from this Congress, politicians around the country will continue their assault on voting rights and use the upcoming redistricting process to lock themselves into power for another decade. While that prospect is bleak, there is hope.

The For the People Act is the right remedy at the right time. The For the People Act recognizes that the best solution to abolishing the undemocratic trinity of issues plaguing our democracy – gerrymandering, voter suppression, and dark money – is to get rid of them all at once. By creating a baseline of protections for voters, rooting out corruption and dark money, and ending the practice of partisan gerrymandering, this Congress can create a fair, level playing field in our electoral system. This bill also makes evident that Congress should, in time, pass the John Lewis Voting Rights Advancement Act which would update the formula for determining which jurisdictions are subject to federal preclearance. Taken together, the For the People Act and the John Lewis Voting Rights Advancement Act represent the greatest pieces of civil rights legislation since 1965 and are badly needed reforms that will strengthen our democracy.

Provision by provision, the For the People Act begins to repair the damage that has been caused to voting rights in America over the past decade. By setting a floor that establishes early voting, stops unnecessary voter purges, and modernizes how we register to vote, this bill will ensure that no one’s access to the ballot is determined by where they reside or what they look like. By undoing the damage caused by the *Citizens United* decision and tackling corruption head on, this bill will help ensure that a politician’s position is not decided by the special interests who fund their campaigns. By ending the partisan gerrymandering of congressional districts, this bill will end the insidious practice of politicians picking their voters and ensure that the people choose their representatives.

In particular, the redistricting provisions will stop members of both parties from manipulating district lines to gain an unfair advantage. As we have seen in states like Arizona and California, the creation of independent, citizen-led commissions leads to competitive districts and delegations that more accurately reflect the political makeup of their states. This bill also addresses the Supreme Court’s concerns in *Rucho* by offering clear standards for what constitutes a partisan gerrymander so that the courts can straightforwardly discern when a map crosses the line. This bill also institutes new protections for communities of color — the people who are often hurt the most by gerrymandered districts. In totality, this bill not only helps

prevent gerrymandering before it happens, but also provides a path to challenge unfair maps in court if that is necessary.

Despite what opponents may say, this bill would not favor either party. Let me be clear: this bill will *not* create an advantage for any one party. All Americans have a stake in a democracy that prizes the idea of “one person, one vote.” No matter what political party you support or what policies you advocate, your voice will be stronger if politicians are required to be responsive to your needs.

Fair districts, in particular, promote legitimate representation, so that voters can choose their public servants instead of politicians picking their constituents. Fair districts will make it possible for members of Congress to work with one another in good faith and not worry about whether that cooperation will foment a primary challenge from the most extreme elements of their party. And they ensure that the people of this country can be heard over the noise of partisan posturing. If we can make politicians accountable to the will of the public, we can take steps forward in the areas where we agree and have an honest debate about the areas where we don’t.

Building a fair democracy is how we achieve long-term advances on issues from employment to education, from healthcare to housing, and from civil rights to criminal justice. It’s how we protect the right to vote and the right to representation for people across the country. It’s how we ensure equal protection under the law not just case-by-case, but in the institutions that govern our society and in the processes that make our country work.

Now is the time for Congress to exercise its constitutional authority to protect the structure of our representative democracy. Otherwise, we will slip deeper into a system in which self-interested politicians use the tools of governance to keep themselves in power with no regard for the desires of the people they are supposed to represent. Ensuring a true representative democracy is how we advance equality, opportunity, and justice in areas where too many Americans are still let down, left out, and left behind. It’s how we enshrine equality in federal law. It’s how we count every vote and make every vote count. Passing this bill will be a critical and necessary step to restoring power to the people, where it belongs.