

# Find Good Trouble this November

Reflections on John Lewis and the Voting Rights Act.



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As we celebrate the life and career of John Lewis, the Atlanta Bar takes a moment to focus on his role in one of his key accomplishments: the Voting Rights Act of 1965. We look prospectively at how attorneys can honor his legacy this election season.

John Lewis played an essential role in the passage of the Voting Rights Act, and he received bipartisan honors for his many accomplishments before and during his tenure as a 17-term Representative.<sup>1</sup>

A young John Lewis led six hundred marchers across the Edmund Pettus Bridge

in Selma, Alabama in 1965, and it was this singular day (aka, Bloody Sunday) on that bridge that catapulted Lewis to the front lines of the fight for the Voting Rights Act.<sup>2</sup> Bloody Sunday and the work by John Lewis and his peers has been noted as a pivotal day to sway public sentiment in support of the Voting Rights Act.<sup>3</sup>

The Voting Rights Act included provisions for federal oversight of jurisdictions deemed to have voting practices that suppressed the vote of minorities. Sections 4 and 5 of the Voting Rights Act required preclearance for voting changes if a jurisdiction fell under the coverage formula. Georgia was

a covered jurisdiction beginning with the November 1964 presidential election, and therefore was required to seek preclearance by the Department of Justice before implementing voting changes. The formula set forth in Section 4 which affected Georgia from 1965 to 2013 was a two prong approach: 1) did the jurisdiction maintain a “test or device” restricting the opportunity to register and vote; and 2) did the Director of the Census determine that less than 50 percent of persons of voting age were registered to vote as of November 1, 1964 or that less than 50 percent of persons of voting age voted in the November 1964 presidential election.<sup>4</sup>

While amendments were enacted in 1975, 1982, and 2006 extending the coverage formula's duration, the Act itself remained fully intact until 2013. Prior to the Supreme Court's decision in *Shelby County v. Holder*<sup>5</sup> in 2013, only one Georgia jurisdiction had obtained a bailout under Section 5 of the Voting Rights Act when the City of Sandy Springs entered into a Consent Decree in 2010. The remainder of Georgia was covered under Section 4, with new voting practices often rejected by the Department of Justice. The Atlanta Journal Constitution noted twelve times since 2000 that the Department of Justice rejected proposed voting changes in Georgia under Section 5.<sup>6</sup> Under the scrutiny of the preclearance process of the Voting Rights Act, a Harvard Kennedy School study shows "increased minority voter turnout by as much as 30 percent."<sup>7</sup>

It is then ironic that Alabama would again make history in the journey for the Voting Rights Act in the *Shelby* decision on June 25, 2013. The Supreme Court found key provisions of the Voting Rights Act outdated and invalidated Section 4 and much of Section 5, while leaving Section 2 intact. Under *Shelby*, jurisdictions previously identified by the coverage formula in Section 4(b) no longer needed preclearance for new voting changes.

At the time of the *Shelby* decision, Georgia had two voting changes affected: Fulton County had a redistricting plan under preclearance review and Macon had delays in a consolidated government delayed by the Justice Department. Representative Lewis spoke with the AJC about the *Shelby* decision at the time, noting that "We brought about changes, but the act is still needed in many parts of America, and especially in the American South where we had a long history of discrimination,[...]It may not be that open. It may not be that visible. But by making this decision, we could go back. ... It is frightening."<sup>8</sup> Indeed, the impacts of the *Shelby* decision continue to affect Georgia voters as the burden is now on the citizens under Section 2 of the Voting Rights Act to show the discriminatory effects of voting

changes, rather than on the government in jurisdictions with patterns of discrimination to show how proposed changes do not disproportionately affect minority voters.

In response to several States making new voting changes throughout the United States after *Shelby*, the House of Representatives, passed H.R. 4 (formerly referred to as the "Voting Rights Advancement Act" and now renamed after Representative Lewis's passing to the "John Lewis Voting Rights Advancement Act") on July 27, 2020. H.R. 4 proposes to create a new coverage formula that applies to all States based upon a 25 year look back period with those jurisdictions without discriminatory voting practices as further defined in the Bill in the last ten years qualifying to bailout. The Act additionally proposes a process for reviewing changes in voting to a limited set of measures (e.g., voter ID law or the number of multilingual voting materials).<sup>9</sup>

Representative Lewis wrote in his 2017 memoir, "Freedom is not a state; it is an act. It is not some enchanted garden perched high on a distant plateau where we can finally sit down and rest. Freedom is the continuous action we all must take, and each generation must do its part to create an even more fair, more just society."<sup>10</sup> As the Atlanta Bar, we can continue to do our part to ensure a fair, more just society.

To help prepare attorneys for the election, our respective Bar Associations are presenting diverse Continuing Legal Education Programs. The Atlanta Bar presented a virtual CLE "Just Mercy and Access to Justice, Part 2: What Can I Do to Help Confront Systemic Racism?" on September 18, 2020, with a roundtable discussion on unconscious bias, strategies to do justice, and how increasing our pro bono presence as attorneys can make an impact. Another opportunity to learn about modern voting rights was hosted by the Georgia Bar in a virtual CLE called "We the People Have the Right to Vote: Yesterday, Today and Tomorrow," held on September 21, 2020. The diverse presenters took an informed

and in-depth look into voting rights in the present day via Zoom.

Attending CLE presentations is just one step. As attorneys, we are used to using our voices to advocate for our clients. We can also use our voices to advocate for participation in the vote this election season.

NonprofitVOTE.org, a 501(c)(3) nonprofit organization, encourages using daily interactions with your community to simply remind people you come into contact with about the election. You can also create visibility with posters and displays in other public areas to help encourage voting rights in Georgia. This could be as simple as leaving voter registration applications in your lobby, or using your social media platform to remind your followers on how to register to vote and find their voting precinct. The American Bar Association also encourages attorneys to help support the vote as we are "well equipped to educate."<sup>12</sup> For example, I have elected to close Swilling Family Law Firm, LLC on November 3, 2020 as a paid holiday for staff with the charge to myself and request from my staff to find a meaningful way to contribute to the vote on Election Day.

Alternatively, you can volunteer. The Georgia Secretary of State's Office is partnering with Chambers of Commerce, the ACLU, and other community organizations to recruit younger, less-at-risk populations to serve as poll workers. The goal is to ensure that all polls have enough staff to function. Many prior workers, who are age 65 or older and are more vulnerable to COVID-19/Coronavirus, may not serve during this election. The Secretary's Office is partnering with various Chambers of Commerce, the ACLU, and other community organizations to recruit poll workers, including attorneys.

Another volunteer option is Election Protection's We the Action, which connects attorneys with voter assistance call centers to answer voters' questions and respond to

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issues, and to Field Programs which respond and monitor voting problems in targeted locations. Their Field Program offers four different time slots for attorneys to choose from as of September 2020.<sup>13</sup>

Bipartisan organizations are coordinating efforts in Coalitions<sup>14</sup> loosely organized on Facebook and social media platforms such as Fair Fight, Fair Count, Georgia Association of Black Women Attorneys, and others to ensure bipartisan success locally for Georgia voters to have access to the resources to vote this November.

Because the Atlanta Bar's purpose includes upholding the United States and Georgia Constitutions, promoting the administration of justice, and promoting the public good,<sup>15</sup> Atlanta Bar members should consider honoring the civil rights icon by voting, and assisting others to vote. Although in-person Atlanta Bar events have been suspended to protect Bar members and staff, healthy and properly protected Atlanta Bar members may make an individual decision to answer the call of the Secretary of State and others to assist in the voting process. If you would like to volunteer, please click on any of the links below to register.<sup>16</sup>

<sup>1</sup>Nation mourns the death of John Lewis: 'One of the greatest heroes of American history' by Tal Axelrod. <https://thehill.com/homenews/house/507937-nation-mourns-the-death-of-john-lewis-one-of-the-greatest-heroes-of-american>

<sup>2</sup>The National Archives, "John Lewis-March from Selma to Montgomery, 'Bloody Sunday' 1965" <https://www.archives.gov/exhibits/eyewitness/html.php?section=2>.

<sup>3</sup>"As Others See It: Pass new Voting Rights Act in honor of John Lewis" an Editorial from the Baltimore Sun. <https://www.post-gazette.com/opinion/Op-Ed/2020/07/25/As-Others-See-It-Pass-new-Voting-Rights-Act-John-Lewis-honor/stories/202007250011>

<sup>4</sup>The United States Department of Justice "Section 4 of the Voting Rights Act" <https://www.justice.gov/crt/section-4-voting-rights-act>

<sup>5</sup>Shelby County v. Holder, 570 U.S. 529 (2013).

<sup>6</sup>"Supreme Court scraps Voting Rights Act pre-clearance formula" Atlanta Journal Constitution <https://www.ajc.com/news/national-govt--politics/supreme-court-scraps-voting-rights-act-pre-clearance-formula/9uMy7GXZUaw1aGNv7vAOXK/>

<sup>7</sup>"Impacts of the Voting Rights Act and the Supreme Court's Shelby ruling" Harvard Kennedy School <https://www.hks.harvard.edu/research-insights/policy-topics/politics/impacts-voting-rights-act-and-supreme-courts-shelby-ruling>

<sup>8</sup><https://www.ajc.com/news/national-govt--politics/supreme-court-scraps-voting-rights-act-pre-clearance-formula/9uMy7GXZUaw1aGNv7vAOXK/>

<sup>9</sup>"John Lewis Voting Rights Advancement Act One Pager" by Sen. Patrick Leahy <https://www.leahy.senate.gov/imo/media/doc/>

John%20Lewis%20Voting%20Rights%20Advancement%20Act%20one%20pager.pdf H.R. 4-116th Congress (2019-2020) Summary. <https://www.congress.gov/bill/116th-congress/house-bill/4>

<sup>10</sup>"Across That Bridge: A Vision for Change and the Future of America" by Sen. John Lewis.

<sup>11</sup>"Nonprofits, Voting & Elections A Guide to Nonpartisan Voter Engagement" <https://www.nonprofitvote.org/nonprofits-voting-elections-online/helping-people-vote/?fbclid=IwAR0dnGWCDdqqJ1fol6hW8uF4w2x4fmsu8guIC-BB1yg-5WINzCUxggqEMc>

<sup>12</sup>"How to Help Protect Our Elections and Get Out the Vote" by Claire L. Parins [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/voting-rights/how-to-help-protect-our-elections-and-get-out-the-vote/?fbclid=IwAR0dnGWCDdqqJ1fol6hW8uF4w2x4fmsu8guIC-BB1yg-5WINzCUxggqEMc](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/how-to-help-protect-our-elections-and-get-out-the-vote/?fbclid=IwAR0dnGWCDdqqJ1fol6hW8uF4w2x4fmsu8guIC-BB1yg-5WINzCUxggqEMc)

<sup>13</sup><https://electionprotection.wetheaction.org/>

<sup>14</sup>While the Atlanta and Macon based Coalitions of non-profit bipartisan organizations do not have an official Facebook page, pages such as 9to5 Georgia Working Women are actively posting informative links to direct users to calls to action by the Coalitions.

<sup>15</sup>The Atlanta Bar Amended and Restated Bylaws, Art. I, Para. 1.2.

<sup>16</sup><https://www.acluga.org/en/poll-worker-recruitment-program>  
<https://elections.sos.ga.gov/Elections/countyelectionoffices.do>

