

United States Senate
WASHINGTON, DC 20510

July 24, 2020

Dear Colleague:

We write today to ask you to join us in introducing a joint resolution that would finally enshrine an affirmative right to vote in the Constitution.

In recent years, we have witnessed seemingly endless attacks on this precious right. Multiple state legislatures have sought to restrict the right via discriminatory photo identification requirements, cuts to early voting, voting roll purges, onerous restrictions on voter registration efforts, and numerous other nefarious tactics.

Recently, these abhorrent attacks have continued even in the midst of a global pandemic that has killed more than 144,000 Americans. Rather than taking steps to ensure that all eligible voters will be able to safely participate in our elections in November, far too many officials at the local, state, and federal levels are focused on holding onto power and doing everything they can to prevent voters from safely accessing the ballot box in the general election.

The federal judiciary has also played a crucial role in restricting the right to vote. While the Supreme Court has referred to this right as “fundamental” and “preservative of other basic civil and political rights,” conservative judges and justices on courts across the nation all too often continue to permit assaults on the right to vote. Just three months ago, the Supreme Court weighed in on the Wisconsin primary—the night before the election—by blocking a lower court’s order to extend the deadline for Wisconsin voters to submit absentee ballots. The Court issued this order despite significant delays in voters receiving such ballots, leaving thousands of voters to decide between increasing their risk of contracting or spreading COVID-19 by casting a ballot in person or not participating in the election to protect their health.

In her dissent criticizing the 5-4 decision, Justice Ginsburg noted that “the Court’s order, I fear, will result in massive disenfranchisement” and force voters to either “brave the polls, endangering their own and others’ safety” or “lose their right to vote, through no fault of their own.”

Unfortunately, the ruling was not surprising, given the Court’s recent jurisprudence on the right to vote. As we all know, in 2013, in a divided 5-4 opinion in *Shelby County v. Holder*, the Supreme Court decimated the Voting Rights Act (VRA) by striking down the key VRA provision that required certain jurisdictions to preclear any changes to their voting laws with the Department of Justice. States like Texas, North Carolina, Alabama, and Mississippi quickly moved forward to put in place restrictive voting laws—which all too often have a disproportionate impact on lower-income voters and voters of color.

There are clear steps that Congress can take right now to restore the VRA under the authority of the Fifteenth Amendment, like passing the John Lewis Voting Rights Advancement

Act, which the House passed last year but has been blocked by Senate Majority Leader Mitch McConnell. However, given the ongoing, ruthless assault on voting rights, it is also clear that more tools are necessary to push back against widespread voter suppression.

An affirmative right to vote in our Constitution would provide an additional, critical tool to fight back against voter suppression efforts ranging from felony disenfranchisement laws to problematic election administration changes that lead to long lines and reduced voter turnout on Election Day. Our amendment would ensure that efforts to limit the fundamental right to vote would be subject to strict scrutiny review and that Congress has irrefutable authority to protect the right to vote through legislation. Additionally, our amendment would ensure that states could no longer rely on Section 2 of the Fourteenth Amendment to prevent otherwise eligible Americans from voting due to a felony conviction.

After years of relentless damage to Americans' right to vote, this amendment would also allow us to put those who seek to unjustly restrict and attack this fundamental right on the defensive. Opponents of this effort need to explain why they believe that the right to vote—the right “preservative of all rights”—should not be affirmatively granted to the American people and enshrined in the United States Constitution.

It is time to draw a bright line to protect our democracy, and make it clear, once and for all, that the Constitution affirmatively protects the right to vote, requires courts to apply the highest level of scrutiny when the right to vote is denied or abridged, and unquestionably permits Congress to strongly protect this fundamental right.

We hope that you will join us in this effort. Please contact Stephanie Trifone ([Stephanie Trifone@judiciary-dem.senate.gov](mailto:Stephanie_Trifone@judiciary-dem.senate.gov)) and Stephanie Akpa ([Stephanie Akpa@warren.senate.gov](mailto:Stephanie_Akpa@warren.senate.gov)) on our staff with any questions or to sign on as a cosponsor.

Sincerely,



Richard J. Durbin
United States Senator



Elizabeth Warren
United States Senator