

Senator Marsha Blackburn
Questions for the Record to Wendy R. Weiser
Vice President, Democracy, Brennan Center

1. Your organization supports H.R. 4, which would prevent states from making many changes to their election laws without federal approval. Do you disagree with the Supreme Court’s consistent view that the Constitution grants the States “broad powers” to oversee elections (*Shelby County v. Holder*)?

While the Constitution contemplates states regulating federal elections, the same constitutional provision that authorizes states to pass laws regulating congressional elections—the Elections Clause in article I, section 4—also makes clear that Congress may, “at any time,” “make or alter” such laws. As recently as 2013, the Court said, in an opinion by Justice Scalia, that Congress’s power under the Elections Clause is so “broad” and “paramount” that it includes the “authority to provide a complete code for congressional elections.”¹ And, as the Supreme Court has held, Congress enjoys similarly broad power over presidential elections.²

The Constitution’s Fourteenth and Fifteenth Amendments likewise vest Congress with broad power to deter and remedy racial discrimination in *all* elections, not just federal elections.³ The Supreme Court has described this enforcement power as “a broad power indeed,” one that gives Congress a “wide berth” to devise appropriate remedial and preventative measures for discriminatory actions.⁴ The John R. Lewis Voting Rights Advancement Act (VRAA, H.R. 4) and the Freedom to Vote: John R. Lewis Act (FTVA) are well within the constitutional authority delegated to Congress under these provisions.⁵

¹ See *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 9 (2013). Congress has exercised its Elections Clause power to enact, among other laws, the Voting Rights Act (1965 and subsequent reauthorizations and amendments through 2006), the Federal Election Campaign Act (1972), the Uniformed and Overseas Citizens Absentee Voting Act (1986), the National Voter Registration Act (1993), the Bipartisan Campaign Reform Act (2002), the Help America Vote Act (2002), and the Military and Overseas Voter Empowerment Act (2009).

² See *Burroughs v. United States*, 290 U.S. 534, 545 (1934); see also *Voting Rts. Coal. v. Wilson*, 60 F.3d 1411, 1414 (9th Cir. 1995) (“The broad power given to Congress over congressional elections has been extended to presidential elections . . .”).

³ See, e.g., *Shelby County v. Holder*, 570 U.S. 529, 536 (2013) (quoting U.S. CONST. amend. XV); see also *South Carolina v. Katzenbach*, 383 U.S. 301, 326 (1966) (“Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting.”).

⁴ *Tennessee v. Lane*, 541 U.S. 509, 520 (2004).

⁵ The Supreme Court decision recognizing the states’ “broad powers” to regulate federal elections in the first instance expressly noted that those powers are limited by the federal constitution as well as “any restriction that Congress acting pursuant to its constitutional powers, has imposed.” *Lassiter v. Northampton*, 360 U.S. 45, 5051 (1959). The VRAA and FTVA would therefore supersede any state authority.