



Voting as a Civil Right

The ability to vote - and therefore influence who will write and enforce our laws - is a key feature of engaging in our nation's democratic system. Throughout the nation's history, including today, not all citizens have enjoyed equal access to this right. This comes despite constitutional amendments that extend this right to citizens regardless of race or gender. Read on for a brief history of voting rights, including the successful 1965 Voting Rights Act, as well as an important Supreme Court case on voting rights.

The 15th Amendment, ratified by the states in 1870, was one of three so-called [Reconstruction Amendments](#) meant to extend the benefits of citizenship to the millions of recently enslaved African Americans. The 15th Amendment protected citizens' right to vote regardless of race or color (this extended to men only, as women did not gain the right to vote until the 19th Amendment in 1920). Despite the 15th Amendment, many states (particularly in the South) found ways to evade the law by instituting voting requirements to keep non-whites from voting. This meant subjecting African-American voters to [literacy tests](#), poll taxes, grandfather clauses and other unfair measures that disqualified most African-Americans from the ballot from the 1880s until the 1960s. Why did state legislators deny the vote to so

many of its own people? Those wishing to deny African-Americans the right to vote knew that the large proportion of African-Americans in the South would be able to significantly influence election outcomes if they had access to the vote, which would likely remove from office white politicians who favored discriminatory policies. After nearly a century of such injustices, the Civil Rights Movement of the 1950s and 1960s challenged many forms of discrimination, including at the ballot box. Though resistant whites used violence and punishment against African-Americans trying to vote in the South, Civil Rights activists eventually succeeded in convincing Congress and President Lyndon Johnson to pass the [Voting Rights Act of 1965](#).





President Lyndon B. Johnson, Dr. Martin Luther King, Jr. and others gathered for the signing of the 1965 Voting Rights Act.

The Voting Rights Act fulfilled the aim of the 15th Amendment by requiring fair access to the ballot for all Americans. The Act also put the federal government in charge of evaluating any election changes for their impact on minority voters in the states and counties that had a history of denying the vote to non-whites. The number of registered African-American voters increased dramatically, and, as a result, the number of non-white elected officials went from under 1,000 in 1965 to more than 17,000 in 2015. The Voting Rights Act has been extremely successful in removing barriers to voting, which is why Congress continuously renewed it - most recently in 2006, more than fifty years after its passage.

In a 5-4 vote in the 2013 [Shelby County v. Holder](#) case, the U.S. Supreme Court struck down a section of the Voting Rights Act. Though Chief Justice Roberts acknowledged “that voting discrimination still exists,” he and four other justices ruled that it was no longer appropriate to enforce the section of the act that gave the federal government the responsibility to monitor voting procedures in particular states and counties that had a history of discriminatory treatment toward non-white voters. The ruling did give Congress the power to determine new criteria for federal monitoring (which has yet to happen). The

majority opinion pointed to near equal levels of white and black voter registration in these monitored jurisdictions as evidence of why monitoring was no longer necessary. The dissent opinion cited the importance of earlier intervention by the U.S. Department of Justice to achieve these equal levels of voting. The dissent also considered the troubling gap between white and non-white registered voters in other parts of the country as evidence of the need for continued monitoring.

In the wake of the 2013 Supreme Court’s ruling, many states across the country have enacted more restrictive voting requirements that [appear to limit the non-white vote](#). While these new voting laws do not explicitly discriminate based on race, opponents of such requirements argue that the new laws effectively limit the number of poor and non-white voters by requiring photo IDs and other documentation that can be expensive and time-consuming to obtain, or by making it more difficult to cast a vote for those with limited mobility or inflexible work schedules. Closed voting precincts and strict signature matches are other potential barriers to voting. Democrat Stacey Abrams, an African-American woman who lost a very close race for Georgia’s governorship in 2018, is working on voter registration projects in Georgia and be-



Legislators outside the U.S. Capitol promoting restoring access to the vote in the wake of the *Shelby County v. Holder* decision.

yond. In a [recent interview](#), Abrams called voting rights the “pinnacle of power in our country” and says that most people still understand voter suppression as the “aggressive interference” of the 1960s that included using firehoses and billy clubs against civil and voting rights workers. Abrams argues that “in the twenty-first century, voter suppression looks like administrative errors, it looks like user error, it looks like mistakes. But, it is just as intentional and just as insidious” as the more forceful tactics of the 1960s. Advocates of stricter voting laws, on the other hand, argue that the new voting requirements reduce voter fraud. [Multiple national studies and reports](#) find that voter fraud—such as repeat voting or impersonating another voter—is quite rare and statistically insignificant

(around .002%). While some states have moved to restrict access to the vote, other states have put in place measures to increase access to voting, such as automatic voter registration for all people with a driver’s license, and online voting registration.

Why are some states moving toward limiting voting and others toward expanding it? The answer generally comes down to which political party influences a state’s legislature and/or governor’s office. Democrats have a larger base of non-white and low-income voters than the Republican Party. Generally speaking, Democrats stand opposed to restrictive voting laws and work to expand access to voting in states where they hold political power.

[Restrictive voting laws generally occur in states where the Republican Party holds power.](#) In Republican-controlled North Dakota, for instance, [voting laws](#) require voters to show a street address, which Native Americans (who often vote for Democrats) lack on reservations; their P.O. Box addresses do not count. Courts, too, often reflect political party opinions and perspectives. A majority of justices on the Supreme Court in 2013 during the *Shelby County v. Holder* case were appointed by Republican presidents; these five justices voted to strike down parts of the Voting Rights Act. The four justices appointed by Democratic presidents disagreed. When even the process of deciding whether and how to protect access to voting becomes politicized, it is easy to see why having the ability to vote can make a substantial difference in determining a person’s influence in the governance of our nation.



Mural on wall outside of the National Voting Rights Museum, Selma, Alabama, a key site in the Civil Rights Movement.

Shelby County v. Holder

Primary source excerpts from the U.S. Supreme Court case decided June 25, 2013

Majority Opinion (excerpted):



John G. Roberts, Jr.
Chief Justice
United States Supreme Court

“The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. Section 5 of the Act required States to obtain federal permission before enacting any law related to voting — a drastic departure from basic principles of federalism. Section 4 of the Act applied that requirement only to some States — an equally dramatic departure from the principle that all States enjoy equal sovereignty. This was strong medicine, but Congress determined it was needed to address entrenched racial discrimination in voting... There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions... At the same time, voting discrimination still exists; no one doubts that. The question is whether the Act’s extraordinary measures, including its disparate [different] treatment of the States, continue to satisfy constitutional requirements... As we put it a short time ago, “the Act imposes current burdens and must be justified by current needs.” ... The formula in that section (4(b)) can no longer be used as a basis for subjecting jurisdictions to preclearance.”

Dissent (excerpted):



Ruth Bader Ginsburg
Associate Justice
United States Supreme Court

“[V]oting discrimination still exists; no one doubts that.”...but the Court today terminates the remedy that proved to be best suited to block that discrimination. The stated purpose of the Civil War Amendments was to arm Congress with the power and authority to protect all persons within the Nation from violations of their rights by the States. In exercising that power, then, Congress may use “all means which are appropriate, which

are plainly adapted” to the constitutional ends declared by these Amendments...So when Congress acts to enforce the right to vote free from racial discrimination, we ask not whether Congress has chosen the means most wise, but whether Congress has rationally selected means appropriate to a legitimate end.

... Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”

(An example from Ginsburg’s dissent of the effectiveness of Section 5 of the Voting Rights Act):

“In 2001, the mayor and all-white five-member Board of Aldermen of Kilmichael, Mississippi abruptly canceled the town’s election after “an unprecedented number” of African-American candidates announced they were running for office. The Department of Justice required an election, and the town elected its first black mayor and three black aldermen [town councilmen].”

- According to Justice Roberts, does voting discrimination still exist? According to Roberts, why was the Voting Rights Act appropriate in 1965, but a section of it no longer appropriate in 2013?
- According to Justice Ginsburg, what is the significance of the Voting Rights Act? According to Ginsburg, why is the entire Voting Rights Act still appropriate?



Fannie Lou Hamer's testimony in front of the 1964 Democratic National Convention

Fannie Lou Hamer was born and raised in Mississippi, working throughout much of her life for white agricultural land owners. Hamer became active in the struggle to register African-Americans to vote in Mississippi before the passage of the Voting Rights Act of 1965. After enduring beatings, arrest, a loss of employment and other forms of intimidation, Hamer traveled to the 1964 Democratic National Convention as part of the Mississippi Freedom Democratic Party delegation. She and her fellow delegates were elected by Mississippians outside of the formal electoral system because in 1964 most African-Americans either did not feel safe to vote or were denied by state officials if they tried. In this testimony, Hamer explains the many ways in which certain white Mississippians kept their African-American neighbors from their legal right to vote.

"It was the 31st of August in 1962 that eighteen of us traveled twenty-six miles to the county courthouse in Indianola to try to register [to vote] to become first-class citizens. We was met in Indianola by policemen, Highway Patrolmen, and they only allowed two of us in to take the literacy test at the time. After we had taken this test and started back to Ruleville, we was held up by the City Police and the State Highway Patrolmen and carried back to Indianola where the bus driver was charged that day with driving a bus the wrong color.

After we paid the fine among us, we continued on to Ruleville, and Reverend Jeff Sunny carried me four miles in the rural area where I had worked as a timekeeper and sharecropper for eighteen years. I was met there by my children, who told me the plantation owner was angry because I had gone down -- tried to register. After they told me, my husband came, and said the plantation owner was raising Cain because I had tried to register. And before he quit talking the plantation owner came and said, "Fannie Lou, do you know -- did Pap tell you what I said?"

And I said, "Yes, sir."

He said, "Well I mean that."

Said, "If you don't go down and withdraw your registration, you will have to leave."

Said, "Then if you go down and withdraw."

Said, "You still might have to go because we're not ready for that in Mississippi."

And I addressed him and told him and said, "I didn't try to register for you. I tried to register for myself."

I had to leave that same night.

On the 10th of September 1962, sixteen bullets was fired into the home of Mr. and Mrs. Robert Tucker for me...

And June the 9th, 1963, I had attended a voter registration workshop; was returning back to Mississippi. Ten of us was traveling by the Continental Trailway bus...As soon as I was seated on the bus, I saw when they began to get the five people in a highway patrolman's car. I stepped off of the bus to see what was happening and somebody screamed from the car that the five workers was in and said, "Get that one there." And when I went to get in the car, when the man told me I was under arrest, he kicked me."...

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- What are the ways in which certain Mississippians kept Hamer and others from exercising their right to vote?
 - How do you think Hamer's testimony may have helped shape the Voting Rights Act of 1965?

Hamer's full testimony is available here: <https://americanrhetoric.com/speeches/fannielouhamercredentialscommittee.htm>

Suggested Links

Instructions for registering to vote: <https://www.usa.gov/register-to-vote>

Background on the 15th Amendment: <https://www.ourdocuments.gov/doc.php?flash=false&doc=44>

Background on the Reconstruction Amendments (13th, 14th, 15th): <https://www.senate.gov/artandhistory/history/common/generic/CivilWarAmendments.htm>

Sample of illegal voting discrimination measures (literacy test): https://www.thirteen.org/wnet/jimcrow/voting_literacy.html

Fannie Lou Hamer's testimony at the 1964 Democratic National Convention: <https://americanrhetoric.com/speeches/fannielouhamercredentialscommittee.htm>

Background on the Mississippi Freedom Democratic Party: <https://kinginstitute.stanford.edu/encyclopedia/mississippi-freedom-democratic-party-mfdp>

Background on the Voting Rights Act of 1965: <https://www.ourdocuments.gov/doc.php?flash=false&doc=100>

Court information for *Shelby County v. Holder*: <https://supreme.justia.com/cases/federal/us/570/529/#tab-opinion-1970749>

Study on impact of *Shelby County v. Holder* decisions: <https://www.hks.harvard.edu/research-insights/policy-topics/politics/impacts-voting-rights-act-and-supreme-courts-shelby-ruling>

Study on voter suppression: <https://www.journals.uchicago.edu/doi/pdfplus/10.1086/688343> & article on North Dakota: <https://www.npr.org/2018/10/13/657125819/many-native-ids-wont-be-accepted-at-north-dakota-polling-places>

About Teach the Election

As the title suggests, this inaugural issue of the Teach the Election series examines the debate over the right to vote and, in particular, its role as an unresolved civil rights issue. This collection of both original content and primary sources is designed to support classroom instruction on the 2020 Election, as well as issues of citizenship that exist outside of any particular election cycle. Teachers may want to use the student background, excerpts from the Supreme Court decision, and the Fannie Lou Hamer primary source to inform ongoing classroom discussions, introduce the concept of voting rights, explore the role of the federal government in local elections, and /or consider the implications of these laws on the future outcome of the 2020 Election. In addition to the included guiding questions, students may want to explore what factors may help explain why the two major political parties have distinct constituencies and positions on voting laws.

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Signing of Voting Rights Act, LBJ Presidential Library, image A1030-8a: <http://www.lbjlibrary.net/collections/photo-archive.html>

National Voting Rights Museum, Library of Congress image: <https://www.loc.gov/item/2010647654/>

Fannie Lou Hamer image, Library of Congress image: <http://loc.gov/pictures/resource/ds.07134/>

Restore the Vote image, from House Democrats #RestoreTheVote: <https://www.flickr.com/photos/housedemocrats/35436453131/in/photolist-dWWoAM-dWWenP-UUzqSq-UUzr5Q-UUzrg1-UUzr4Y-UUzqRo-VZp6i4-UUzqNY-VZp6a8-UUzqQb-UUzr6G-VZp62T-VZp5Ea-VZp5Kk-UUzqP9-UUzqU9-UUzrco-UUzr8q-VZp6fZ-VZp5ZZ-UUzr4h-VZp6kZ-UUzr23-UUzqY7-UUzqVb-VZp5G4-VZp67x-UUzqZu-UUzqWo-UUzqXq-UUzr9Y-VZp5XK-VZp5MV-VZp5QF-VZp6cT-VZp5Tg-VZp64X-VZp6jX-UUzrbw-e1ywUk-e1EcpS-e1EcGU-e1Ed2S-e1yw7H-e1E95u-VZp6op-VZp5VR-UUzres-BBiBxp>



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