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Martin Luther King, Jr. Lecture

“GIVE US THE BALLOT”: REFLECTIONS ON THE STRUGGLE FOR
THE RIGHT TO VOTE IN HONOR OF THE 90TH BIRTHDAY OF
DR. MARTIN LUTHER KING, JR.

BRENDA WRIGHT*

I'M delighted to be here today on behalf of Dēmos¹ to give an address in honor of Dr. Martin Luther King, Jr.'s 90th birthday, which we commemorated with a national holiday last week, along with a major weather front that unfortunately kept me from joining you for the actual anniversary. My apologies for that.

A 90th birthday is most notable. Those who can celebrate a 90th in person are very fortunate. I think we all wish that could be true for Dr. King.

But even though that's not possible, we can all be uplifted by reflecting on the wisdom, the courage, the passion, and the vision that he gifted us with during his all-too-short life. And I very much appreciate the opportunity to be with you all to mark this important anniversary with a focus, in particular, on the struggle for the right to vote.

Everyone knows Dr. King's inspiring leadership in the fight against segregation and racial hatred; his fight against denial of economic opportunity and basic human dignity to people of color; his brilliant and strategic use of non-violent civil disobedience to call attention to the injustices he was fighting.

But because of our theme today, on the struggle for the vote, I want to focus on Dr. King's critical engagement with the fight for the right to vote, and his understanding of what the right to vote means to the entire struggle for civil rights. Dr. King's reflections on the importance of the right to

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1. Dēmos, <https://www.demos.org/>, is a dynamic “think-and-do” tank that powers the movement for a just, inclusive, multiracial democracy. Through policy research, litigation, and deep relationships with grassroots organizations, Dēmos seeks to champion solutions that will create a democracy and economy rooted in racial equity. Dēmos means “the people.” It is the root word of democracy, and it reminds us that in America, the true source of our greatness is the diversity of our people.

vote, and his actions in support of it, were indispensable to any progress we have made in past decades in securing that right for so many who were previously excluded.

And Dr. King's reflections on the right to vote, I believe, are equally relevant today, when we are confronting a resurgence of efforts to suppress the vote—to reduce or deny access to registration and voting—and yet, alongside that, are seeing a flowering of campaigns for reforms to make access to voting more free, fair, and accessible.

I'll start by noting that the first speech Dr. King gave at the steps of the Lincoln Memorial was *not* his famous "I have a dream speech" in 1963²—the speech that's embedded in almost everyone's memory as one of the most inspiring public addresses of all time.

The first speech that Dr. King made at the steps of the Lincoln Memorial, instead, addressed the right to vote. It was in May 1957, before a crowd of about 20,000-25,000.³ It was the speech in which Dr. King memorably called for the most basic and indispensable right of citizenship: "Give us the Ballot."

Dr. King gave that speech at the Lincoln Memorial three years after the Supreme Court's 1954 decision in *Brown v. Board of Education*.⁴ In the speech, Dr. King was soberly commenting on state governments' massive resistance⁵ to actually implementing the ruling of *Brown* and ending the practice of racial segregation in schools. Of course, in 1957, we were still eight years away from the enactment of the Voting Rights Act of 1965.⁶ Dr. King, in that first speech at the Lincoln Memorial, connected the dots between the lack of progress on implementing *Brown v. Board of Education*, and the continuing denial of voting rights to African Americans.

I thought people here would be interested to listen to Dr. King himself giving that speech, to help us frame our discussion today, so I'm going to play the key portion. Readers of this Article can hear the words of Dr. King's speech at the link in this footnote.⁷

2. *Prayer Pilgrimage for Freedom*, THE MARTIN LUTHER KING, JR. RESEARCH & EDUC. INST. AT STANFORD, <https://kinginstitute.stanford.edu/encyclopedia/prayer-pilgrimage-freedom> [<https://perma.cc/T2BA-92H8>] (last visited July 16, 2019) [hereinafter KING INSTITUTE].

3. *Id.*

4. See KING INSTITUTE, *supra* note 2.

5. The "massive resistance" was a set of state laws passed in 1956 for the purpose of hindering efforts to integrate schools after *Brown v. Board of Education*. See *Massive Resistance*, VA. MUSEUM OF HISTORY & CULTURE, <https://www.virginiahistory.org/collections-and-resources/virginia-history-explorer/civil-rights-movement-virginia/massive> [<https://perma.cc/23MY-HUJ8>] (last visited July 16, 2019). For example, one law cut off state funds to any public school that attempted to comply with the Supreme Court's integration order. See *id.*

6. 52 U.S.C. § 10101 *et seq.* (2018).

7. To hear the audiotape that the audience heard, go to <https://www.youtube.com/watch?v=oPre-KEFiVs> [<https://perma.cc/E9ZC-7MMC>] (ended at 5:00).

So: "Give us the ballot," Dr. King said in 1957. I don't know how often we think about the fact that even though the *Brown* decision was in 1954, the call to "give us the ballot" wasn't answered in any meaningful way until eleven years after *Brown*, after the struggle for the right to vote reached Selma, Alabama in March 1965, and the nation saw on national television the violence that state police visited upon people at the Edmund Pettis Bridge who were peacefully marching for the right to vote.⁸ Only then, more than a decade after *Brown*, did it finally become possible to win enactment of federal legislation to protect the right to vote against discrimination by state and local authorities, the Voting Rights Act of 1965.

And the Voting Rights Act of 1965 did have an enormous and profound impact on the right to vote. In 1965, before the Voting Rights Act, in Mississippi, only 6.7% of eligible African Americans were registered to vote.⁹ By 1970, through extensive enforcement actions in Mississippi by the Department of Justice and by private civil rights groups, over 60% of African Americans were registered.¹⁰ The Voting Rights Act was a critical, indispensable step forward.

But the thing I'd like us to think about today is that, no matter what victories we achieve in advancing access to the right to vote, the history of our country tells us that we're never actually done in fighting for the right to vote. And that's important, because I think there's often a somewhat sentimental portrayal of the history of the struggle for the right to vote in America. Many times, we see it portrayed as just a steady march forward to more and more inclusion—right?

The story we hear goes something like this: "Well, at the adoption of the Constitution, only propertied white men could vote. Then, the Civil War led to the 14th and 15th Amendments, meaning that African American men could also vote (in the South, for about a nanosecond). Then, in 1920, women (in practice, mostly white women) got the right to vote through the 19th Amendment. Then, in 1964, we ratified the 24th Amendment outlawing poll taxes. Next, after the shocking violence at the Edmund Pettus Bridge in Selma, Alabama, against peaceful marchers supporting the right to vote for black Americans, Congress finally passed the Voting Rights Act of 1965, a powerful tool to protect voting rights for people previously excluded on the basis of race, ethnicity, language access, disability. Then we ratified the 26th Amendment in 1971, giving eighteen-year-olds the right to vote. Just an ever-expanding march to full democracy. And now, everybody has access to the ballot!" I think in the popular imagination, that's often the story we've accepted.

8. JOHN LEWIS, *WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT* 323-47 (1998).

9. FRANK R. PARKER, *BLACK VOTES COUNT: POLITICAL EMPOWERMENT IN MISSISSIPPI AFTER 1965*, at 2 (1990).

10. *Id.* at 3.

And let's be clear: all of those steps forward to expand the right to vote were important, and necessary, for enlarging the universe of people who have a voice in American democracy. I'm not cynical, at all, about the progress those advances represent.

But today I also want to frame up the fact that, whatever the progress we have made in expanding the franchise, the right to vote remains highly contested in the United States, and it has always been so. At almost every moment when there's been forward movement in bringing more voices into our democracy, there's also been backlash and new strategies to halt or reverse that progress. Alex Keyssar has laid out that history most comprehensively in his book, *The Right to Vote: The Contested History of Democracy in the United States*,¹¹ where he examines the history of the right to vote from our founding to the 2000 election.

In calling the right to vote "the contested history of democracy in the United States," Professor Keyssar nailed it. If the right to vote is contested, the very concept of democracy is contested. And it's up to every generation to be in the arena to keep fighting for the vision of voting and democracy that brings everyone in and gives everyone a voice.

The last two decades, in particular, have seen serious, renewed challenges to the right to register and vote, and to achieve fair representation.

One is the increasing weaponization of vote suppression techniques as a partisan political tool and how that plays out in an ever more polarized political environment. A huge inflection point, I believe, was the 2000 presidential election between George W. Bush and Al Gore, and what happened when the election ended up turning on just a handful of votes in one state: Florida.

The turmoil in Florida in that election exposed how the very architecture of election procedures and administration—from something as simple as the design of the ballot, to the rules for counting ballots and deciding which were validly cast, to the use of inaccurate and racially discriminatory procedures to purge voters from the rolls—could sway even a presidential election.

That lesson, unfortunately, was not lost on political operatives, and it has been driving a more and more intense battle over access to registration and voting ever since.¹²

Connected to that is the Supreme Court's evisceration of a key section of the Voting Rights Act in its 2013 decision, *Shelby County v. Holder*,¹³ which took away probably the most important tool preventing backsliding

11. ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* (revised ed. 2009).

12. See, e.g., MacKenzie Weinger, *PA Pol: Voter ID Helps GOP Win State*, POLITICO (June 26, 2012), <https://www.politico.com/story/2012/06/pa-pol-voter-id-helps-gop-win-state-077811> [<https://perma.cc/LD8B-F2VG>] (Pennsylvania House Majority Leader (Rep.) states voter ID law will "allow Governor Romney to win the state of Pennsylvania, done").

13. 570 U.S. 529 (2013).

on access to participation. It was the part of the Voting Rights Act that required certain jurisdictions with a history of voting discrimination to get preclearance from the U.S. Department of Justice (DOJ) or a federal district court before making any changes in their voting procedures. That was crucial, because before the Voting Rights Act, it was a constant game of catch-up to challenge discriminatory voting procedures through the litigation process. As soon as one discriminatory measure was struck down, the state would simply enact a different measure preventing access to the ballot, and litigators couldn't keep up through the normal court process, which could often require years to navigate.

Chief Justice Roberts' opinion for a 5–4 majority was, to me, shockingly ahistorical. He pointed to the fact that African American registration and turnout had increased in the southern states in the years following the Voting Rights Act, and cited that progress as demonstrating that the preclearance provisions of the Voting Rights Act were no longer needed. Justice Ginsburg's dissent in *Shelby* memorably said that striking down the Voting Rights Act because it has helped to prevent discrimination in voting is like throwing away your umbrella in a rainstorm because you're not getting wet.¹⁴

Justice Ginsburg was right: since the Supreme Court threw away the umbrella in 2013, voters have been getting drenched. Examples:

Immediately after the ruling, Texas, Mississippi and Alabama announced they were moving forward with restrictive photo ID laws that had been on hold because they didn't pass muster under section 5 of the Voting Rights Act.¹⁵

Soon after the ruling, North Carolina not only enacted a restrictive photo ID law, but also made cuts to early voting and eliminated same-day registration.¹⁶ All of these measures surely would have been blocked under section 5 prior to *Shelby* because of their retrogressive effects on the voting rights of persons of color.

Georgia started closing dozens of polling places across the state. By the time of the 2018 elections, Georgia had shut down 214 locations, more than 8% of the state's polling places. Before *Shelby*, the state would have

14. *Id.* at 590.

15. Lizette Alvarez, *Ruling Revives Florida Review of Voting Rolls*, N.Y. TIMES, (Aug. 8, 2013), <https://www.nytimes.com/2013/08/08/us/ruling-revives-florida-review-of-voting-rolls.html?searchResultPosition=4> [https://perma.cc/7HCZ-7473]; Scott Applewhite, *For Republicans, No Easy Answers on Voting Rights Act*, CBS NEWS (July 5, 2013), <https://www.cbsnews.com/news/for-republicans-no-easy-answers-on-voting-rights-act/> [https://perma.cc/8SKQ-YX3G]; Kim Chandler, *Alabama Photo Voter ID Law to be Used in 2014, State Officials Say*, AL.COM (June 25, 2013), http://blog.al.com/wire/2013/06/alabama_photo_voter_id_law_to.html [https://perma.cc/2FU4-MEA3].

16. Press Release, *Justice Department to Sue State of North Carolina to Stop Discriminatory Changes to Voting Law*, JUSTICE.GOV (Sept. 30, 2013), <https://www.justice.gov/opa/pr/justice-department-file-lawsuit-against-state-north-carolina-stop-discriminatory-changes> [https://perma.cc/KG3P-XWQ3].

had to prove that the closings would not have a discriminatory effect before moving forward with them. After *Shelby*, Georgia officials just went ahead and did it. In Randolph County, Georgia, which is majority African American, the local elections board proposed to shut down seven of the nine polling places in the county, and backed off only after the community organized a large public outcry.¹⁷

Of course, voting rights advocates have fought back since *Shelby*, as did the DOJ while President Obama was in office. Some of the worst laws and changes have been struck down by the courts after lengthy and very resource-intensive litigation. But since the 2016 presidential election, which was the first held without the protections of section 5, we haven't had assistance from the DOJ. Under Jeff Sessions, the Civil Rights Division, in two years, filed exactly zero enforcement actions challenging discriminatory voting laws.

In fact, the DOJ has even switched sides in several voting rights cases since Jeff Sessions became Attorney General. For example, in the 2017 Supreme Court term, the Supreme Court heard *Husted v. A. Philip Randolph Institute*,¹⁸ a case dealing with voter purges in Ohio. My organization, Dēmos, served as lead counsel in the case. Ohio was treating voting as a use-it-or-lose-it right, so that if you didn't vote during any two-year period, the state would initiate a process to remove you from the voting rolls. For almost two decades, the DOJ had consistently interpreted the National Voter Registration Act¹⁹ as preventing states from doing that—under both Democratic and Republican administrations.²⁰ But while the case was already pending in the Supreme Court, the DOJ simply switched sides; and as you probably heard, a 5–4 majority of the Court unfortunately let them get away with that.

This retreat by the DOJ, together with the impact of *Shelby*, meant that leading up to the November 2018 elections, groups like Dēmos were exceptionally busy in trying to keep up with the vote suppression going on all over the country. Dēmos filed preliminary injunction motions or motions for expedited relief to correct voting rights violations in Arizona, Florida, Indiana, Missouri, and Ohio.²¹ And I'm happy to say we were successful in four out of five of those states. Other voting rights groups also had important wins in lawsuits they were able to bring. And although there just are simply not enough resources to sue over everything that would have previ-

17. Mark Niesse, Maya T. Prabhu & Jacquelyn Elias, *Voting Precincts Closed Across Georgia Since Election Oversight Lifted*, ATLANTA JOURNAL-CONSTITUTION (Aug. 31, 2018), <https://www.ajc.com/news/state—regional-govt—politics/voting-precincts-closed-across-georgia-since-election-oversight-lifted/bBkHxptlim0Gp9pKu7dfrN/> [<https://perma.cc/98E6-5Q32>].

18. 138 S. Ct. 1833 (2018).

19. 52 U.S.C. § 20501 et seq. (2018).

20. See generally Brief for Eric H. Holder, Jr. et al. as Amici Curiae Supporting Respondents, *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018), 2017 WL 4483918.

21. Details on these cases are available at <https://www.demos.org/>.

ously been blocked by the preclearance provisions of the Voting Rights Act, the court victories in the cases we were able to bring are still, for now, a reason for some optimism.

That brings me to another important development in the 2018 elections that also gives me some hope. And I'm not talking about the partisan results of the election; I'll leave others to have that conversation. What I'm talking about is that in 2018, democracy itself was on the ballot in numerous states, in the form of ballot measures to enact reforms such as independent redistricting commissions; automatic voter registration (AVR); same day registration (SDR), ethics and disclosure laws, and others. And the great majority of those pro-voter measures passed. Five states passed measures to create independent redistricting commissions to draw legislative or congressional districts, or to reform the criteria for drawing districts. Those were Colorado, Michigan, Missouri, Ohio, and Utah.²² Not all blue states! Nevada and Michigan passed automatic voter registration by ballot initiative.²³ Maryland and Michigan approved SDR.²⁴ Maine enacted a ballot measure to allow ranked-choice voting, which makes it the first state in the country to do that.²⁵

But the most remarkable victory for voting rights and democracy, in my view, was in Florida, for Amendment 4, which was an initiative to amend the state constitution to restore voting rights to returning citizens who have completed their felony sentences.²⁶ Previously, the Florida Constitution barred returning citizens from voting for life after a felony conviction. Only if a person obtained an individual pardon from the governor could the person ever vote again. There are about 1.4 million Floridians affected by the passage of Amendment 4. And it didn't just squeak by. A 60% vote is required to change the state constitution. Amendment 4 passed with 65% of the vote.²⁷

It's not just the outcome of the Florida initiative that is thrilling for supporters of democracy, but it's also the campaign that led to this seemingly improbable victory which depended on persuading voters to see persons with past felony convictions as people who deserved to be welcomed back when they have completed their sentences. That campaign may change Florida politics forever.

22. Miles Rapoport, *Tuesday's Verdict on Voter Suppression and Gerrymandering*, THE AM. PROSPECT (Nov. 9, 2008), <https://prospect.org/article/tuesday%e2%80%99s-verdict-on-voter-suppression-and-gerrymandering> [<https://perma.cc/28YV-2ZBF>]; Reid Wilson, *Ohio Voters Pass Redistricting Reform Initiative*, THE HILL (May 8, 2018), <https://thehill.com/homenews/state-watch/386839-ohio-voters-pass-redistricting-reform-initiative> [<https://perma.cc/5ZJT-3BX5>].

23. Rapoport, *supra* note 22.

24. *Id.*

25. *Spotlight: Maine*, FAIRVOTE https://www.fairvote.org/spotlight_maine#november_2018_maine_elections [<https://perma.cc/RSG4-72BY>] (last visited July 16, 2019).

26. FLA. CONST. art. VI, § 4.

27. Rapoport, *supra* note 22.

The campaign was spearheaded by a remarkable leader, Desmond Meade, who himself is a returning citizen, and who registered to vote on January 8, 2019, the day the law went into effect. Desmond Meade and the Florida Rights Restoration Coalition developed and implemented an unprecedented campaign that went door-to-door in Florida and succeeded in mobilizing Florida voters to see the humanity of formerly incarcerated persons and the contributions they could make to our democracy.

So, I want to end by letting you hear Desmond Meade's own words about the meaning of this victory. Readers can hear these words through the link in this footnote.²⁸

What I take away from this, and what I hope you all take away, is that every generation needs to be ready to step into the arena when the time comes, and to fight to protect the right to vote for all persons. To protect a vision of democracy in which all voices are heard, as Dr. Martin Luther King Jr. demanded when he declared "Give us the Ballot!" in his first speech at the Lincoln Memorial, in 1957.

That vision may never be a finished product. It may always be tested and contested in ways we might not even be able to conceive of yet. But that just means that there is a role for every one of us to step into the arena and be part of the struggle for the ballot. That's a charge to everyone in this room today, and I hope you will take it up.

Thank you.

28. To watch the video the audience saw, use this link: https://www.youtube.com/watch?v=45N1r_grBQ [<https://perma.cc/P2W3-M4X2>].