

■ Voting Rights Act of 1965

Date: August 6, 1965

Author: U.S. Congress

Genre: legislation; law

Summary Overview

The Voting Rights Act of 1965 has been described as one of the most successful pieces of civil rights legislation ever adopted by the U.S. Congress. Coming at a time when, despite decades of reform efforts, African Americans were still substantially disenfranchised in many southern states, the act employed various measures and procedures to restore suffrage to excluded minority voters in the South and later in the nation as a whole.

In doing this, the Voting Rights Act permitted, and even required, the federal government to intrude in matters previously reserved to the individual states, significantly reworking the balance between state and federal powers. Furthermore, the act gave reformers the tools they needed to radically transform election laws and procedures. The result was the rapid integration of African Americans and, later on, members of language minorities, into the electoral process. In time, the act brought about a transformation in politics and the election of thousands of African Americans, Hispanics, and Asian Americans to political office. It represented a reshaping of politics first in the South and eventually across the nation.

Defining Moment

By the 1960s, southern efforts to disenfranchise African American voters had been in place for the better part of a century; Black people had been denied the vote by southern election officials through means both fair and foul. Among the obstacles placed before Black voters were unfairly applied literacy and comprehension tests, in which voters had to read, understand, or interpret sections of state constitutions to the satisfaction of white (and usually hostile) election officials; complicated registration requirements that excluded minority voters on technical grounds; and financial barriers such as poll taxes. Intimidation and threats of violence were also effective means of keeping southern Black people from attending the polls. One of the simplest ways of undermining the Black vote involved setting up polling places in areas inconvenient for Black people. Many polling places were placed in distant locations or in the middle of white sections of the town or county; similarly, some were put in businesses owned by known opponents of African American suffrage. Finally, in efforts to ensure that Black people had as little voice as possible in government through the election process, state legisla-

tures across the South implemented rules prohibiting Black people from voting in the politically dominant Democratic Party primaries. Since Democratic candidates almost always won in the general elections, this particular method of exclusion was extraordinarily effective.

The South's system of race-based vote denial, which was well entrenched by the start of the twentieth century, came under increasing attack from the



Alabama police in 1965 attack voting rights marchers on "Bloody Sunday", the first of the Selma to Montgomery marches. Photo via Wikimedia Commons. [Public domain.]



President Johnson, Martin Luther King Jr., and Rosa Parks at the signing of the Voting Rights Act on August 6, 1965. Photo via Wikimedia Commons. [Public domain.]

1930s onward. By 1944 the National Association for the Advancement of Colored People (NAACP), a leader in the fight against race-based disenfranchisement via the courts, had pushed the Supreme Court to declare the all-white Democratic primary held in Texas—and by implication, similar institutions in other southern states—to be unconstitutional. Political pressure from the civil rights movement in the 1950s, along with further litigation by the NAACP, led to the passage of two civil rights acts—one in 1957 and the other in 1960—each of which empowered the U.S. Department of Justice (DOJ) to bring lawsuits against unconstitutional vote-denial techniques. Finally, the Civil Rights Act of 1964 sped up the ability of three-judge courts to hear voting rights cases, required that any literacy tests employed be given entirely in writing, demanded that Black registration be based upon the same voter qualifications as those

applied to whites, and allowed for the temporary appointment of federal voting registrars.

Still, despite the best efforts of leaders of the civil rights movement and the federal government, African American disenfranchisement remained largely intact as the 1960s approached the midway point. As late as 1964, Black voter registration in the Deep South state of Mississippi stood at only 6.7 percent—which was at least an increase from the rate of 2 percent two years earlier. Conditions were admittedly better in other states; African American registration throughout the Deep South, where the majority of Blacks lived, stood at 22.5 percent in 1964, while in the border-state region, which included such states as Florida, Texas, Tennessee, and Arkansas, registration rates averaged 43 percent. Regardless, come Election Day, the majority of southern Blacks were yet unable to cast ballots.

The root of this problem lay in white southerners' extreme unwillingness to accept any court orders or administrative programs reversing disenfranchisement laws. Every time the courts or DOJ overturned laws aimed at disenfranchising southern Black voters, southern election officials turned to new (or, at the least, different) techniques to achieve the same discriminatory end—techniques not covered by the courts' orders and thus still permissible until invalidated by another court proceeding. Whenever the courts seemed about to invalidate these new procedures, southern election officials simply adopted still other methods of disenfranchisement, starting the whole process over once more. In consequence, opponents of Black vote denial were forced to initiate court case after court case in their efforts to gain the vote and to do so with very few practical gains.

The Voting Rights Act, which passed in 1965, was expressly designed to attack the sources of delay in the case-by-case litigation approach, as the nineteen sections of the act imposed a completely new enforcement methodology with respect to voting rights violations. The act not only outlawed vote denial based on race or color—and later ethnicity—but also gave both the executive branch and the federal courts powerful new abilities and regulations. Among them were the power to appoint federal examiners and observers in whatever numbers the president felt necessary, prohibitions on literacy tests and poll taxes, and rules outlawing any action “under color of the law” that prevented qualified citizens from voting or having their votes fairly counted. Most important of all, the Voting Rights Act froze all southern election laws in place as of its passage. If local or state officials wanted to change laws or procedures, they would have to receive clearance from the DOJ or the federal courts beforehand. In this way, the southern strategy of using ever-shifting techniques of voter denial to derail election reforms was effectively ended.

Author Biography

Pressure for reform of voting rights legislation had been growing for years. In 1963 the federal Commission on Civil Rights announced that the only way to guarantee all citizens the right to vote was through federal legislation that spelled out clear and uniform voter standards. When the Civil Rights Act of 1964 did not go far enough to protect Black voting, the Southern Christian Leadership Conference (SCLC) took the risky step of staging a voting registration drive that featured an organized march in Selma, Alabama, in early 1965; their hope was that the expected violent response to the march by local officials would increase public pressure for a voting rights act. The state police indeed produced a public spectacle under the leadership of the racist Selma sheriff, Jim Clark, using excessive and unjustified violence against the protesters, including frequent beatings of demonstrators and mass arrests. The leaders of the drive were thus successful in putting pressure on President Lyndon B. Johnson to address the need for an effective voting rights act.

The bill that would become the Voting Rights Act of 1965 was sent to Congress by President Johnson on March 15, 1965. Johnson noted in his message to Congress as he submitted the bill, “Every device of which human ingenuity is capable has been used to deny” Black people their right to vote. He continued: “It is wrong—deadly wrong—to deny any of your fellow Americans the right to vote in this country” (millercenter.org). The Senate passed the bill on May 11, after a successful cloture vote on March 23, by a vote of 77 to 19; the House then passed it by a vote of 333 to 85 on July 10; over the following three weeks, the differences between the two bills were resolved in conference. The House passed the conference report on August 3 by a vote of 328 to 74 and the Senate on August 4 by a vote of 79 to 18. President Johnson signed the Voting Rights Act into law on August 6, 1965.



Historical Document

PUBLIC LAW 89-170

S. 1564

Eighty-ninth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Monday, the fourth day of January,
one thousand nine hundred and sixty-five*

An Act

To enforce the fifteenth amendment to the Constitution of the United States,
and for other purposes.

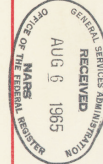
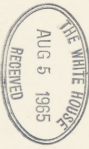
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965".

Sec. 2. No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

Sec. 3. (a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such



Document Analysis

Totaling nineteen sections, the full text of the Voting Rights Act of 1965 (not shown in its entirety here) includes both permanent rule changes regulating the voting process nationwide and temporary special provisions designed to attack specific racial injustices in the South (and after 1970, nationwide with respect to language minorities). Before 1980 the temporary provisions—found primarily in Sections 4 to 9 and renewed and amended in 1970, 1974, 1982, and 2006—had the greatest impact on minority voting rights. Designed in direct response to the ongoing problems faced by African Americans and the DOJ in combating southern disenfranchisement, these sections provide for direct federal intervention in the South to protect minority voting rights and place authority to enforce these rights directly in the hands of the executive branch. This dual objective was implemented in three ways.

First, Section 4 creates a triggering formula that imposes federal executive authority over any state that employs such voter-limiting devices as literacy tests to determine voter qualifications and in which, as of November 1, 1964, less than 50 percent of voting-age residents are registered. Those states that meet these criteria—between 1965 and 1975, this group included six southern states in whole and parts of another—automatically fall under the jurisdiction of the act's various temporary requirements.

Second, later in Section 4, comes a direct assault on the tools of vote denial then in use across the South. This portion of the act abolishes the most significant barriers to Black voting: literacy tests, exams measuring “good moral character” and “ability to . . . understand,” and the requirement that a registered voter vouch for a potential voter. Extended by Congress for another five years in 1970, these prohibitions were made permanent in 1975, at which time another triggering formula was added, applying to states that discriminated against language-minority groups, such as Texas.

Third, Sections 5 through 9 expand the federal government's power and authority to implement these and other reforms. Most important in this regard is Section 5, designed expressly to check the seemingly

endless cycle by which southern states replaced one discriminatory law with another every time the old requirements were suspended or declared unconstitutional. To achieve this end, all state voting statutes and procedures in place as of November 1, 1964, are frozen pending federal approval for proposed changes. This meant that any state or county covered by the act's triggering formula that sought to modify its voting laws would first have to gain approval for the changes by submitting proposed revisions to the DOJ and proving that they did “not have the purpose and . . . [would] not have the effect of denying or abridging the right to vote on account of race or color.” All changes not cleared ahead of time by the DOJ, which had sixty days to object, were legally barred from implementation. Alternately, a state could file for a declaratory judgment from the district court for the District of Columbia, whose positive response served the same result as preclearance by the DOJ.

Of lesser importance than Section 5 but still significant in promoting change, Sections 6 and 7 grant the attorney general jurisdiction to appoint voting examiners to certify that legally qualified voters are free to register. Section 8 permits the attorney general to assign, as needed, federal observers to oversee the actual voting process in those areas covered by the triggering formula. Elsewhere, passages define the terms *vote* and *voting* for the purposes of the act (Section 14), set out criminal penalties for violating the act (Section 12), prohibit voter fraud and outlaw any action “under color of law” preventing qualified voters from voting or having their votes fairly counted (Section 11), and suggest to the attorney general that he bring suit challenging the poll taxes still in use in four states (Section 10). At the beginning of the document, Section 2 accomplishes the fundamental justice of prohibiting discrimination in voting based on race or color.

Essential Themes

In the years following its passage, the Voting Rights Act of 1965 became one of the most effective tools in the advancement of racial integration across the South. As cited in literally hundreds of separate litigations, the act's provisions forced major changes in the

ways that southern states ran their elections. Most states and municipalities were forced to shift away from at-large election formats, whereby all candidates for a similar office (such as county commissioner) ran against one another no matter where they resided in the county, and the top vote-getters county-wide were declared the winners. Further, where possible, every effort was taken to encourage the creation of minority-majority districts, in which minorities made up the majorities. The result in terms of minority office-holding was explosive. In 1965 the number of Black public officials nationwide, of any level or significance, numbered fewer than 100. By 1989 the number of African American elected officials stood at 3,265, or 9.8 percent of all offices. By 2000 the number of minority officeholders in any category had increased to almost five thousand. Given that as late as 1944 only about 3 percent of southern Black people were even registered to vote and that none had held elective office since the turn of the century, the changes in southern politics generated by the Voting Rights Act were truly extraordinary. These changes amounted to a reconstruction of southern political power so profound and extensive that it was, in Davidson and Grofman's words, nothing less than a "quiet revolution" in southern politics.

After being augmented in 1970, 1975, and later years, the act continued to function effectively for decades to ensure the proper administration of elections, particularly in districts that had been identified, historically, as being subject to bias and manipulation. However, key portions of the act came to be challenged in 2013, in the case *Shelby County v. Holder*. That year the U.S. Supreme Court concluded that the Voting Rights Act was outmoded and constitutionally unsupported, and therefore must be abandoned, in

large measure. Specifically, the practice of preclearance was eliminated. Since then, efforts to limit access to the ballot by questioning mail-in ballots, restricting the times and places of voting, requiring valid ID's, and a number of other such measures have taken hold in many states having Republican majorities in the legislatures.

—Charles L. Zelden, PhD

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