



OFFICE OF ALICIA HUGHES CHIEF POLICY ADVISOR & LEGISLATION COMMITTEE CHAIRMAN

HEARD ON THE HILL: NBA JANUARY VOTING RIGHTS LOBBY INITIATIVE

Objective: To lobby Members of the U.S. Senate to pass the John R. Lewis Voting Rights Advancement Act (hereinafter referred to as the “John Lewis Act”) before April 2022 and to thank Members of the U.S. House of Representatives for passing the John Lewis Act, while encouraging them to press U.S. Senate leadership to take whatever procedural steps are necessary to bring the matter to a vote, with no Democratic deflections and the addition of a few Republican friends in the Senate, so that the bill can be signed into law before the conclusion of the 117th U.S. Congress.

Positionality: The NBA is a non-partisan organization. However, the NBA has long been on the front lines for social justice and fights for causes that protect and provide for equal rights. Voting rights, along with criminal justice reform, near the top of the list. While we, as an organization, do not side with parties, we do align, when necessary and in a lobby, with politicians, parties notwithstanding, who support what we support. We support “One Man, One Vote.” By and large congressional members of the Democratic Party, and one known Republican, can be associated with where the NBA has stood historically on voting rights. Consistent with our long-standing position, today we support the John Lewis Act, in some iteration, becoming federal law.

Background/The Need for Help:¹ The U.S. House of Representatives passed the John Lewis Act of 2021 in Year One of the 117th U.S. Congress Legislative Session, on August 24, 2021. However, to date, the U.S. Senate has not acted. If the U.S. Senate does not pass a voting rights measure and the same, if necessary, go to conference, reports out of conference, and is then voted on by both bodies before the 117th U.S. Congress Legislative Session ends on January 3, 2023, the John Lewis Act will die. The result will be millions of continually disenfranchised U.S. voters, predominantly minorities, immigrants, and the underprivileged. While the Voting Rights Act of 1965 has been amended five (5) times in response to need to expand its protections, in recent years, some of the most critical protections afforded have deteriorated due to Supreme Court action *Brnovich v. Democratic National Committee, et. al.*, 141 S. Ct. 2321 (2021) and *Shelby County v. Holder*. Now, millions are vulnerable and remain without the full scope of protections that have been fought for and were guaranteed in a manner contemplated by the original Voting Rights Act of 1965, and *Brnovich* and *Shelby County v. Holder* have given way to voting reform measures that alienate and instill fear, rather than ease legitimate access to the ballot box.

Only congressional action can reverse the effects of the U.S. Supreme Court decisions that have harmed our democracy. As a result, the John Lewis Act is not a want. To save democracy, it is an urgent need. America needs Black lawyers to come save democracy. We sue to make peoples’ lives better, and this is easier when the law is on our side. With it as a guiding tool with clear legislative intent, we can reverse the adverse impact of state legislatures all around the country through legal challenges once the John Lewis Act is federal law. Importantly, there is hope, but we must strike while the iron is hot. House passage has not been a problem. As a matter of fact, The U.S. House of Representatives passed some iteration of the John Lewis Act in 2019 on a strict party line, but it died, because it was not taken up in the Republican-controlled Senate. Without knowing what will happen in mid-term elections in November, timing for a full-court press while there is a Democrat-controlled Senate, is imperative. Importantly, Joe Manchin (D-WV) and one Republican

¹ Sourced, in part, from: [The John Lewis Voting Rights Act: What Would It Actually Do? \(nymag.com\)](https://nymag.com/news/political/2021/08/the-john-lewis-voting-rights-act-what-would-it-actually-do/).

senator, Lisa Murkowski of Alaska, have supported some version of the John Lewis Act in the past, and Manchin is making it the centerpiece of his efforts to come up with a bipartisan compromise on voting rights. The NBA must make haste to DC to pull this act over the finish line and let the American people know, it's step one in our fight to protect access to the ballot. Importantly, the John Lewis Act, in its current form, retroactively prohibits state laws put in place after the 2020 elections by Republican-controlled state legislatures.

The John Lewis Act, once implemented, will create procedural rules governing voting-rights violations, similar to Section 2 of the original Voting Rights Act, which established legal grounds for private parties or the federal government to challenge state laws that are intended to, or have the effect of, diluting minority voting rights. Unfortunately, Section 2 was significantly curtailed by the conservative majority of the U.S. Supreme Court this year in *Brnovich v. DNC*. The far more powerful Sections 4 and 5 created a system whereby jurisdictions with a history of discriminatory practices would have to submit changes in voting and election laws to the Civil Rights Division of the Justice Department for review and "preclearance" as non-discriminatory before they could take effect. It was Section 4, which set up a formula for determining which jurisdictions fell under the Section 5 preclearance requirement, that the Court killed largely in its 2013 *Shelby County v. Holder* ruling, claiming it was based on outdated evidence of discriminatory practices.

Since both Supreme Court decisions modifying the Voting Rights Act were based on statutory interpretation, they are susceptible to a congressional "correction." The revised John Lewis Act would neutralize *Brnovich* by emphasizing a right to use Section 2 to address the discriminatory consequences, direct and indirect, of voting and elections changes, "instruct[ing] courts to consider other discriminatory factors when hearing such cases, including the history of discrimination in the state and the impacts of racism across impacted jurisdictions, from education and employment to health disparities." And to counter *Shelby County* it would revise the Section 4 formula for preclearance to cover states with "15 or more voting rights violations" in the previous 25 years, or just 10 violations if "at least one [violation] was committed by the state itself." This is intended to be a self-updating formula which will keep the courts from future challenges to the law.

Notably in recent time, there has been a bevy of legislation passed in states around the country, under the protective shields afforded by *Brnovich* and *Shelby County v. Holder*, including but not limited to in Mississippi, Georgia and Texas.