



## Voting Rights

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### Background

During colonial times, the right to vote (also known as being enfranchised) was severely limited. Mostly, adult white males who owned property were the only people with the right to vote. Women could not vote, though some progressive colonies allowed widows who owned property to vote. After the United States gained its independence from Great Britain, the Constitution gave the states the right to decide who could vote. Individually, the states began to abolish property requirements and, by 1830, adult white males could vote. Suffrage (the right to vote) has been gradually extended to include many people, and the U.S. Constitution has been amended several times for this purpose. A time line of major developments in U.S. voting rights contains at least the following seventeen events:

- 1789: The first presidential election is held, electing George Washington by unanimous vote of the country's "electors," a group of mostly white male landowners.
- 1868: The Fourteenth Amendment declares that any eligible twenty-one year old male has the right to vote.
- 1870: The Fifteenth Amendment says that the right to vote cannot be denied "on account of race, color, or previous condition of servitude," thus extending the right to vote to former (male) slaves.
- 1876: Wyoming becomes a state, and is the first state to give voting rights to women.
- 1884: The U.S. Supreme Court rules "grand- father clauses" unconstitutional.
- 1890: Southern states pass laws designed to limit the voting rights of African Americans. Some of the laws require voters to pay a poll tax or to prove that they can read and write.
- 1920: The U.S. Supreme Court rules that since Native Americans who live on reservations pay no state taxes, they cannot vote.
- 1920: Women gain the vote when the Nineteenth Amendment declares that the right to vote cannot be denied "on account of sex."
- 1947: A court ruling grants Native Americans the right to vote in every state.
- 1961: The Twenty-third Amendment establishes that the citizens of the District of Columbia have the right to vote in presidential elections. D.C. is given 3 electoral votes.
- 1964: The Twenty-fourth Amendment declares that the states cannot require citizens to pay a poll tax in order to vote in federal elections.
- 1965: Voting Rights Act bans literacy tests as a voting requirement and bars all racist voting practices in all states.

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- 1971: The Twenty-Sixth Amendment lowers the voting age to 18 and gives all Americans the right to vote.
- 1975: Additions to the Voting Rights Act require translations of all election materials to be made available for non-English speaking citizens.

As this list illustrates, suffrage has been expanded to include a greater number of people belonging to diverse demographic groups based on age, sex, and race. Without a doubt, the most dramatic and controversial developments in the history of U.S. voting rights expansion involves the movement to grant suffrage to women and African Americans. For African Americans, this includes a long history of ensuring unimpeded access to the polls in order to exercise their constitutional right to vote. For women, gaining suffrage was a very long struggle as well.

### The Nineteenth Amendment

The Nineteenth amendment to the United States Constitution guarantees U.S. women the right to vote. But this right was not easily won for women. It took many decades of political agitation and protest before such a right became part of U.S. law. The struggle for women's right to vote began in the middle of the nineteenth century. A movement arose that included several generations of woman suffrage supporters, who became known as suffragettes. These women lectured, wrote articles, marched, lobbied, and engaged in acts of civil disobedience to achieve what many Americans then considered to be an enormous change in the Constitution. Few of the movement's early supporters lived to see the amendment ratified in 1920.

The amendment was first introduced in Congress in 1878, but it was ratified on August 18, 1920. Those who supported voting rights for women used a variety of strategies to achieve their goal. Some worked to pass suffrage acts in each state; their efforts resulted in nine western states adopting female suffrage legislation by 1912. Others used the courts to challenge male-only voting laws. Some of the more militant suffragettes organized parades, vigils, and even hunger strikes. Suffragettes frequently met resistance and even open hostility. They were heckled, jailed, and sometimes even attacked physically.

By 1916, however, almost all of the major female suffrage organizations had agreed that the best strategy was to pursue the goal of a [CONSTITUTIONAL AMENDMENT](#). The following year, New York granted suffrage to women. This was quickly followed in 1918 by President Woodrow Wilson's change in his position to support an amendment in 1918. These important events helped shift the political balance in favor of the vote for women. Then, on May 21, 1919, the U.S. House of Representatives passed the amendment, followed in two weeks by the Senate. With Tennessee becoming the 36th state to ratify the amendment on August 18, 1920, the amendment had thus been ratified by three-fourths of the states. The U.S. Secretary of State, Bainbridge Colby, certified the [RATIFICATION](#) on August 26, 1920, and women had gained the constitutional right to vote. Women's collective experience in pursuit of this goal differed significantly from that of Black Americans, who had actually gained the right much earlier but who had to struggle against sustained efforts to curtail their exercise of this right.

### Black Suffrage

Prior to the Civil War, free blacks were denied the right to vote everywhere but in New York and several New England states. By the close of the Civil War, suffrage for African Americans had become a possibility throughout the country. The Reconstruction Act of 1867 imposed conditions on former states of the Confederacy for re-admission to the Union. Some of these conditions touched on black suffrage. For example, former Confederate states were required to call conventions to which blacks could be elected as delegates and

devise new state constitutions guaranteeing voting rights to black men. By the end of registration for 1867, more than 700,000 southern black men had been added to the rolls. By 1872 there were 342 black officials elected to state legislatures and to the U.S. Congress. Despite such progressive legislation, not all black [CIVIL RIGHTS](#) or suffrage measures succeeded. Constitutional amendments that would have prohibited states from imposing birth requirements, property ownership, or literacy tests, as well as giving the federal government complete control over voting rights were rejected.

Unfortunately, the progress of black voting rights can be characterized as a stumbling trajectory of success. There were gains, often followed by severe setbacks. For example, in 1870 and 1871 three Enforcement Acts were passed that strengthened the constitutional guarantee of black voting rights. Moreover, the year 1870 also witnessed the ratification of the Fifteenth Amendment. However, just a few years later, two Supreme Court decisions, *United States v. Reese* (1876) and *United States v. Cruikshank* (1876), weakened the Fourteenth and Fifteenth Amendments. By 1877, the Union was withdrawing federal troops from the South as a compromise with Democrats to allow the election of Rutherford B. Hayes as president of the United States. This move gave the largely racist Southern Democrats control over the lives of blacks including black suffrage. Accordingly, this and other like-minded groups launched a wave of repressive measures to curtail the freedoms of blacks in the South.

### **Grandfather Clauses, Literacy Tests, and the White Primary**

After the Civil War and Reconstruction, southern states employed a range of tactics to prevent blacks from exercising their right to vote. They used violence, vote [FRAUD](#), gerrymandering, literacy tests, white primaries, among others. These tactics caused registration by blacks to drop significantly. Such measures as the poll tax, literacy tests, grandfather clauses, and the white primary proved especially effective in disfranchising blacks.

The poll tax, as it applied to primary elections leading to general elections for federal office, was abolished in the Twenty-fourth Amendment, ratified in 1964. Qualifications to vote based on some element of property ownership have a history that extends to colonial days. However, the poll tax was instituted in seven southern states following Reconstruction. The poll tax was a flat fee required before voting; it was often levied as high as \$200 per person. The voting rights of poor blacks were disproportionately discriminated against in this method.

The U.S. Congress eventually came to view the financial qualification as an impediment to individuals' suffrage rights. Despite Congressional sentiment, though, a constitutional amendment was necessary to abolish poll taxes, as the poll tax had previously withstood constitutional challenges in the courts. Even with the ratification of the Twenty-fourth Amendment, some states continued to look for ways to use poll taxes as an impediment to blacks' exercising their right to vote. Finally, in the 1965 opinion in the case of *Harman v. Forssenius*, the Supreme Court struck down a Virginia law which had partially eliminated the poll tax as an absolute qualification for voting in federal elections. The Virginia law had given voters in federal elections the choice of either paying the tax or of filing a certificate of residence six months before the election. The Court found the latter requirement to be an unfair procedural requirement for voters in federal elections, particularly because the law was not imposed on those who otherwise agreed to pay the poll tax. The Court unanimously held the law to conflict with the Twenty-fourth Amendment as it penalized those who chose to exercise a right guaranteed them by the amendment.

There were many uneducated African Americans in the post-Civil War era. Literacy tests were used to help exclude them from the polls. However, whites found that literacy tests also would exclude large numbers of whites from becoming eligible voters since many whites could not read or write either. As a remedy, some

jurisdictions adopted a "reasonable interpretation" clause; these laws gave voting registrars discretion to evaluate applicants' performance on literacy tests. The effect was predictable: most whites passed and most blacks did not. By the beginning of the twentieth century, almost every black had been disfranchised in the South.

Grandfather clauses, a peculiarly irksome impediment to achieving voting rights for African Americans, were enacted by seven Southern states between 1895 and 1910. These laws provided that those who had enjoyed the right to vote prior to 1866 or 1867 or their lineal descendants would be exempt from educational, property, or tax requirements for voting. Because former slaves had not been granted the right to vote until the Fifteenth Amendment was ratified in 1870, these clauses effectively excluded blacks from the vote. At the same time, grandfather clauses assured the right to vote to many impoverished, ignorant, and illiterate whites. In 1915, the U.S. Supreme Court finally declared the [GRANDFATHER CLAUSE](#) unconstitutional because it violated equal voting rights guaranteed by the Fifteenth Amendment.

The so-called white primary was a tactic Southern whites used in which the Democratic Party was declared a private organization that could exclude whomever it pleased. State party rules or state laws that excluded blacks from the Democratic primary virtually disenfranchised all blacks (and only blacks) by keeping them out of the election that generally determined who would hold office in a state that was dominated by the Democratic Party. In 1944, the white primary was ruled unconstitutional in the U.S. Supreme Court case of *Smith v. Allwright*.

### The Fifteenth Amendment

The Fifteenth Amendment to the United States Constitution was ratified in 1870, just a few years after the end of the Civil War. This Amendment prohibits both federal and state governments from infringing on a citizen's right to vote "on account of race, color, or previous condition of servitude." The Fifteenth Amendment is the third of three "Reconstruction Amendments" ratified in the aftermath of the Civil War. The other two are the Thirteenth Amendment that abolished slavery, and the 14th Amendment granted citizenship to all persons, "born or naturalized in the United States."

Prior to the Fifteenth Amendment, the states were empowered to set the qualifications for the right to vote. The Fifteenth Amendment essentially transferred this power to the federal government. Its ratification, however, had little effect for nearly a century. It had practically no effect in southern states, which devised numerous ways such as poll taxes and grandfather clauses to keep blacks from voting. Over time, federal laws and Supreme Court judicial opinions eventually struck down voting restrictions for blacks. Eventually, Congress passed the Civil Rights Act of 1957 which established a commission to investigate voting [DISCRIMINATION](#). And in 1965 the Voting Rights Act was passed to increase black voter registration by empowering the **JUSTICE DEPARTMENT** to closely monitor voting qualifications.

### The Voting Rights Act

The **VOTING RIGHTS ACT OF 1965** (VRA) is arguably the most significant piece of federal legislation aimed at enforcing and protecting the voting rights of minorities. While the Fifteenth Amendment enfranchises African Americans, it does not necessarily clear the way to the polls for them. After nearly a century of countenancing various forms of intimidation and legalistic obstructions to black voters, the federal government passed sweeping legislation that fills important gaps in African Americans' constitutional right to vote. The VRA essentially mandates access to the polls for minority groups. The VRA prevents states from enforcing a range of discriminatory practices legislated to prevent African Americans from participating in the

voting process. As a result of the VRA, the federal government intervened directly in areas where African Americans had been denied the right to vote.

### ***Section Two and Section Five***

Sections Two and Five of the VRA are especially important. Section 2 prohibits attempts to dilute the votes of minorities. Dilution occurs when the full effect of a block of voters is deliberately and unfairly negated. Vote dilution can occur through legislation or other situations that weaken the voting strength of minorities. Section Two prohibits cities and towns from establishing practices designed to prevent minorities a fair chance to elect candidates of their choice. Section Two is enforceable nationwide.

Section Five of the VRA requires certain designated areas of the country to obtain "pre-clearance" from the U.S. attorney general or the U.S. District Court for the District of Columbia for any changes that impact voting. These special areas are called "covered jurisdictions." Accordingly, covered jurisdictions must obtain approval before they can administer any new electoral practices. All areas in the following states are subject to Section Five pre- clearance.

- Alabama
- Alaska
- Arizona
- Georgia
- Louisiana
- Mississippi
- South Carolina
- Texas
- Virginia

Parts of the following states are also subject to pre- clearance:

- California
- Florida
- Michigan
- New Hampshire
- New York
- North Carolina
- South Dakota

Section Five was necessary because of the purpose or intent in some areas to dilute or weaken the strength of minority voters. They did this by changing electoral rules such that minorities had decreased opportunities to elect someone of their choice. Additionally, Section 5 considers the effect of a proposed change. The U.S. attorney general or the U.S. District Court for the District of Columbia considers whether the proposed change will lead to a worsening of the position of minority voters, an effect known as "retrogression."

In 1975 an important amendment was added to the VRA to include rights for language minorities. These amendments required jurisdictions to provide bilingual ballots and even translation services to those who speak any of the following languages:

- Spanish
- Chinese
- Japanese
- Korean

- Native American languages
- Eskimo languages

### ***Malapportioned Districts***

The first version of the VRA was insufficient to prevent efforts to continue vote dilution. Many areas had a winner-take-all, at-large electoral system, as well as severely malapportioned districts. Malapportioning, also known as "gerrymandering," is the deliberate rearrangement of the [BOUNDARIES](#) of congressional districts with the intent to influence the outcome of elections. Gerrymandering either concentrates opposition votes in a few districts to gain more seats for the majority in surrounding districts (a process called packing) or diffuses minority votes across many districts (called dilution). The term came about in 1812 when Massachusetts's governor Elbridge Gerry created a district for political purposes that resembled a salamander.

The at-large electoral system where representatives are chosen area-wide dilutes minority voting strength because whites so frequently outnumber blacks. In 1973 the U.S. Supreme Court in the case of *White v. Register* ruled that at-large elections were unconstitutional if they diluted or minimized minority votes.

In terms of malapportionment, there were problems of state legislatures adhering to outmoded rural interests. For example, in the 1962 case *Baker v. Carr*, malapportionment claims from some of Tennessee's big cities were found justifiable under the Fourteenth Amendment. *Baker v. Carr* involved [APPORTIONMENT](#) schemes whereby less populated rural counties had obtained disproportionate political strength as opposed to the densely populated cities.

Such malapportionment procedures became tinged with racism as redistricting practices maximized the political advantage or votes of one group and minimized the political advantage or votes of another. In *Gomillion v. Lightfoot*, the board of supervisors in Tuskegee, Alabama, annexed territory to increase the size of the city, but excluded all the blacks around the city. The Supreme Court found that such racial gerrymandering violated constitutional guarantees. A related case, *Reynolds v. Sims* put a stop to a gerrymandering scheme that discriminated heavily against populated urban areas in favor of rural areas and small towns. Through such cases, the U.S. Supreme Court advanced toward the goal of full and effective participation by all citizens in state government.

### **Minority Majority Districts**

Through the VRA, the federal government moved to guarantee access for all citizens to the ballot. Even so, the right to vote did not necessarily translate into electing representatives for voters who were in the minority. In jurisdictions, particularly in the South, voters who historically had faced racial discrimination (African-Americans, Latinos, Asian-Pacific Americans and Native Americans) had been unable to elect candidates of their choice unless they constituted a majority of voters in a given electoral district. In 1982, Congress amended the VRA to include requirements that certain jurisdictions provide minority voters opportunities to elect candidates of their choice.

Initially, these jurisdictions turned minority populations into a majority through re-drawing legislative districts. This created an overall racial majority from a formerly minority population in a particular district. But this approach has serious drawbacks, especially when a minority group is not centralized, but is dispersed geographically or interspersed with other groups of voters. Consequently, these race-conscious districts encountered setbacks at the Supreme Court, which outlawed explicit "racial gerrymanders."

As a result of many legal disputes and public controversies concerning effective minority representation,

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courts have ordered ward-based systems (single-member districts) as remedies in vote dilution cases. This supports the notion that the best determinant of a black candidate's electoral success is the racial composition of the electoral jurisdictions. But in the 1993 Supreme Court decision of *Shaw v. Reno*, the Court declared that a North Carolina reapportionment scheme constituted racial gerrymandering under the EQUAL PROTECTION Clause of the Fourteenth Amendment. This ruling allows white voters to object to what they perceive as racially motivated districting. Cases similar to *Shaw*, and cases resulting from the *Shaw* decision filled the courts. Voting rights attorneys, civil rights groups, and community activists defended majority minority voting districts and to protect them in light of the *Shaw* decision.

Many would agree that the VRA is perhaps the most significant piece of legislation designed to secure minority electoral rights. However, the VRA is vulnerable to attack on the grounds that it may over-extend its original mandate. Some have argued that proponents of the VRA have confused the "right to vote" with the "right to be elected." Many people of color have won federal, state, and local elections. Their success may not have been possible without such aggressive policy measures as the VRA. Yet despite the protections of the VRA, courts continue to address controversies surrounding new methods to dilute the collective strength of black voters.

The creation of majority-black districts has been the overarching federal policy regarding minority representation after the VRA was enacted. Even so, there are many views about the need and effectiveness of majority-black districts. Likewise, the case of *Shaw v. Reno* places majority-black districting in a somewhat tenuous position as more and more groups of whites begin to assert that redistricting plans have resulted in a new kind of "political apartheid," preventing them from full and effective use of the ballot. Efforts continue to work out a solution that passes constitutional muster and it remains to be seen what that solution will be.

### Additional Resources

*Along Racial Lines: Consequences of the 1965 Voting Rights Act.* David M. Hudson, Peter Lang Publishing, 1998.

*The Appearance of Equality: Racial Gerrymandering, Redistricting, and the Supreme Court.* Christopher Matthew Burke, Greenwood Publishing Group, 1999.

*A Free Ballot and a Fair Count: The Department of Justice and the Enforcement of Voting Rights in the South, 1877-1893.* Robert Michael Goldman, Fordham University Press, 2001.

*Feminism and Suffrage: The Emergence of an Independent Women's Movement in America, 1848-1869.* Ellen Carol Dubois, Cornell University Press, 1999.

*Struggle for Mastery: Disfranchisement in the South, 1888- 1908.* Michael Perman, University of North Carolina Press, 2001.

*Voting Rights and Redistricting in the United States.* Edited by Mark E. Rush, Greenwood Publishing Group, 1998.

*Voting Rights on Trial: A Handbook with Cases, Laws, and Documents.* Charles L. Zelden, ABC-CLIO, 2002.

## Organizations

### *The Center for Voting and Democracy (CVD)*

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### *Federal Election Commission (FEC)*

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### *Joint Center for Political and Economic Studies (JCPES)*

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### *League of Women Voters (LWV)*

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