

# The Voting Rights Act: History and Current Controversies

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November 2, 2023



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## 1800s

Vote spoken aloud



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## 1800s

Vote spoken aloud

Change from out-loud to ballot  
each voter brought his own ballot  
candidates and parties began to print ballots  
usually color-coded to aid the illiterate  
getting on the “ticket”



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## 1800s and Race

1835	"Free blacks" banned from voting
1868	Fourteenth Amendment
1870	Fifteenth Amendment
1890s	Fusion politics and terror

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Let's talk about septic systems

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## 1901

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language, and shall show to the satisfaction of the registrar his ability to read and write any such section when he applies for registration, and before he is registered;

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## 1901

*Provided, however,* that no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote, and no lineal descendant of such person shall be denied the right to register and vote by reason of his failure to possess the educational qualification aforesaid.



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## 1910s

First primaries  
Introduction of absentee voting  
voters who will be away  
then also those who are sick or disabled



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## 1910s

With absentee voting, county had to provide ballots  
Dovetailed with move to Australian ballot  
government prints the ballots  
voter marks in secret and deposits in secret  
First statutory provision for a voting booth  
not needed before then



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## 1920s

1920 Women enfranchised



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## 1940s

1949 Counties first authorized to use machines  
referendum required, then repealed



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## 1965

The Voting Rights Act of 1965



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## 1990s

- 1993 National Voter Registration Act
  - motor voter
  - mail-in registration
  - provisional ballots
- 1999 No excuse absentee voting



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## 2000s—the Aughts

- 2001 “No excuse” absentee voting, plus satellite sites for “one stop,” plus extended voting times for “one stop” equals “early voting.”
- 2003 Out-of-precinct voting—from HAVA
- 2007 Same-day registration early voting sites



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## 2010s

- 2013 Voter Information Verification Act
  - photo ID instituted
  - same-day registration/voting eliminated
  - out-of-precinct voting eliminated
  - early voting shortened
  - straight ticket voting ended



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## Back to the VRA

### Fourteenth Amendment

Government may not “deny to any person . . . the equal protection of the laws.”

### Fifteenth Amendment

“The right . . . to vote . . . shall not be denied or abridged . . . on account of race, color, or previous condition of servitude.”

### Both

“The congress shall have the power to enforce this article by appropriate legislation.”



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## The VRA

“AN ACT to enforce the fifteenth amendment to the Constitution of the United States . . .”



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## The VRA

Two operative sections



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## The VRA

Section 2 non-discrimination

Section 5 "preclearance"



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## Section 2



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## Section 2

Section 2

"No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by and 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."



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Section 2

Intent



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Section 2

Effect



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Section 2

“A violation . . . is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.”



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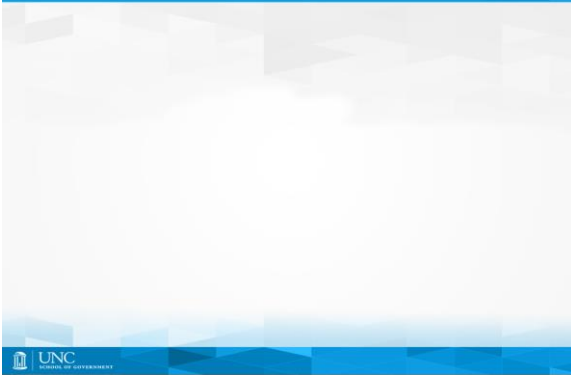
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## Section 5



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## Section 5

“Preclearance”



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## Section 5

A “test or device” in place for registration  
Less than 50% of voting age people registered



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## Section 5

If so, subject to “preclearance”



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## Section 5

Mixed reactions at the local level



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## The End of Section 5

2013



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## The End of Section 5

Outside the strictures of the Supremacy Clause, States retain broad autonomy in structuring their governments and pursuing legislative objectives. Indeed, the Constitution provides that all powers not specifically granted to the Federal Government are reserved to the States or citizens. This allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States. But the federal balance is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.

*Shelby County v. Holder*, 570 U.S. 529 (2013)



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## The End of Section 5

Not only do States retain sovereignty under the Constitution, there is also a fundamental principle of *equal* sovereignty among the States.



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## The End of Section 5

The Voting Rights Act sharply departs from these basic principles. It suspends *all* changes to state election law—however innocuous—until they have been precleared by federal authorities in Washington, D.C. States must beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own.



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## The End of Section 5

In 1966, we found these departures from the basic features of our system of government justified.



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## The End of Section 5

Nearly 50 years later, things have changed dramatically. . . . In the covered jurisdictions, voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels. The tests and devices that blocked access to the ballot have been forbidden nationwide for over 40 years.



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## The End of Section 5

There is no doubt that these improvements are in large part *because of* the Voting Rights Act.



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## The End of Section 5

Congress did not use the record it compiled to shape a coverage formula grounded in current conditions. It instead reenacted a formula based on 40-year-old facts having no logical relation to the present day.



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## The End of Section 5

Congress may draft another formula based on current conditions. Such a formula is an initial prerequisite to a determination that exceptional conditions still exist justifying such an extraordinary departure from the traditional course of relations between the States and the Federal Government.



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## Weeks Later



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## Weeks Later

2013 Voter Information Verification Act  
 photo ID instituted  
 same-day registration/voting eliminated  
 out-of-precinct voting eliminated  
 student preregistration  
 early voting shortened



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## Fourth Circuit 2016

After years of preclearance and expansion of voting access, by 2013 African American registration and turnout rates had finally reached near-parity with white registration and turnout rates. African Americans were poised to act as a major electoral force.

North Carolina v. N.C. State Conf. of NAACP, 831 F.3d 320



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## Fourth Circuit 2016

But, on the day after the Supreme Court issued [its decision] eliminating preclearance obligations, a leader of the party that newly dominated the legislature (and the party that rarely enjoyed African American support) announced an intention to enact what he characterized as an 'omnibus' election law.



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## Fourth Circuit 2016

Before enacting that law, the legislature requested data on the use, by race, of a number of voting practices. Upon receipt of the race data, the General Assembly enacted legislation that restricted voting and registration in five different ways, all of which disproportionately affected African Americans.



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## Three of the Five

Remain in force as the statutes stood before the 2013 enactment.

same-day registration/voting eliminated  
out-of-precinct voting eliminated  
student preregistration

But the statutes remain on the books as changed in 2013



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## One of the Five Has Been Revised

Early voting period



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## But Wow! One of the Four

2016

Fourth Circuit says it violates the Fourteenth Amendment and the VRA



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## Voter ID: Fourth Circuit 2020

2018 revised voter ID law—following successful referendum to add voter ID to the state constitution—is OK



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## Voter ID: Fourth Circuit 2020

The outcome hinges on the answer to a simple question: How much does the past matter? To the district court, the North Carolina General Assembly's recent discriminatory past was effectively dispositive of the Challengers' claims here. But . . . a legislature's past acts do not condemn the acts of a later legislature, which we must presume acts in good faith.

North Carolina State Conference of the NAACP v. Raymond  
981 F.3d 295



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## Voter ID: NC Supreme Court 2022



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## Voter ID: NC Supreme Court 2022

No, the 2018 law is not OK  
It violates the North Carolina Constitution



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## Voter ID: NC Supreme Court 2022

[W]e hold that S.B. 824 was enacted with the discriminatory intent to target African-American voters who were unlikely to vote for Republican candidates. In doing so, we do not conclude that the General Assembly harbored racial animus; however, we conclude [that] the Republican majority targeted voters who, based on race, were unlikely to vote for the majority party.

Holmes v. Moore, 383 N.C. 171



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Voter ID: NC Supreme Court 2023



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Voter ID: NC Supreme Court 2023

No, the 2018 law does not violate the North Carolina Constitution



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Voter ID: NC Supreme Court 2023

[P]laintiffs have failed to provide evidence sufficient to prove beyond a reasonable doubt that [the voter ID law] will result in disparate impact. . . [P]laintiffs' failure to provide sufficient evidence of disparate impact ends the matter.

Holmes v. Moore, 384 N.C. 426



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## Voter ID: NC Supreme Court 2023

Nonetheless, we note that plaintiffs also fail to provide sufficient evidence of discriminatory intent.



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## Section 2 in SCOTUS in 2023



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## Section 2 in SCOTUS in 2023

Shortly after the Civil War, Congress passed and the States ratified the Fifteenth Amendment, providing that “[t]he right of citizens of the United States to vote shall not be denied or abridged ... on account of race, color, or previous condition of servitude.” In the century that followed, however, the Amendment proved little more than a parchment promise. Jim Crow laws like literacy tests, poll taxes, and “good-morals” requirements abounded, “render[ing] the right to vote illusory for blacks.”

Allen v. Milligan, 599 U.S. 1



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## Section 2 in SCOTUS in 2023

That changed in 1965. Spurred by the Civil Rights movement, Congress enacted and President Johnson signed into law the Voting Rights Act. The Act “create[d] stringent new remedies for voting discrimination,” attempting to forever “banish the blight of racial discrimination in voting.” By 1981, in only sixteen years’ time, many considered the VRA “the most successful civil rights statute in the history of the Nation.”



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## Section 2 in SCOTUS in 2023

The concern that § 2 may impermissibly elevate race in the allocation of political power within the States is, of course, not new. Our opinion today does not diminish or disregard these concerns. It simply holds that a faithful application of our precedents and a fair reading of the record before us do not bear them out here.



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## Section 5 in Congress in 2023



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# Section 5 in Congress in 2023

John Lewis Voting Rights Advancement Act



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