

CONSTITUTION

MODULE 13

VOTING RIGHTS IN AMERICA



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VOTING RIGHTS IN AMERICA

The original Constitution did not specifically protect the right to vote—leaving the issue largely to the states. For much of American history, this right has often been granted to some, but denied to others; however, through a series of amendments to the Constitution, the right to vote has expanded over time. These amendments have protected the voting rights of new groups, including by banning discrimination at the ballot box based on race (15th Amendment) and sex (19th Amendment). They also granted Congress new power to enforce these constitutional guarantees, which Congress has used to pass landmark statutes like the Voting Rights Act of 1965. While state governments continue to play a central role in elections today, these new amendments carved out a new—and important—role for the national government in this important area.

Learning Objectives

At the conclusion of this module, you should be able to:

1. Describe what the Constitution says about voting rights.
2. Identify who can vote in America during various periods in our nation's history.
3. Explore the role of federalism in the context of voting and elections in America.
4. Discuss the groups that benefited from the 12th, 15th, 17th, 19th, 23rd, 24th, and 26th Amendments.
5. Analyze battles at the Supreme Court over the Voting Rights Act of 1965.
6. Describe the long battle over women's suffrage, culminating in the 19th Amendment.

13.1 Activity: Voting in the Constitution

Purpose

In this activity, you will reflect on the importance of the right to vote and the value of informed voters.

Process

Review the following quote from Frances Ellen Watkins Harper, abolitionist, suffragist, poet, and writer:

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"I do not think the mere extension of the ballot a panacea for all the ills of our national life. What we need to-day is not simply more voters, but better voters."

Women's Political Future, 1893 by Frances Ellen Watkins Harper

View [Visual Info Brief: Frances Harper Quote](#)

After reviewing the quote, discuss with a partner the following questions:

- What is your immediate reaction to the quote?
- Why is the right to vote important?
- What does it mean to be a "better voter"?
- Can the right to vote address the "ills of our national life"? If so, how?
- What other actions are needed to address these ills?
- Do you agree or disagree with the quote, and why?

Activity 13.1 Notes & Teachers Comments

Launch

Present the Visual Info Brief: Frances Harper Quote on the board for the class to view. Define "panacea" for all students.

Share with the students additional information about Harper with the [Info Brief: Frances Ellen Watkins Harper](#). Note the year of the quote. What can they say about the year in relation to voting rights in America? Understanding the social context of the time will help students explore the meaning of the quote in greater detail. Examine the importance of the year, as well as her gender and race, in understanding Harper's quote.

Activity Synthesis

Have students share their reactions to the quote with a partner and then discuss it as a class.

Activity Extension (Optional)

Invite students to review the [transcript](#) of the longer entry of *Women's Political Future* and compare it with another famous speech from earlier in Harper's life, [We are All Bound Up Together](#).

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13.2 Video: Voting Rights in America

Purpose

In this activity, you will learn about the amendments, laws, and Supreme Court cases that have shaped voting rights in America.

Process

Watch [the video](#) about voting rights in America..

Then, complete the [Video Reflection: Voting Rights in America](#) worksheet.

Identify any areas that are unclear to you or where you would like further explanation. Be prepared to discuss your answers in a group and to ask your teacher any remaining questions.

Activity 13.2 Notes & Teachers Comments

Launch

Give students time to watch the video and answer the questions on the worksheet.

Activity Synthesis

Have students identify the patterns they see in the history of the right to vote in America. Ask them to reflect on the role of voting in the American constitutional system, and why it is important for citizens to have the right to vote.

Activity Extension (Optional)

Now that students have a better understanding of the history of voting rights in America, ask students to conduct additional research about voting rights and election practices during one of the time periods identified in the worksheet.

13.3 Activity: Exploring Elections and Voting in the Constitution

Purpose

In this activity, you will examine how the constitutional amendments have shaped elections and voting throughout American history. You will also explore the role of federalism in the context of elections and voting in America.

Process

First, begin by reading the [Info Brief: Exploring Elections and Voting in the Constitution](#). Then, in your group, read the *Interactive Constitution* essay assigned to your group and take notes.

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Constitutional amendments addressing election and voting rights:

- 12th Amendment
 - [Text of the Constitution](#)
 - [Common Interpretation](#)
- 15th Amendment
 - [Text of the Constitution](#)
 - [Common Interpretation](#)
- 17th Amendment
 - [Text of the Constitution](#)
 - [Common Interpretation](#)
- 19th Amendment
 - [Text of the Constitution](#)
 - [Common Interpretation](#)
- 23rd Amendment
 - [Text of the Constitution](#)
 - [Common Interpretation](#)
- 24th Amendment
 - [Text of the Constitution](#)
 - [Common Interpretation](#)
- 26th Amendment
 - [Text of the Constitution](#)
 - [Common Interpretation](#)

Complete the [Activity Guide: Exploring Elections and Voting in the Constitution](#) worksheet.

Finally, share with your class what you learned about your assigned amendment and how it shaped elections and voting in elections. Then, explore the following questions:

- What does the Constitution say about voting rights? What's in there, and what isn't?
- Who can vote in America (and when)?
- Before the Constitution, who could vote, and which governments controlled elections and voting?
- How did Reconstruction transform voting rights in America? What were its limits?
- Which groups benefited from the 12th, 15th, 17th, 19th, 23rd, 24th, and 26th Amendments?

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Activity 13.3 Notes & Teachers Comments

Launch

Begin by asking students: Where in the Constitution do you see language that relates to elections and voting?

Have the students read Info Brief: Exploring Elections and Voting in the Constitution.

Assign students one or more of the following sections of the Interactive Constitution to read:

- 12th Amendment
- 15th Amendment
- 17th Amendment
- 19th Amendment
- 23rd Amendment
- 24th Amendment
- 26th Amendment

While analyzing their assigned amendment(s), have the students complete the Activity Guide: Exploring Elections and Voting in the Constitution.

Then, have students meet in small groups to share and compare what they learned and build upon each other's findings.

Activity Synthesis

Have students identify:

- What does the Constitution say about voting rights? What's in there, and what isn't?
- Who can vote in America (and when)?
- Before the Constitution, who could vote, and which governments controlled elections and voting?
- How did Reconstruction transform voting rights in America? What were its limits?
- Which groups benefited from the 12th, 15th, 17th, 19th, 23rd, 24th, and 26th Amendments?

Activity Extension (Optional)

Now that students have a better understanding of voting at the national level, ask the following questions:

- What is the role of the states in voting and elections? What can states control? What limits are set by the Constitution?
- What sorts of limits were in the original Constitution? What sorts of limits were added through the constitutional amendment process?

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- How do voting requirements vary in different states?
- Do you think that we need any other constitutional amendments concerning elections and voting? Why, or why not?

13.4 Primary Source Readings: The Supreme Court and the Vote

Purpose

In this activity, you will read a primary source about voting rights and then analyze two landmark Supreme Court decisions addressing the Voting Rights Act of 1965.

Process

Read the [Info Brief: The Supreme Court and Voting Rights](#).

The teacher will then divide your class into groups. With your group, read W.E.B. Du Bois, *The Souls of Black Folk* (1903), and the NAACP, Platform Adopted by National Negro Committee (1909). Then, complete the relevant part of the [Case Brief: The Supreme Court and the Vote](#) worksheet, reflecting on the following questions:

- Who authored the primary source, and when?
- What is the call to action in this source?
- Did the American people, their elected officials, and/or the Supreme Court address these concerns over time? If so, when?

Now, your teacher will assign your group one of the following Supreme Court cases. Please read the background information and case excerpt for your assigned case and reflect on how the Court interpreted Congress's power to enforce the right to vote in each case.

- [South Carolina v. Katzenbach](#)
- [Shelby County v. Holder](#)

After you read the content of your assigned case, summarize the key arguments offered by the justices, complete the relevant part of the Case Brief: The Supreme Court and the Vote worksheet, reflecting on the following questions:

- Facts: Who are all the people (parties) associated with the case? What was the dispute between them?
- Issue: What is the issue in the case? What constitutional provision is at issue? What is the constitutional question that needs to be answered?
- How does the Court rule? What was the outcome in the case? Who won and who lost? How did the justices vote? What sort of rule does the Court come up with to resolve the issue?
- Who was the author of the majority opinion?

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- Were there any concurring or dissenting opinions? Who authored them? What did they say? How would the justices who authored them have ruled in the case?
- How does the Court's decision address voting rights?
- Were the calls to action from the NAACP committee and W.E.B. Du Bois met?

Activity 13.4 Notes & Teachers Comments

Launch

Give students time to read the primary source documents and summarize the key arguments of the document in support of granting the right to vote. Sources: W.E.B. Du Bois, *The Souls of Black Folk* (1903) and the NAACP, Platform Adopted by National Negro Committee (1909).

Activity Synthesis

As a large group, discuss each source and which arguments were the most and least convincing.

- Have students compare the arguments presented in the sources and identify similarities and differences.
- Ask the class, which, if any, of the arguments presented in the sources are still applicable today? For which groups of people?

Next, assign each group one of the following Supreme Court cases:

- *South Carolina v. Katzenbach*
- *Shelby County v. Holder*

Have groups continue to build on their Case Brief: The Supreme Court and the Vote worksheet and share their findings.

- Facts: Who are all the people (parties) associated with the case? What was the dispute between them?
- Issue: What is the issue in the case? What constitutional provision is at issue? What is the constitutional question that needs to be answered?
- How does the Court rule? What was the outcome in the case? Who won and who lost? How did the justices vote? What sort of rule does the Court come up with to resolve the issue?
- Who was the author of the majority opinion?
- Were there any concurring or dissenting opinions? Who authored them? What did they say? How would the justices who authored them have ruled in the case?
- How does the Court's decision address voting rights?
- Were the calls to action from the NAACP committee and W.E.B. Du Bois met?

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Activity Extension (Optional)

What about women's suffrage? To understand some of the early debates over women's voting rights and the Constitution, read an excerpt from the Supreme Court's decision in [Minor v. Happersett](#) and compare it with [Susan B. Anthony's Closing Argument](#) at her trial for election fraud in *United States of America v. Susan B. Anthony*. Reflect on the following questions:

- How did the Supreme Court rule? What were the Court's key arguments?
- What were the key arguments advanced by Susan B. Anthony?
- Compare and contrast the arguments advanced by each. Who offered a more persuasive constitutional argument? Why?

13.5 Activity: The Fight for the 19th Amendment

Purpose

The 19th Amendment bans discrimination at the ballot box based on sex. The battle for women's suffrage was a long one, involving generations of brave reformers pushing for change at the national, state, and local level.

Process

To begin, read [Info Brief: The Women's Suffrage Movement](#).

Then, your teacher will break your class into groups. Each group should build a women's suffrage timeline, using the Info Brief and the [National Constitution Center's Drafting Table tool](#).

From there, use the [Interactive Primary Source Tool: Historic Debates for and Against Suffrage](#) to create a chart of the main arguments for and against women's suffrage.

Finally, your group will share what you learned and reflect on the battle for women's suffrage over time and what that story can teach us about the process of constitutional reform within the American constitutional system. We will return to this big question about constitutional reform in Module 15.

Activity 13.5 Notes & Teachers Comments

Launch

The 19th Amendment bans discrimination at the ballot box based on sex. The battle for women's suffrage was a long one, involving generations of brave reformers pushing for change at the national, state, and local level.

To begin, have the students read [Info Brief: The Women's Suffrage Movement](#).

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Then, break the class into groups. Each group should build a women’s suffrage timeline, using the Info Brief and the [National Constitution Center’s Drafting Table tool](#).

From there, each group will use the interactive [Debates webpage](#) for and against suffrage to create a chart of the main arguments for and against women’s suffrage.

Activity Synthesis

Each group will share what they learned and reflect on the battle for women’s suffrage over time and what that story can teach us about the process of constitutional reform within the American constitutional system. We will return to this big question about constitutional reform in Module 15.

13.6 Activity: Exploring the Vote in Your Community

Purpose

In this activity, you will research how to vote where you live. You will also identify how someone can become an informed voter in your state and locality.

Process

Using [vote.gov](#), research your state-run voting website and review the process for voting in your state from start to finish. Fill out the [Activity Guide: Exploring the Vote in Your Community](#) worksheet.

Create a one-page infographic or fact sheet on voting for the eligible voters in your school and community. Ensure it has at least the following information:

- Voter eligibility
- Voter registration instructions
- Voting locations
- Election day dates and times
- How to become an informed voter—sources of reliable information on the candidates
- Other information that you think will be helpful to get to the polls, vote by mail, or to be a “better voter”

Activity 13.6 Notes & Teachers Comments

Launch

Have students discuss their experiences with the voting process from news, to going to the polls with adults in their lives. Give students time to research the process for voting in their state from start to finish.

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Activity Synthesis

Have students present their one-page infographic or fact sheet on voting. Display voting guides in the classroom and have students develop a plan for sharing their voting guide outside the classroom.

13.7 Test Your Knowledge

Purpose

Congratulations for completing the activities in this module! Now it's time to apply what you have learned about the basic ideas and concepts covered.

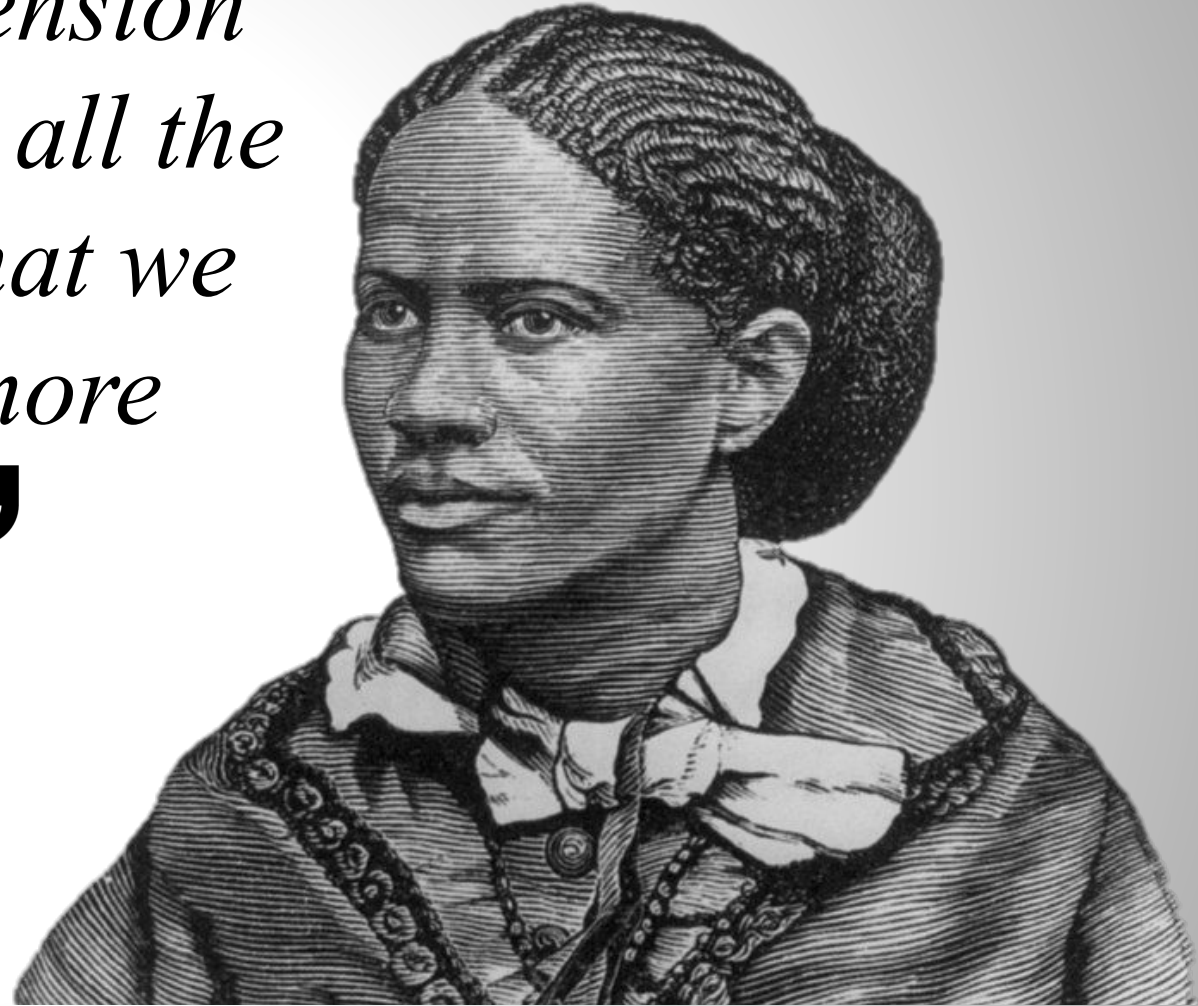
Process

Complete the questions in the following quiz to test your knowledge.

- [Test Your Knowledge: Voting Rights in America](#)

“*I do not think the mere extension of the ballot a panacea for all the ills of our national life. What we need to-day is not simply more voters, but better voters.*”

Frances Ellen Watkins Harper,
Women's Political Future (1893)



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13.1 Info Brief

FRANCES ELLEN WATKINS HARPER

QUOTE

“I do not think the mere extension of the ballot a panacea for all the ills of our national life. What we need to-day is not simply more voters, but better voters.”

Frances Ellen Watkins Harper, *Women’s Political Future* (1893)

ABOUT FRANCES ELLEN WATKINS HARPER

Frances Ellen Watkins Harper was a key figure in the fight for universal suffrage. She was born a free black woman in 1825 and was educated in Baltimore. Harper published several books of poetry, three serial novels, and numerous articles in anti-slavery newspapers. Known to many as the mother of African American journalism, her literary works reflected her passion for the cause of abolition and her work helping enslaved people escape to freedom on the Underground Railroad. In 1852, Harper left the South to participate in the abolitionist speaker circuit. During Reconstruction, she advocated for African Americans’ and women’s rights and for educational opportunities for all people.

KEY TERMS

- Panacea: A solution to a problem
- Suffrage: The right to vote

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13.2 Video Reflection

VOTING RIGHTS IN AMERICA

In this activity, you will learn about the amendments, laws, and Supreme Court cases that have shaped voting rights in America.

After you have watched the [video](#), write down your answers to the questions below for each time period from history.

	Founding Generation (1776–1787)	Age of Jackson (1820s–1830s)	Seneca Falls Convention (1848)	Jim Crow and the Civil Rights Movement (1865–1965)
What was a common requirement for voters during this time?				
What group of people gained the right to vote during this time? Which groups were still excluded?				
What was the goal of reformers in this period?				
What are some questions about suffrage that were left unanswered during this time period?				

EXPLORING ELECTIONS AND VOTING IN THE CONSTITUTION

While the original Constitution left the issue of voting largely to the states, a series of new constitutional amendments shaped elections and voting in America, including by banning discrimination at the ballot box based on race (15th Amendment) and sex (19th Amendment). While state governments continue to play a central role in elections today, these new amendments carved out a new—and important—role for the national government in the context of elections and voting.

When examining how the Constitution shapes elections and voting, we must address the following questions:

- What does the Constitution say about voting rights? What's in there, and what isn't?
- Who can vote in America (and when)?
- Before the Constitution, who could vote, and which governments controlled elections and voting?
- How did Reconstruction transform voting rights in America? What were its limits?
- Which groups benefited from the 12th, 15th, 17th, 19th, 23rd, 24th, and 26th Amendments?

Let's begin—as we always do when interpreting the Constitution—with the Constitution's text. When it comes to voting rights, it's worth pausing on a series of provisions.

Beginning with the original Constitution, there are four main provisions addressing elections and voting:

- [Article I, Section 2](#): Sets qualification for voters in the U.S. House elections. These qualifications must match the qualifications for voters for the lower house of each state legislature. These houses of the state legislatures were designed to be the elected branch closest to the people themselves. For its day, this is a fairly democratic provision—requiring states to elect national representatives with the same rules that apply to the most democratic component of each state government—its lower house.
- [Article I, Section 3](#): Leaves the election of U.S. senators to the state legislatures. (Revised by the [17th Amendment](#).)

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- [Article I, Section 4](#): Leaves the time, place, and manner of elections to the state legislatures, but subject to regulation by Congress.
- [Article II, Section 1](#): Sets up the Electoral College for electing the U.S. president.

Turning away from the original Constitution, we see many constitutional amendments touching on elections and voting.

- [12th Amendment](#): Alters the Electoral College.
- [14th Amendment](#): Section 2 provides a mechanism for penalizing states when they deny African American men over the age of 21 access to the ballot box. Many suffragists were outraged that the 14th Amendment wrote gender explicitly into the amendment. It uses the word “male.” The Supreme Court eventually uses the 14th Amendment’s Equal Protection Clause to protect voting in a series of 20th-century cases.
- [15th Amendment](#): Bans racial discrimination in voting.
- [17th Amendment](#): Provides for the popular election of U.S. senators.
- [19th Amendment](#): Bans sex discrimination in voting.
- [23rd Amendment](#): Grants the District of Columbia three electors in the Electoral College—giving D.C. a voice in presidential elections.
- [24th Amendment](#): Bans poll taxes in national elections.
- [26th Amendment](#): Protects voting rights for those 18 and older, effectively setting a floor for the national voting age at 18. (This was, in part, in response to the Vietnam War. Many young people who were drafted were still unable to vote.)

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13.3 Activity Guide

EXPLORING ELECTIONS AND VOTING IN THE CONSTITUTION

In this activity, you will examine how the constitutional amendments have shaped elections and voting throughout American history. You will also explore the role of federalism in the context of elections and voting in America.

Read the text of your assigned amendment and your assigned essay from the *Interactive Constitution*. Then complete the worksheet as a group.

My Provision(s):		
Question	Answer	Notes
What are some important words included in your constitutional amendment?		
What year was it ratified?		

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13.3 Activity Guide

What perceived problem was your amendment designed to address?		
What does your assigned amendment and essay say about elections and voting?		
[If relevant] Who has the power to enforce your amendment?		
[If relevant] How does your amendment affect the Constitution's system of federalism?		

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THE SUPREME COURT AND VOTING RIGHTS

From the 1870s through the early 1900s, the Supreme Court began to cut back on the 15th Amendment in cases like [United States v. Reese \(1876\)](#) and [Giles v. Harris \(1903\)](#)—breaking the 15th Amendment’s promise of racial equality at the ballot box and green lighting Jim Crow discrimination in the South.

However, the Supreme Court began to reverse course a few decades later. And while the Supreme Court rejected the suffragists’ 14th Amendment argument in *Minor v. Happersett*, the Court *did* eventually extend the 14th Amendment’s protections to cover voting rights.

The Supreme Court has continuously said that the right to vote is a fundamental right protected under the 14th Amendment. As the Supreme Court explained, the right to vote is “preservative of all rights.”

As a result, the Court has struck down various laws for infringing on the right to vote—most notably, Jim Crow laws discriminating against African Americans.

For instance, in [Harper v. Virginia Board of Elections \(1966\)](#), the Court struck down the use of poll taxes in state and local elections as a violation of the 14th Amendment’s Equal Protection Clause. There, Annie Harper couldn’t pay a \$1.50 poll tax. She argued that it violated the 14th Amendment’s promise of equality. And she won. The Court concluded that wealth had no rational connection to a person’s eligibility to vote.

In recent years, the Supreme Court has considered a variety of voting rights issues. Let’s walk through a few of the big ones.

REAPPORTIONMENT

One key area of voting rights cases covers the issue of congressional representation and the principle of “one-person, one-vote.” Over time, many state legislatures had not redrawn legislative districts to match changes in population. (This included districts for electing members of Congress.) During this period, urban areas across a number of states grew in population—leading to electoral district maps that gave more electoral strength to rural areas than to urban areas.

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The Warren Court's reapportionment cases addressed this issue—reshaping political power in legislatures across the country. In 1946, the Supreme Court concluded that it would *not* address constitutional challenges to legislative maps in [Colegrove v. Green](#).

Justice Felix Frankfurter famously wrote, the challengers “ask of this Court what is beyond its competence to grant. [E]ffective working of our government revealed this issue to be of a peculiarly political nature and therefore not fit for judicial determination. “[C]ourts ought not to enter this political thicket.”

The Supreme Court reversed course in [Baker v. Carr \(1962\)](#). There, Tennessee citizens brought a challenge to the state's legislative districts. The Tennessee legislature had established those districts *six* decades earlier. The challengers argued that the state's legislative districts ignored population shifts that had occurred in the state over that time.

In a 6-2 opinion authored by Justice William Brennan, the Supreme Court concluded that it *could* consider these sorts of challenges under the 14th Amendment's Equal Protection Clause.

Two years later, the Court went further in [Reynolds v. Sims \(1964\)](#). The case involved state legislative districts in Alabama. These districts ranged in size from 15,000 people to 635,000 people. That's a massive difference! Chief Justice Earl Warren authored the Court's landmark opinion.

The Court attacked legislative malapportionment and established the “one-person, one-vote” standard—requiring legislative districts to be roughly the same size. The Court argued that malapportionment means vote dilution. And that vote dilution violated the 14th Amendment's [Equal Protection Clause](#).

Warren: “Legislatures represent people, not trees or acres. Legislatures are elected by voters, not farms or cities or economic interests.”

“As long as ours is a republican form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect representatives in a free and unimpaired fashion is a bedrock of our political system.”

The Court's reapportionment decisions led to changes in districts across a number of states that had not previously responded to similar population shifts within their borders. Chief Justice Earl Warren called these reapportionment rulings the Court's most important decisions during his tenure—a tenure that included other landmark decisions like [Brown v. Board of Education](#).

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GERRYMANDERING

Another key area of voting rights cases covers the issue of gerrymandering. Gerrymandering covers efforts by politicians to draw district lines for their state legislatures or for electing members of Congress to benefit a particular party or a particular group. Racial gerrymandering arises when politicians take race into account to set district lines. And partisan gerrymandering covers districting efforts by politicians to benefit a particular political party. The Supreme Court has played a role in policing *racial* gerrymandering.

For instance, consider [Shaw v. Reno \(1993\)](#). This was one of the first racial gerrymandering cases to come before the Supreme Court. North Carolina had created a congressional reapportionment plan that created two majority–African American districts. One of them was an unusual shape—designed to track Interstate 85.

Residents challenged this oddly shaped district under the 14th Amendment’s Equal Protection Clause, arguing that North Carolina designed this district to enable the election of an additional African American representative. In a 5-4 ruling, the Court rejected the North Carolina districting decision. The Court concluded that, while North Carolina’s plan was not expressly based on race, the district was so extraordinary in its shape that it constituted an effort to impermissibly draw district lines on the basis of race.

The Court determined that such a suspiciously drawn district would not pass constitutional muster under the Equal Protection Clause unless the state could show that it had a compelling justification for designing the district as it did. The *Shaw* decision helped establish a framework for analyzing the use of race in the legislative districting process—in other words, for evaluating racial gerrymandering claims.

So, the bottom line is that following *Shaw*, you can’t draw districts that look funny without some sort of strong reason. The key point is that the Court doesn’t want states to give race too much weight in the districting process.

Finally, in an important decision decided recently, the Supreme Court turned away from policing *partisan* gerrymandering. The case was [Rucho v. Common Cause \(2019\)](#).

There, the Supreme Court weighed in on whether it had the power to review partisan gerrymandering challenges. Again, these are challenges to district maps for benefiting one political party over another. The Court observed that partisan gerrymandering extends back to early America. (The word “gerrymandering” comes from Elbridge Gerry, a Massachusetts leader from the Founding era.) The original Constitution left issues relating to voting—including districting decisions—largely to the states. And it didn’t grant any explicit role to the courts.

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Finally, the Court concluded that there was no manageable standard for reviewing partisan gerrymandering challenges. Justice Elena Kagan authored the dissent—joined by Justices Breyer, Ginsburg, and Sotomayor. Justice Kagan explored possible ways of assessing partisan gerrymandering claims. She also argued that the courts were the only institutions well-suited to step in to stop partisan gerrymandering. (Elected representatives can't be trusted to police themselves. And they can use gerrymandering to insulate themselves from the electorate.)

CONGRESSIONAL REGULATION

Another key area of cases covers the powers that the Constitution grants Congress to regulate voting. One of the civil rights movement's landmark achievements was the Voting Rights Act of 1965 ("VRA"). Congress passed it under its powers granted by the 14th Amendment and the 15th Amendment.

The VRA created mechanisms to enforce the 15th Amendment's ban on racial discrimination in voting—most notably "preclearance," a requirement that certain states with poor voting rights histories obtain national permission before altering their voting laws. The VRA included a formula for determining which states and counties needed to get preclearance to change their election practices. So, preclearance didn't apply everywhere.

Only *some* states and counties were required to seek approval before changing election policies, based on their history of discrimination in voting. This was strong constitutional medicine—providing the *national* government with an important role in protecting voting rights and attacking Jim Crow laws discriminating against African Americans.

Shortly after the VRA passed, the Supreme Court considered a challenge to the VRA's constitutionality brought by South Carolina—[South Carolina v. Katzenbach](#). The Supreme Court—in an opinion authored by Chief Justice Earl Warren—rejected South Carolina's challenge and upheld the VRA's preclearance requirement as a valid exercise of Congress's power to enforce the 15th Amendment.

The Court concluded that the 15th Amendment gave Congress "**full remedial powers**" to ban racial discrimination in voting. In the Court's view, the VRA was a "**legitimate response**" to the "**insidious and pervasive evil**" of the Jim Crow laws that prevented African Americans from voting since the ratification of the 15th Amendment in 1870.

And when they framed and ratified the 15th Amendment, the Reconstruction generation made Congress "**chiefly responsible**" for enforcing its promise to ban racial discrimination in voting.

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The Supreme Court recently returned to the issue of the VRA's constitutionality in [Shelby County v. Holder](#). When the VRA was passed in 1965, the preclearance provision was set to expire after five years. But Congress extended its life in 1970, 1975, and 1982, and then for an additional 25 years in 2006.

In *Shelby County*, the challengers argued that the VRA used an outdated formula for determining which states and localities were covered by the preclearance requirement and that the formula violated the Constitution. In a 5-4 ruling authored by Chief Justice John Roberts, the Supreme Court agreed.

The Court struck down the VRA's preclearance formula. The Court concluded that this provision exceeded the scope of Congress's power under the 14th and 15th Amendments. The Court determined that the 2006 extension was unconstitutional because the coverage formula was based on data about racial discrimination from the 1970s and had not been changed since 1982. So, it was based on *very old data*. The Court observed that the South had changed a great deal since the pre-VRA Jim Crow days.

While the VRA had done its job in its own day—attacking racial discrimination in voting—it remained strong constitutional medicine, in tension with the states' traditional authority to determine their own voting rules. Under these circumstances, the Court concluded that the selective application of the preclearance requirement ran afoul of what it described as “**a fundamental principle of equal sovereignty' among the States.**” As a result, the VRA's preclearance mechanism can't be enforced unless Congress passes a new coverage formula.

Justice Ruth Bader Ginsburg dissented—joined by Justices Breyer, Kagan, and Sotomayor. Justice Ginsburg argued that the VRA fell within Congress's power to protect against racial discrimination in voting under the 14th and 15th Amendments.

The 15th Amendment's text and history show a commitment to attacking racial discrimination at the ballot box.

The Court's previous decisions—including *Katzenbach*—confirmed Congress's broad powers to enforce the 15th Amendment's commands. The VRA has worked—defeating Jim Crow, transforming voting (especially in the South), and increasing African American voter participation. And Congress was careful when it decided to reauthorize the VRA in an overwhelming, bipartisan vote in 2006.

Ginsburg: “*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.*”

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VOTER ID LAWS

Finally, one of the biggest debates over voting rights today involves the constitutionality of state voter ID laws. The Supreme Court addressed this issue a little over a decade ago in [Crawford v. Marion County Election Board \(2008\)](#). There, the Supreme Court reviewed a constitutional challenge to a 2005 Indiana law requiring voters to show photo identification before casting their ballots.

The challengers—including the local Democratic Party and groups representing minority and elderly citizens—argued that the Indiana law was an unconstitutional burden on the right to vote. In a 6-3 ruling, the Supreme Court upheld the Indiana law, but the Court divided over the reasoning (3-3-3). (So, there was no majority opinion.)

Three justices—John Paul Stevens (author), John Roberts, and Anthony Kennedy—voted to uphold the law. They concluded that Indiana had a legitimate interest in preventing fraud, modernizing its elections, and safeguarding voter confidence—and that the law promoted those interests. And they thought that the ID law’s burden wasn’t great—falling on only a small part of the population.

The Court referred to these burdens as “**neutral and nondiscriminatory.**” Three *other* justices—Antonin Scalia (author), Samuel Alito, and Clarence Thomas—also voted to uphold the law, but on different grounds. They argued that laws like these fell within the traditional powers of the states and that the Court should simply defer to state and local officials.

Finally, three justices dissented. Justice David Souter—joined by Ruth Bader Ginsburg—concluded that the state had shown no evidence of fraud and that there was a real burden on certain populations, including the elderly and the poor. And Justice Breyer argued that while some voter ID laws might be constitutional, the facts in this case forced him to conclude that the Indiana law was unconstitutional.

Voter ID laws remain a topic of constitutional debate today. But this is only the tip of the iceberg. Americans continue to debate a range of constitutional issues that touch on voting rights.

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THE SUPREME COURT AND THE VOTE

In this activity, you will read a primary source about voting rights and then analyze two landmark Supreme Court decisions addressing the Voting Rights Act of 1965.

You will work with a group to review:

- [NAACP, Platform Adopted by National Negro Committee \(1909\)](#)
- [W.E.B. Du Bois, *The Souls of Black Folk* \(1903\)](#)

And ONE of the following:

- [South Carolina v. Katzenbach](#)
- [Shelby County v. Holder](#)

Read excerpts from your assigned source from the *Founders' Library* and complete the chart below as if your role is to brief the case like a constitutional lawyer.

Platform Adopted by National Negro Committee
Who authored the primary source, and when?
What is the call to action?
Did the American people, their elected officials, and/or the Supreme Court address these concerns over time? If so, when?

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W.E.B. Du Bois, *The Souls of Black Folk* (1903)

Who authored the primary source, and when?

What is the call to action?

Did the American people, their elected officials, and/or the Supreme Court address these concerns over time? If so, when?

My Case:

Facts:

Who are all the people (parties) associated with the case? What was the dispute between them?

Issue:

What is the issue in the case? What constitutional provision is at issue? What is the constitutional question that needs to be answered?

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Ruling:

How does the Court rule? What was the outcome in the case? Who won and who lost? How did the justices vote? What sort of rule does the Court come up with to resolve the issue?

Who was the author of the majority opinion?

Were there any concurring or dissenting opinions? Who authored them? What did they say? How would the justices who authored them have ruled in the case?

How does the Court's decision address voting rights?

Were the calls to action from the NAACP committee and W.E.B. Du Bois met?

PLATFORM ADOPTED BY NATIONAL NEGRO COMMITTEE (1909)

View the document on the National Constitution Center's website [here](#).

SUMMARY

In 1905, W.E.B. Du Bois, John Hope, William Monroe Trotter, and others met in Niagara Falls, Canada, to form the Niagara Movement. There, they committed themselves to Du Bois's call for immediate action and activism to realize the Constitution's guarantees in the 13th, 14th, and 15th Amendments and elsewhere for equal rights and full civic membership and inclusion without regard to race, in opposition to Booker T. Washington's more passive accommodationism of Jim Crow segregation and black disenfranchisement. While the movement had lost momentum by 1908, a racist pogrom in Springfield, Illinois, led the group's members, on the initiative of Du Bois, to join pro-civil rights white progressives like Oswald Garrison Villard, William English Walling, and Mary White Ovington, and Black activists including Mary Church Terrell and Ida B. Wells-Barnett, to found the interracial National Association for the Advancement of Colored People in 1909. The NAACP, with Du Bois as its preeminent public voice, as editor and writer for its house organ *The Crisis*, prominently championed and spearheaded social and political action, for the immediate recognition of full constitutional rights.

Excerpt

African Americans face violence, intimidation, and Jim Crow segregation; this is the greatest threat facing our nation; we are persecuted, and we are denied our right to vote.

We denounce the ever-growing oppression of our 10,000,000 colored fellow citizens as the greatest menace that threatens the country. Often plundered of their just share of the public funds, robbed of nearly all part in the government, segregated by common carriers, some murdered with impunity, and all treated with open contempt by officials, they are held in some States in practical slavery to the white community. The systematic persecution of law-abiding citizens and their disfranchisement on account of their race alone is a crime that will ultimately drag down to an infamous end any nation that allows it to be practiced, and it bears most heavily on those poor white farmers and laborers whose economic position is most similar to that of the persecuted race....

We support economic advancement for African Americans, but we also call for a free and complete education for all African American children. We agree fully with the prevailing opinion that the transformation of the unskilled colored laborers in industry and agriculture into

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skilled workers is of vital importance to that race and to the nation, but we demand for the Negroes, as for all others, a free and complete education

We demand equal treatment before the law; that is the surest path of progress for African Americans. [T]he public schools assigned to the Negro of whatever kind or grade will never receive a fair and equal treatment until he is given equal treatment in the Legislature and before the law. Nor will the practically educated Negro ... be given a fair return for his labor or encouraged to put forth his best efforts or given the chance to develop that efficiency that comes only outside the school until he is respected in his legal rights as a man and a citizen.

African American men are denied the right to work, often by violence; this is true in the North and South. We regard with grave concern the attempt manifest South and North to deny black men the right to work and to enforce this demand by violence and bloodshed....

We demand the following from the national government. As first and immediate steps toward remedying these national wrongs, so full of peril for the whites as well as the blacks of all sections, we demand of Congress and the Executive:

Enforce the civil rights promised by the Fourteenth Amendment. (1) That the Constitution be strictly enforced and the civil rights guaranteed under the Fourteenth Amendment be secured impartially to all.

Guarantee an equal education for African Americans. (2) That there be equal educational opportunities for all and in all the States, and that public school expenditure be the same for the Negro and white child.

Enforce the Fifteenth Amendment's promise to end racial discrimination in voting throughout the nation. (3) That in accordance with the Fifteenth Amendment the right of the Negro to the ballot on the same terms as other citizens be recognized in every part of the country.

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* (1903)

View the case on the National Constitution Center's website [here](#).

SUMMARY

Born and raised in Great Barrington, Massachusetts, the Fisk-, Harvard-, and Berlin-educated historian, sociologist, economist, and man of letters, W.E.B. Du Bois was the country's preeminent Black scholar and intellectual, and one of the nation's most prominent of any background. Du Bois was simultaneously a political activist who mounted an aggressive, and often bitter, challenge, to the then-reigning "spokesman for the race," Booker T. Washington, who had called upon blacks to accept Jim Crow segregation and disenfranchisement, and to prove themselves through hard work, self-cultivation, and self-help, whereupon their achievements would ultimately be recognized, and full citizenship freely granted. Du Bois, by contrast, called for immediate political and legal action and activism to win recognition of the constitutional rights and guarantees of full civic membership and inclusion promised by the 13th (1865), 14th (1868), and 15th Amendments (1870), not least, in the last, of the purportedly guaranteed right to vote. Du Bois's vision of the political and legal strategy for immediate action, institutionalized in his role in founding, first, the Niagara Movement, and, then, in 1908, the National Association for the Advancement of Colored People (NAACP), underwrote the emerging civil rights vision, which charted a political and legal path for a movement committed to winning equal citizenship and full civic membership without regard to race, and to equal justice under law.

Excerpt

Booker T. Washington has become an important leader within the African American community; his agenda focuses on economic education and empowerment for African Americans; however, he also calls for peace with white Southerners and a turn away from a focus on civil and political rights for African Americans; with this agenda, he has won support from white Southerners and white Northerners; and he has largely silenced his critics in the African American community. Easily the most striking thing in the history of the American Negro since 1876 is the ascendancy of Mr. Booker T. Washington.... Mr. Washington came, with a simple definite programme, at the psychological moment when the nation was a little ashamed of having bestowed so much sentiment on Negroes, and was concentrating its energies on Dollars.... His programme of industrial education, conciliation of the South, and submission and silence as to civil and political rights ... startled and won the applause of the South, it interested and won the admiration of the North; and after a confused murmur of protest, it silenced if it did not convert the Negroes themselves....

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Washington embraces the social separation of the races, but cooperation in economic progress; this is known as the “Atlanta Compromise.” “In all things purely social we can be as separate as the five fingers, and yet one as the hand in all things essential to mutual progress.” This “Atlanta Compromise” is by all odds the most notable thing in Mr. Washington’s career....

Washington endorses adjustment and submission to white Southerners; he focuses almost exclusively on work and money; he largely accepts the racial inferiority of African Americans. Mr. Washington represents in Negro thought the old attitude of adjustment and submission; but adjustment at such a peculiar time as to make his programme unique. This is an age of unusual economic development, and Mr. Washington’s programme naturally takes an economic cast, becoming a gospel of Work and Money to such an extent as apparently almost completely to overshadow the higher aims of life. Moreover, this is an age when the more advanced races are coming in closer contact with the less developed races, and the race-feeling is therefore intensified; and Mr. Washington’s programme practically accepts the alleged inferiority of the Negro races....

The African American community faces pervasive prejudice; in the past, we have fought back against this oppression, demanding equal citizenship; Washington preaches submission; history teaches us that we must demand more than land and houses; we must fight for our rights as citizens. Mr. Washington withdraws many of the high demands of Negroes as men and American citizens. In other periods of intensified prejudice all the Negro’s tendency to self-assertion has been called forth; at this period a policy of submission is advocated. In the history of nearly all other races and peoples the doctrine preached at such crises has been that manly self-respect is worth more than lands and houses, and that a people who voluntarily surrender such respect, or cease striving for it, are not worth civilizing....

Washington says that we should give up political power, our civil rights, and access to higher education. Mr. Washington distinctly asks that black people give up, at least for the present, three things, -

First, political power,

Second, insistence on civil rights,

Third, higher education of Negro youth....

Washington is wrong; we must demand the right to vote, equal protection of our civil rights, and an education for our youth that matches each student’s ability. [Another] class of Negroes who cannot agree with Mr. Washington ... feel in conscience bound to ask of this nation three things:

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1. The right to vote.
2. Civic equality.
3. The education of youth according to ability....

Washington places the blame and the burden of the African American community on African Americans themselves and not on the nation as a whole; this is a serious mistake. [O]n the whole the distinct impression left by Mr. Washington's propaganda is, first, that the South is justified in its present attitude toward the Negro because of the Negro's degradation; secondly, that the prime cause of the Negro's failure to rise more quickly is his wrong education in the past; and thirdly, that his future depends primarily on his own efforts. Each of these propositions is a dangerous half-truth. The supplementary truths must never be lost sight of: first, slavery and race-prejudice are potent if not sufficient causes of the Negro's position; second, industrial and common school training were necessarily slow in planting....; and, third, while it is a great truth to say that the Negro must strive and strive mightily to help himself, it is equally true that unless his striving be not simply seconded, but rather aroused and encouraged, by the initiative of the richer and wiser enviroing group, he cannot hope for great success.... His doctrine has tended to make the whites, North and South, shift the burdens of the Negro problem to the Negro's shoulders and stand aside as critical and rather pessimistic spectators; when in fact the burden belongs to the nation, and the hands of none of us are clean if we bend not our energies to righting these great wrongs.

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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SOUTH CAROLINA V. KATZENBACH (1966)

View the case on the Constitution Center’s website [here](#).

SUMMARY

One of the civil rights movement’s landmark achievements was the Voting Rights Act of 1965 (or the “VRA”). The VRA created mechanisms to enforce the 15th Amendment’s ban on racial discrimination in voting—most notably “preclearance,” a requirement that certain states with poor voting rights histories obtain national permission before altering their voting laws. The VRA included a formula for determining which states and counties needed to get preclearance to change their election practices. So, preclearance did not apply everywhere. Only some states and counties were required to seek approval before changing election policies, based on their history of discrimination in voting. This was strong constitutional medicine—providing the national government with an important role in protecting voting rights and attacking Jim Crow laws discriminating against African Americans. Shortly after Congress passed the VRA, the Supreme Court considered a challenge to the VRA’s constitutionality brought by South Carolina. In *South Carolina v. Katzenbach*, the Supreme Court—in an opinion authored by Chief Justice Earl Warren—rejected South Carolina’s challenge and upheld the VRA as a valid exercise of Congress’s power to enforce the 15th Amendment.

[Read the Full Opinion](#)

Excerpt: Majority Opinion, Chief Justice Earl Warren

Congress passed the Voting Rights Act under its authority to enforce the Fifteenth Amendment’s promise to end racial discrimination in voting; it was a response to a longstanding history of voter suppression; the Voting Rights Act is constitutional. The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century. The Act creates stringent new remedies for voting discrimination where it persists on a pervasive scale, and, in addition, the statute strengthens existing remedies for pockets of voting discrimination elsewhere in the country. Congress assumed the power to prescribe these remedies from §2 of the Fifteenth Amendment, which authorizes the National Legislature to effectuate by “appropriate” measures the constitutional prohibition against racial discrimination in voting. We hold that the sections of the Act which are properly before us, are an appropriate means for carrying out Congress’ constitutional responsibilities, and are consonant with all other provisions of the Constitution. We therefore deny South Carolina’s request that enforcement of these sections of the Act be enjoined. . . .

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Congress studied the problem of racial discrimination in voting closely; the VRA responds to longstanding problems. The constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects. Before enacting the measure, Congress explored with great care the problem of racial discrimination in voting. . . .

Congress concluded that it needed to pass a strong law to realize the Fifteenth Amendment's promise. Two points emerge vividly from the voluminous legislative history of the Act contained in the committee hearings and floor debates. First: Congress felt itself confronted by an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution. Second: Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures in order to satisfy the clear commands of the Fifteenth Amendment. . . .

In the 1890s, a wave of Jim Crow laws swept through the South, denying African Americans access to the ballot box. [B]eginning in 1890, the States of Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia enacted tests still in use which were specifically designed to prevent Negroes from voting. Typically, they made the ability to read and write a registration qualification and also required completion of a registration form. These laws were based on the fact that, as of 1890, in each of the named States, more than two-thirds of the adult Negroes were illiterate, while less than one-quarter of the adult whites were unable to read or write. At the same time, alternate tests were prescribed in all of the named States to assure that white illiterates would not be deprived of the franchise. These included grandfather clauses, property qualifications, "good character" tests, and the requirement that registrants "understand" or "interpret" certain matters.

Challengers brought a number of cases to attack these Jim Crow laws, and they won some important victories; but the underlying problems remained, as the Jim Crow states came up with new ways to keep African Americans from voting. The course of subsequent Fifteenth Amendment litigation in this Court demonstrates the variety and persistence of these and similar institutions designed to deprive Negroes of the right to vote. Grandfather clauses were invalidated Procedural hurdles were struck down The white primary was outlawed Improper challenges were nullified Racial gerrymandering was forbidden Finally, discriminatory application of voting tests was condemned

Over time, the Jim Crow states have applied their laws unfairly to African Americans. According to the evidence in recent Justice Department voting suits, the latter stratagem is now the principal method used to bar Negroes from the polls. Discriminatory administration of voting qualifications has been found in all eight Alabama cases, in all nine Louisiana cases, and in all

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nine Mississippi cases which have gone to final judgment. Moreover, in almost all of these cases, the courts have held that the discrimination was pursuant to a widespread “pattern or practice.” White applicants for registration have often been excused altogether from the literacy and understanding tests, or have been given easy versions, have received extensive help from voting officials, and have been registered despite serious errors in their answers. Negroes, on the other hand, have typically been required to pass difficult versions of all the tests, without any outside assistance and without the slightest error. The good-morals requirement is so vague and subjective that it has constituted an open invitation to abuse at the hands of voting officials. Negroes obliged to obtain vouchers from registered voters have found it virtually impossible to comply in areas where almost no Negroes are on the rolls.

Congress has passed laws allowing challenges to these forms of racial discrimination, one case at a time. In recent years, Congress has repeatedly tried to cope with the problem by facilitating case-by-case litigation against voting discrimination. . . .

However, this case-by-case approach hasn’t worked; African American voter registration remains very low in the relevant states. Despite the earnest efforts of the Justice Department and of many federal judges, these new laws have done little to cure the problem of voting discrimination. According to estimates by the Attorney General during hearings on the Act, registration of voting-age Negroes in Alabama rose only from 14.2% to 19.4% between 1958 and 1964; in Louisiana, it barely inched ahead from 31.7% to 31.8% between 1956 and 1965, and in Mississippi it increased only from 4.4% to 6.4% between 1954 and 1964. In each instance, registration of voting-age whites ran roughly 50 percentage points or more ahead of Negro registration.

There are a variety of reasons why this case-by-case approach has failed. The previous legislation has proved ineffective for a number of reasons. Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees, or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. Alternatively, certain local officials have defied and evaded court orders or have simply closed their registration offices to freeze the voting rolls. . . .

Congress concluded that it needed a stronger law, so it passed the VRA; the VRA specifically targets the areas that have the worst records of racial discrimination in voting; the most powerful part of the VRA is its preclearance requirement, which requires states with especially bad records to request approval from the national government before changing its voting laws. The Voting Rights Act of 1965 reflects Congress’ firm

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intention to rid the country of racial discrimination in voting. The heart of the Act is a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant. Section 4(a)-(d) lays down a formula defining the States and political subdivisions to which these new remedies apply. The first of the remedies, contained in §4(a), is the suspension of literacy tests and similar voting qualifications for a period of five years from the last occurrence of substantial voting discrimination. Section 5 prescribes a second remedy, the suspension of all new voting regulations pending review by federal authorities to determine whether their use would perpetuate voting discrimination. The third remedy, covered in §§ 6(b), 7, 9, and 13(a), is the assignment of federal examiners on certification by the Attorney General to list qualified applicants who are thereafter entitled to vote in all elections. . . .

South Carolina argues that many parts of the VRA are unconstitutional because they exceed Congress's power and conflict with the central role that the states have traditionally played in the area of voting and elections; in particular, the preclearance requirement conflicts with the principle of the equality of the states. [Various] provisions of the Voting Rights Act of 1965 are challenged on the fundamental ground that they exceed the powers of Congress and encroach on an area reserved to the States by the Constitution. South Carolina and certain of the amici curiae also attack specific sections of the Act for more particular reasons. They argue that the coverage formula prescribed in § 4(a)-(d) violates the principle of the equality of States, denies due process by employing an invalid presumption and by barring judicial review of administrative findings, constitutes a forbidden bill of attainder, and impairs the separation of powers by adjudicating guilt through legislation. They claim that the review of new voting rules required in § 5 infringes Article III by directing the District Court to issue advisory opinions. They contend that the assignment of federal examiners authorized in § 6(b) abridges due process by precluding judicial review of administrative findings, and impairs the separation of powers by giving the Attorney General judicial functions; also that the challenge procedure prescribed in § 9 denies due process on account of its speed. Finally, South Carolina and certain of the amici curiae maintain that §§ 4(a) and 5, buttressed by § 14(b) of the Act, abridge due process by limiting litigation to a distant forum. . . .

The central question is whether the VRA is consistent with Congress's powers under the Fifteenth Amendment. The objections to the Act which are raised under these provisions may . . . be considered only as additional aspects of the basic question presented by the case: has Congress exercised its powers under the Fifteenth Amendment in an appropriate manner with relation to the States?

The Fifteenth Amendment's text, history, and doctrine point to one key principle: Congress has broad power to enforce the Fifteenth Amendment's promise of ending racial discrimination in voting. The ground rules for resolving this question are clear. The language and purpose of the Fifteenth Amendment, the prior decisions construing its several provisions, and the general doctrines of constitutional interpretation all point to one fundamental

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principle. As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting. . . .

Section 1 of the Fifteenth Amendment may be enforced by the courts directly, without legislation. Section 1 of the Fifteenth Amendment declares that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” This declaration has always been treated as self-executing, and has repeatedly been construed, without further legislative specification, to invalidate state voting qualifications or procedures which are discriminatory on their face or in practice. . . .

However, Section 2 of the Fifteenth Amendment grants Congress broad power to enforce the amendment’s commands; the Fifteenth Amendment’s Framers made Congress chiefly responsible for ending racial discrimination in voting. South Carolina contends that the cases cited above are precedents only for the authority of the judiciary to strike down state statutes and procedures – that to allow an exercise of this authority by Congress would be to rob the courts of their rightful constitutional role. On the contrary, §2 of the Fifteenth Amendment expressly declares that “Congress shall have power to enforce this article by appropriate legislation.” By adding this authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in §1. “It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the [Civil War] amendments fully effective.” Accordingly, in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting.

Congress has used its enforcement powers to pass a number of laws in the past, and the courts have repeatedly upheld them. Congress has repeatedly exercised these powers in the past, and its enactments have repeatedly been upheld. . . .

The Court should approach this grant of congressional power the same way it has interpreted others written into the Constitution; it should embrace Chief Justice Marshall’s approach in *McCulloch*, which grants Congress broad leeway to carry out its textually enumerated powers. The basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States. Chief Justice Marshall laid down the classic formulation, 50 years before the Fifteenth Amendment was ratified: “Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.” . . . The Court has subsequently echoed his language in describing each of the Civil War Amendments

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Congress has broad discretion to craft laws to carry out the Fifteenth Amendment's commands. We therefore reject South Carolina's argument that Congress may appropriately do no more than to forbid violations of the Fifteenth Amendment in general terms – that the task of fashioning specific remedies or of applying them to particular localities must necessarily be left entirely to the courts. Congress is not circumscribed by any such artificial rules under § 2 of the Fifteenth Amendment. . . .

The VRA is inventive, and it is strong medicine; but it is justified by the nation's history of racial discrimination in voting. Congress exercised its authority under the Fifteenth Amendment in an inventive manner when it enacted the Voting Rights Act of 1965. First: the measure prescribes remedies for voting discrimination which go into effect without any need for prior adjudication. This was clearly a legitimate response to the problem, for which there is ample precedent under other constitutional provisions. . . . Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims. . . .

Congress may target these strong remedies to the states with the worst records of racial discrimination in voting; this approach isn't barred by the doctrine of the equality of the states. Second: the Act intentionally confines these remedies to a small number of States and political subdivisions which, in most instances, were familiar to Congress by name. This, too, was a permissible method of dealing with the problem. Congress had learned that substantial voting discrimination presently occurs in certain sections of the country, and it knew no way of accurately forecasting whether the evil might spread elsewhere in the future. In acceptable legislative fashion, Congress chose to limit its attention to the geographic areas where immediate action seemed necessary. . . . The doctrine of the equality of States, invoked by South Carolina, does not bar this approach, for that doctrine applies only to the terms upon which States are admitted to the Union, and not to the remedies for local evils which have subsequently appeared. . . .

The VRA is constitutional; hopefully, it will achieve its purpose and end racial discrimination in voting. After enduring nearly a century of widespread resistance to the Fifteenth Amendment, Congress has marshalled an array of potent weapons against the evil, with authority in the Attorney General to employ them effectively. Many of the areas directly affected by this development have indicated their willingness to abide by any restraints legitimately imposed upon them. We here hold that the portions of the Voting Rights Act properly before us are a valid means for carrying out the commands of the Fifteenth Amendment. Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live. We may finally look forward to the day

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when truly “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”

Excerpt: Concurring (in Part) and Dissenting (in Part) Opinion, Justice Hugo Black

I agree with the Court that some parts of the VRA are constitutional. I agree with substantially all of the Court’s opinion sustaining the power of Congress under § 2 of the Fifteenth Amendment to suspend state literacy tests and similar voting qualifications and to authorize the Attorney General to secure the appointment of federal examiners to register qualified voters in various sections of the country. Section 1 of the Fifteenth Amendment provides that “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”

Those parts are consistent with Congress’s power to enforce the Fifteenth Amendment.

In addition to this unequivocal command to the States and the Federal Government that no citizen shall have his right to vote denied or abridged because of race or color, § 2 of the Amendment unmistakably gives Congress specific power to go further and pass appropriate legislation to protect this right to vote against any method of abridgment no matter how subtle. . . . I have no doubt whatever as to the power of Congress under § 2 to enact the provisions of the Voting Rights Act of 1965 dealing with the suspension of state voting tests that have been used as notorious means to deny and abridge voting rights on racial grounds. This same congressional power necessarily exists to authorize appointment of federal examiners. I also agree with the judgment of the Court upholding § 4(b) of the Act which sets out a formula for determining when and where the major remedial sections of the Act take effect. . . .

But the preclearance requirement is unconstitutional. Though . . . I agree with most of the Court’s conclusions, I dissent from its holding that every part of § 5 of the Act is constitutional. Section 4(a), to which § 5 is linked, suspends for five years all literacy tests and similar devices in those States coming within the formula of § 4(b). Section 5 goes on to provide that a State covered by § 4(b) can in no way amend its constitution or laws relating to voting without first trying to persuade the Attorney General of the United States or the Federal District Court for the District of Columbia that the new proposed laws do not have the purpose and will not have the effect of denying the right to vote to citizens on account of their race or color. I think this section is unconstitutional

The preclearance requirement conflicts with some of the Constitution’s core principles.

Congress has here exercised its power under § 2 of the Fifteenth Amendment through the adoption of means that conflict with the most basic principles of the Constitution.

This requirement degrades the states and conflicts with the Constitution’s system of federalism; Congress can’t require the states to seek permission from the national

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government before amending their constitutions or changing their laws; this requirement also violates Article IV's guarantee of a republican form of government in the states.

Section 5, by providing that some of the States cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless. One of the most basic premises upon which our structure of government was founded was that the Federal Government was to have certain specific and limited powers and no others, and all other power was to be reserved either "to the States respectively, or to the people." Certainly if all the provisions of our Constitution which limit the power of the Federal Government and reserve other power to the States are to mean anything, they mean at least that the States have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg federal authorities to approve them. Moreover, it seems to me that § 5, which gives federal officials power to veto state laws they do not like, is in direct conflict with the clear command of our Constitution that "The United States shall guarantee to every State in this Union a Republican Form of Government."

The preclearance requirement treats the states as conquered provinces; and there's a danger that Congress may feel empowered to pass similar laws covering different issues.

I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat federal authorities in far-away places for approval of local laws before they can become effective is to create the impression that the State or States treated in this way are little more than conquered provinces. And if one law concerning voting can make the States plead for this approval by a distant federal court or the United States Attorney General, other laws on different subjects can force the States to seek the advance approval not only of the Attorney General, but of the President himself, or any other chosen members of his staff. It is inconceivable to me that such a radical degradation of state power was intended in any of the provisions of our Constitution or its Amendments. . . .

The preclearance requirement isn't an important part of the VRA, and it is likely to incite conflict in the states; if vigorously enforced, the rest of the VRA will protect the voting rights of all. Section 5 . . . is of very minor importance and, in my judgment, is likely to serve more as an irritant to the States than as an aid to the enforcement of the Act. I would hold § 5 invalid for the reasons stated above, with full confidence that the Attorney General has ample power to give vigorous, expeditious and effective protection to the voting rights of all citizens.

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SHELBY COUNTY V. HOLDER (2013)

View the case on the Constitution Center's website [here](#).

SUMMARY

The Voting Rights Act of 1965, passed to protect the right to vote of minorities, required certain jurisdictions with a history of discriminatory voting practices to receive permission from the federal government before implementing changes in voting procedures. This process was known as “preclearance,” and Congress used a formula to determine which jurisdictions would be covered by this preclearance requirement. In *Shelby County v. Holder*, the Supreme Court assessed whether this feature of the VRA was constitutional under Congress's power to “enforce” the 14th and 15th Amendments, which prohibit racially discriminatory voting practices. The Court held that the relevant statutory provisions were now unconstitutional because Congress's requirements must be justified by *current* burdens and needs. This decision cleared the way for the passage of many recent voter laws, including Texas's photo ID law (announced within 24 hours of this ruling) and various statutes restricting poll hours, early voting, and pre- and same-day registration.

[Read the Full Opinion](#)

Excerpt: Majority Opinion, Chief Justice Roberts

The Voting Rights Act was a powerful measure that addressed a serious problem; its preclearance requirement departed from traditional federalism; the Court acknowledged that the VRA was strong medicine, but it concluded that it was needed to address pervasive racial discrimination in voting. 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. And §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, “an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.” As we explained in upholding the law, “exceptional conditions can justify legislative measures not otherwise appropriate.” . . . Reflecting the unprecedented nature of these measures, they were scheduled to expire after five years

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The VRA is still in effect, and Congress has even strengthened it; but conditions have changed; we no longer see massively lower registration and voting rates among African Americans. Nearly 50 years later, they are still in effect; indeed, they have been made more stringent, and are now scheduled to last until 2031. There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions. By 2009, “the racial gap in voter registration and turnout [was] lower in the States originally covered by §5 than it [was] nationwide.” . . . Since that time, Census Bureau data indicate that African-American voter turnout has come to exceed white voter turnout in five of the six States originally covered by §5, with a gap in the sixth State of less than one half of one percent. . . .

Voting discrimination still exists; but the question remains whether the strong medicine of the VRA is justified by current conditions. At the same time, voting discrimination still exists; no one doubts that. The question is whether the Act’s extraordinary measures, including its disparate 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 original VRA was well-tailored to the conditions that existed at the time. When upholding the constitutionality of the coverage formula in 1966, we concluded that it was “rational in both practice and theory.” The formula looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both.

However, Congress has not updated the formula that determines which states are covered by the preclearance requirement; it is no longer well-tailored to reflect current conditions. By 2009, however, we concluded that the “coverage formula raise[d] serious constitutional questions.” As we explained, a statute’s “current burdens” must be justified by “current needs,” and any “disparate geographic coverage” must be “sufficiently related to the problem that it targets.” The coverage formula met that test in 1965, but no longer does so.

The coverage formula is outdated, and the conditions on the ground have changed. Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned nationwide for over 40 years. And voter registration and turnout numbers in the covered States have risen dramatically in the years since. Racial disparity in those numbers was compelling evidence justifying the preclearance remedy and the coverage formula. There is no longer such a disparity.

The formula made sense in 1965; it doesn’t make sense today. In 1965, the States could be divided into two groups: those with a recent history of voting tests and low voter registration and turnout, and those without those characteristics. Congress based its coverage formula on that

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distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were. . . .

We must always pause before exercising judicial review to strike down a law passed by Congress; in a previous case, we expressed our constitutional concerns and gave Congress time to update the formula; Congress didn't do so; now, we must declare the coverage formula unconstitutional. Striking down an Act of Congress “is the gravest and most delicate duty that this Court is called on to perform.” . . . We do not do so lightly. That is why, in 2009, we took care to avoid ruling on the constitutionality of the Voting Rights Act when asked to do so, and instead resolved the case then before us on statutory grounds. But in issuing that decision, we expressed our broader concerns about the constitutionality of the Act. Congress could have updated the coverage formula at that time, but did not do so. Its failure to act leaves us today with no choice but to declare §4(b) unconstitutional. The formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance.

Our ruling only addresses the coverage formula; it doesn't touch other parts of the VRA; and it still gives Congress the opportunity to craft a new coverage formula that addresses current conditions. Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in §2. We issue no holding on §5 itself, only on the coverage formula. 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.” . . . Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.

Excerpt: Dissent, Justice Ruth Bader Ginsburg

Congress studied the problem of racial discrimination in voting and decided to reauthorize the Voting Rights Act; I would defer to Congress's judgment and uphold the VRA in its entirety. In the Court's view, the very success of §5 of the Voting Rights Act demands its dormancy. Congress was of another mind. Recognizing that large progress has been made, Congress determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated. The question this case presents is who decides whether, as currently operative, §5 remains justifiable, this Court, or a Congress charged with the obligation to enforce the post-Civil War Amendments “by appropriate legislation.” With overwhelming support in both Houses, Congress concluded that, for two prime reasons, § 5 [the preclearance requirement] should continue in force, unabated. First, continuance would facilitate completion of the impressive gains thus far made; and second, continuance would guard against backsliding. Those assessments were well within Congress' province to make and should elicit this Court's unstinting approbation. . . .

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The Court admits that voting discrimination still exists, but it gets rid of the most powerful method for addressing it. “[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 Voting Rights Act of 1965 (VRA) has worked to combat voting discrimination where other remedies had been tried and failed. Particularly effective is the VRA’s requirement of federal preclearance for all changes to voting laws in the regions of the country with the most aggravated records of rank discrimination against minority voting rights. . . .

The VRA has helped our nation make massive progress, but voting discrimination remains a problem; that’s why Congress reauthorized the VRA. But despite this progress, “second generation barriers constructed to prevent minority voters from fully participating in the electoral process” continued to exist, as well as racially polarized voting in the covered jurisdictions, which increased the political vulnerability of racial and language minorities in those jurisdictions. Extensive “[e]vidence of continued discrimination,” Congress concluded, “clearly show[ed] the continued need for Federal oversight” in covered jurisdictions. The overall record demonstrated to the federal lawmakers that, “without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years.” . . .

The Fifteenth Amendment grants Congress broad power to attack racial discrimination in voting; the Court has repeatedly reaffirmed Congress’s power in this area; we should defer to Congress here. In summary, the Constitution vests broad power in Congress to protect the right to vote, and in particular to combat racial discrimination in voting. This Court has repeatedly reaffirmed Congress’ prerogative to use any rational means in exercise of its power in this area. And both precedent and logic dictate that the rational-means test should be easier to satisfy, and the burden on the statute’s challenger should be higher, when what is at issue is the reauthorization of a remedy that the Court has previously affirmed, and that Congress found, from contemporary evidence, to be working to advance the legislature’s legitimate objective. . . .

The Court has given Congress considerable leeway in this area, deferring to its judgments; and Congress has studied this problem extensively, accumulating a massive record; we should honor its judgment here. The Court has time and again declined to upset legislation of this genre unless there was no or almost no evidence of unconstitutional action by States. . . . No such claim can be made about the congressional record for the 2006 VRA reauthorization. Given a record replete with examples of denial or abridgment of a paramount federal right, the Court should have left the matter where it belongs: in Congress’ bailiwick.

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Why should we throw away a part of the VRA that has worked so well? Instead, the Court strikes §4(b)'s coverage provision because, in its view, the provision is not based on "current conditions." . . . It discounts, however, that one such condition was the preclearance remedy in place in the covered jurisdictions, a remedy Congress designed both to catch discrimination before it causes harm, and to guard against return to old ways. . . . Volumes of evidence supported Congress' determination that the prospect of retrogression was real. 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. . . .

The nation still needs the preclearance requirement to avoid backsliding. The sad irony of today's decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA's success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. With that belief, and the argument derived from it, history repeats itself. The same assumption—that the problem could be solved when particular methods of voting discrimination are identified and eliminated—was indulged and proved wrong repeatedly prior to the VRA's enactment. Unlike prior statutes, which singled out particular tests or devices, the VRA is grounded in Congress' recognition of the "variety and persistence" of measures designed to impair minority voting rights. In truth, the evolution of voting discrimination into more subtle second-generation barriers is powerful evidence that a remedy as effective as preclearance remains vital to protect minority voting rights and prevent backsliding.

The Court is right that the VRA remains strong medicine, but that's because it was designed to address a massive problem; and it has worked. Beyond question, the VRA is no ordinary legislation. It is extraordinary because Congress embarked on a mission long delayed and of extraordinary importance: to realize the purpose and promise of the Fifteenth Amendment. For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made.

In 2006, Congress studied the problem closely, built a massive record, and, in an overwhelmingly bipartisan vote, agreed to reauthorize the VRA; this move was consistent with Congress's power to enforce the Fifteenth Amendment's promise to end racial discrimination in voting. The record supporting the 2006 reauthorization of the VRA is also extraordinary. It was described by the Chairman of the House Judiciary Committee as "one of the most extensive considerations of any piece of legislation that the United States Congress has dealt with in the 27½ years" he had served in the House. . . . After exhaustive evidence-gathering and deliberative process, Congress reauthorized the VRA, including the coverage provision, with overwhelming bipartisan support. It was the judgment of Congress that "40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure

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that the right of all citizens to vote is protected as guaranteed by the Constitution.” . . . That determination of the body empowered to enforce the Civil War Amendments “by appropriate legislation” merits this Court’s utmost respect. In my judgment, the Court errs egregiously by overriding Congress’ decision.

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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THE WOMEN'S SUFFRAGE MOVEMENT

After America declared its independence, states began to write new constitutions. A little over a decade later, the [U.S. Constitution](#) was ratified—leaving issues of elections and voting primarily to the states.

Most states establish property requirements for voters. So, during this period, voting is *generally* restricted to white male property owners.

In the 1820s and 1830s, restrictions remained on women, but women began to push back and organize conventions and lectures, circulate ideas in newspapers, and petition state governments for women's rights, including suffrage.

SENECA FALLS CONVENTION

Most famously, in 1848, abolitionists Elizabeth Cady Stanton and Lucretia Mott organized a convention to discuss women's issues in Seneca Falls, New York. The local gathering attracted nearly 300 people. Stanton prepared a manifesto (The Declaration of Sentiments)—literally, a rewriting of the Declaration of Independence—to draw attention to the inequalities and oppressive laws that women endured. Signed by 68 women and 32 men, the Declaration of Sentiments included a suffrage resolution. However, women's voting rights was only one demand among many. The burning issues of the day centered on married women—their right to contract, own property, and sue or be sued. As news of the convention circulated, some voiced their support, while others criticized the reformers for operating outside of their traditional duties as mothers and wives inside the home.

1865 – 1870S: RECONSTRUCTION ERA MOVEMENTS FOR EQUALITY

Following the Civil War (in a period known as Reconstruction), the Republican Party—the party of Lincoln and of the Union—pushed a series of constitutional amendments. During this period, Congress debated the reach of equality and the definition of citizenship. The goal was to set new constitutional baselines for post-Civil War America.

This effort led to the ratification of the [13th Amendment](#) (abolishing slavery), the [14th Amendment](#) (writing promises of freedom and equality into the Constitution), and the [15th Amendment](#) (banning racial discrimination in voting).

Women—long active in the fight to abolish slavery—fought to be included in this period of constitutional transformation. Women participated in the anti-slavery movement before and during the Civil War. Building on their experience battling slavery, the suffragists and their allies advanced a powerful vision of universal voting rights. For these reformers, the push for voting

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rights wasn't about race or sex. It was about post-Civil War America's commitment to universal rights.

During this period, biracial coalitions of women and men worked for universal suffrage. For instance, they flooded Congress with petitions. Even so, many politicians believed that it wasn't the right time to discuss women's suffrage. Many members of Congress embraced the traditional role of women in the home—not in politics.

Although the [14th Amendment](#) ultimately protected equal citizenship, it explicitly promoted “male” voting—introducing the word “male” into the Constitution for the first time in Section 2 of the 14th Amendment. The section sought to protect the voting rights of African American males against discrimination in Southern states by allowing Congress to punish such states with the loss of representation. Suffragists fought to remove this discriminatory language from the proposed amendment, but they did not succeed.

And with the [15th Amendment](#), Republicans and their allies prioritized African American male voting rights—not universal suffrage.

With the Republican Party prioritizing the rights of African American men over those of *all* women, tensions soon grew over race and tactics—fracturing the women's suffrage movement for decades. Many prominent suffragists denounced the 15th Amendment because they viewed it as a new barrier to women's rights—splitting the long-standing alliance between abolitionists and suffragists. While the post-war women's movement had unified around a vision of universal rights, some white women—appalled by their exclusion from the 15th Amendment—refused to support the new amendment. Others embraced it.

The universalist movement (and its leading organization, the American Equal Rights Association) split into two organizations.

- The National Woman Suffrage Association, led by Susan B. Anthony and Elizabeth Cady Stanton, opposed the amendment. They chose to fight exclusively for women's suffrage first—particularly, *national* women's suffrage through a separate constitutional amendment. This group turned away from the Republican Party, broke with its longtime abolitionist allies, and worked to create an independent women's suffrage movement.
- At the same time, the American Woman Suffrage Association, led by Lucy Stone and Henry Browne Blackwell, supported the new amendment. They sided with the Republican Party, prioritized African American rights, rallied around the 15th Amendment, and remained committed to a vision of universal rights.

Finally, even as the suffragists lost this battle over the framing of the 14th and 15th Amendments, they didn't give up on the newly amended Constitution—laying claim to the Constitution's text, especially the 14th Amendment, in their push for women's suffrage.

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Some suffragists focused on Congress. The 14th Amendment gave Congress the power to pass new laws to enforce the “privileges or immunities” of U.S. citizenship. In 1871, Victoria Woodhull—a leading suffragist—petitioned Congress to pass a new law recognizing women’s suffrage as a “privilege” of U.S. citizenship under the 14th Amendment. Woodhull (1871): “I do now claim that I am, equally with men, possessed of the right to vote.” Woodhull appeared before a House committee to present her argument—the first woman to do so.

Other suffragists used the Reconstruction Amendments to vote, arguing that under the 14th Amendment, voting was a “privilege” of U.S. citizenship. This was a key strategy of a movement known as the “New Departure.”

Two key figures from the New Departure were Susan B. Anthony and Virginia Minor

- **[SUSAN B. ANTHONY USES THE 14TH AMENDMENT TO TRY AND VOTE](#)**
Susan B. Anthony was both a leading abolitionist and a founder of the mid-1800s Women’s Movement. During Reconstruction, Anthony and her allies in Congress pressed the framers of the 14th and 15th Amendments to confer the right to vote on women as well as Black men. When those efforts failed, Anthony and others turned to direct action, accompanied by a creative interpretation of the 14th Amendment’s promise of equal rights. In 1872, Susan B. Anthony, her three sisters, and 11 other women tried to vote in a New York election. Thanks to the help of local Republican Party officials, Anthony registered to vote. To Anthony’s surprise, she was even permitted to cast her vote, but her victory was short-lived. Two weeks later, Anthony was arrested and charged with election fraud. At her trial in June 1873, Anthony was allowed to make a final statement. She was ultimately found guilty for voting illegally, but she refused to pay the fine and was never punished. Despite being found guilty, her example helped pave the way for the 19th Amendment, which brought women’s right to vote into the Constitution in 1920.
- **[MINOR v. HAPPERSETT \(1875\)](#)**
From 1868 to 1875, hundreds of women—both African American and white—embraced the New Departure. Some women successfully voted, while most were turned away, arrested, or fined. In *Minor v. Happersett*, Virginia Minor challenged a St. Louis registrar’s decision to block her from registering to vote. A pioneer of the New Departure, Minor argued that women were United States citizens and that voting was a “privilege” of national citizenship protected by the 14th Amendment. The Supreme Court rejected Minor’s claim. In a unanimous decision, the Court agreed that women were U.S. citizens, but ruled that voting was not a right of national citizenship. Instead, the Court concluded that the Constitution left the question of women’s suffrage to the states.

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CHANGING TACTICS

Following the New Departure, women turned their attention to two strategies: (1) securing suffrage in the states and (2) pushing for a constitutional amendment. During this period, suffragists embraced a broad range of tactics. And although their efforts often followed separate tracks—some national and some state-by-state—they all fed into one common goal: *national* voting rights for women.

By the early 1900s, women from all walks of life supported women’s suffrage. While expanding support among all classes and building coalitions with the labor movement, suffrage organizations continued to divide over the issue of race. Parts of the movement grew increasingly exclusionary. At the same time, African American women organized into clubs and continued to push for the vote to secure social and economic change within their own communities. Other women of color, including Native Americans, lobbied for their citizenship to be recognized.

SUFFRAGE MOVEMENT PROGRESSED ON A STATE LEVEL

Women worked at the state and local levels to extend suffrage—and used the states as testing grounds for the idea. Viewed one way, the 19th Amendment story is a great example of the states functioning as Justice Louis Brandeis envisioned—as “laboratories of democracy.” The theory? If enough states allowed women to vote, national change might follow.

With some early successes, women’s suffrage expanded out West first—and then moved East. So, women began voting in Western states long before the 19th Amendment—with women’s suffrage expanding throughout much of the West from the late 1800s through the early 1900s. The first win came in 1869 with the Wyoming Territory. In 1889, suffrage came to Wyoming, as a state. In the 1890s: Colorado, Idaho, and Utah. This experiment worked out so well that other states extended voting rights to women, as well—including (eventually) large states like New York and Michigan. We see a new wave of success for the women’s suffrage movement beginning in 1910. This push included full women’s voting rights in Washington (1910), California (1911), Arizona (1912), Kansas (1912), Oregon (1912), Montana (1914), Nevada (1914), New York (a big one!) (1917), and Michigan (1918).

SUFFRAGE MOVEMENT PROGRESSED ON A NATIONAL LEVEL

While some suffragists pushed for reform at the state level, others focused on applying pressure on *national* leaders. So, as momentum built at the state level, a new generation of suffragist leaders brought more aggressive tactics to the movement. These suffragists took to the streets to revive the national amendment strategy and grab the public’s attention—relying on key First Amendment rights like speech, press, assembly, and petition.

- Women Suffrage Procession in Washington, D.C. On March 3, 1913—the day before Woodrow Wilson’s presidential inauguration—an estimated 5,000 women from across

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the nation gathered in Washington, D.C., for a national women's suffrage parade and violence erupted. Roughly 100 women wound up in the hospital. Wilson's inauguration now shared headlines with shocking news of the parade and the attacks—causing public sympathies to soar.

Women of color joined their fellow suffragists in this parade, but they met resistance from other members of the movement. Parade organizers gave in to Southern white prejudice—and their own notions of racial hierarchy—by asking many African American women to march in the back. Ultimately, at least four states marched with integrated delegations. And civil rights crusader Ida B. Wells-Barnett refused to march in the back. When the parade began, she broke ranks and joined her Illinois delegation.

- Militant suffragists continued their work—publicly criticizing the president for embracing democracy abroad while leaving half of the population without the vote at home. For instance, Alice Paul and her allies in the National Woman's Party (like Lucy Burns) began protesting in front of the White House in 1917.
- At the same time, other suffragists continued to pursue more conventional lobbying campaigns—applying sustained pressure on Congress and the president.

President Wilson eventually relented, giving his support to the 19th Amendment in January 1918 and declaring it a vital war measure.

PASSAGE AND RATIFICATION BATTLE OF THE 19TH AMENDMENT

Congress passed the 19th Amendment in 1919 following several failed votes—sending it along to the states for ratification.

Suffragists faced one final hurdle: *ratifying* the 19th Amendment. After 70 years—and a 15-month ratification battle—women finally secured the women's suffrage amendment.

In the end, the push for women's suffrage can teach us important lessons about (at least) four different pathways of constitutional change. The suffragists used all four of them.

- Amend the Constitution: Advocate for amendments through the formal process outlined in Article V of the Constitution. (Think the 19th Amendment itself.)
- Lobby and petition Congress: Pursue new laws to enforce the Constitution's existing promises. (Think Victoria Woodhull's push.)
- Use the courts: Use the Constitution's existing text to advance constitutional arguments inside the courts. (Think the New Departure.)
- Pursue state reform: Test new ideas out at the state level that could potentially lead to nationwide reform. (Think the state-by-state push for women's suffrage—changing state laws and state constitutions—beginning out West.)

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THE STORY OF WOMEN'S SUFFRAGE AFTER RATIFICATION

In November 1920, many women across the country voted under the 19th Amendment. With support from female voters, the Republican candidate Warren G. Harding won in a landslide. He captured 60% of the popular vote.

At the same time, for millions of women, the fight for suffrage was not over. Before and after the ratification of the 19th Amendment, voters of color were disproportionately targeted by voter discrimination practices. As many suffragist leaders debated whether to unify around another cause, many of these white leaders left behind women of color, who often continued their suffrage activism alone.

WOMEN AND THE CIVIL RIGHTS MOVEMENT

For instance, millions of African American women fought against their continued disenfranchisement in the South.

For decades, they fought to remove these barriers—leading to the Voting Rights Act of 1965 (VRA). This landmark law empowered the national government to protect voting rights for all people of color and attack state voter discrimination efforts.

Congress was granted this enforcement power in 1870 with the 15th Amendment. (Reinforced by the 19th Amendment's own enforcement clause.)

And the Supreme Court upheld the VRA in *South Carolina v. Katzenbach*.

The VRA itself was a massive success. Following its passage, women of color began voting in huge numbers for the first time.

LEGACY OF SUFFRAGE ORGANIZATIONS

Finally, with the ratification of the 19th Amendment, two key suffrage organizations reassessed their purpose.

- Carrie Chapman Catt's National American Woman Suffrage Association restructured as the League of Women Voters to educate voters about elections and issues.
- The National Woman's Party—led by Alice Paul—pursued the Equal Rights Amendment (ERA).

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THE EQUAL RIGHTS AMENDMENT

Drafted by Alice Paul, the ERA was first proposed in Congress in 1923.

“Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction.”

The proposed amendment enjoyed widespread support in the 1970s. Both Houses of Congress passed it in 1972—after being introduced in every Congress for 49 years. By 1977, the ERA had been ratified by 35 states. Congress extended the deadline for ratifying the amendment for another five years, but no new states ratified it before 1982. Since then, Nevada, Illinois, and Virginia have voted in favor of the amendment.

However, there are still a range of constitutional debates surrounding the ERA:

- Can Congress impose a deadline on ratifying an amendment proposal?
- If the time limit is valid, can a future Congress extend that deadline?
- Can a state rescind its ratification? (Between 1973 and 1979, five state legislatures voted to rescind their ratifications.)

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Module 13: Voting Rights in America
13.6 Activity Guide

EXPLORING THE VOTE IN YOUR COMMUNITY

In this activity, you will research how to vote where you live. You will also identify how someone can become an informed voter in your state and locality.

Using vote.gov, research your state-run voting website and review the process for voting in your state from start to finish. Fill out the chart below.

Using the information that you've collected, create a one-page infographic or fact sheet on voting for the eligible voters in your school and community.

Voter Eligibility Requirements

Do voters need to be a certain age? Are there any residency restrictions?

Voter Registration Instructions

Where can a person register to vote? Will the government require any documents or other information? Is there a registration deadline for the next election?

Polling Place Information

How can a person find their polling place? Where is yours?

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Module 13: Voting Rights in America

13.6 Activity Guide

Election Day Information

When is the next Election Day? What offices are up for election? What are the hours that the polls are open? Do voters need to bring anything with them to the polls?

Getting Informed

Where can a person look to find reliable information about the candidates in the upcoming election?

Additional Information

Include any other information that you think will be helpful.
(Getting to the polls, voting by mail, early voting, etc.)



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Module 13: Voting Rights in America 13.7 Test Your Knowledge

VOTING RIGHTS IN AMERICA

Complete the questions in the following quiz to test your knowledge of basic ideas and concepts covered in this module.

1. The original Constitution largely left elections and voting to _____.
 - a. Congress
 - b. The president
 - c. The Supreme Court
 - d. The states

2. What area of voting is covered by Article II, Section I, of the Constitution?
 - a. Qualifications for voters in U.S. House elections
 - b. Declaring that the selection of U.S. senators will be determined by state legislatures
 - c. The time, place, and manner of elections will be determined by state legislatures
 - d. The Electoral College

3. The 15th Amendment passed in 1870 banned voting discrimination on the basis of _____.
 - a. Age
 - b. Race
 - c. Sex
 - d. Wealth

4. The 19th Amendment passed in 1920 banned voting discrimination on the basis of _____.
 - a. Age
 - b. Race
 - c. Sex
 - d. Wealth

5. The 26th Amendment passed in 1971 banned voting discrimination on the basis of _____.
 - a. Age
 - b. Race
 - c. Sex
 - d. Wealth

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Module 13: Voting Rights in America

13.7 Test Your Knowledge

6. Although voting requirements varied state to state, what were some requirements for voting that existed in the early years of America?
 - a. Race and gender requirements
 - b. Wealth and property requirements
 - c. Taxpaying requirements
 - d. All of the above

7. Unmarried women who owned land could vote in state and local elections in which state between 1776 and 1807?
 - a. Vermont
 - b. New York
 - c. New Jersey
 - d. South Carolina

8. During the Age of Jackson in the 1820s and 1830s, some voting requirements were eliminated and it became much easier to vote if you were _____.
 - a. A white man, regardless of your wealth
 - b. A woman
 - c. A free African American
 - d. An enslaved person

9. A gathering of women at the Seneca Falls Convention in 1848 produced this famous document, which cited a list of grievances and drew attention to inequalities and oppressive laws in America.
 - a. The Declaration of Independence
 - b. The Declaration of Sentiments
 - c. The Continental Association
 - d. The Gettysburg Address

10. In addition to a demand for the right to vote, what else was a demand that women made during the Seneca Falls Convention?
 - a. Access to education
 - b. Equal pay
 - c. Property rights
 - d. All of the above

11. The language of the women's suffrage amendment, which stated "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex," was introduced in Congress as early as 1878 and named for this leader of the women's suffrage movement.
 - a. Lucy Stone

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13.7 Test Your Knowledge

- b. Lucretia Mott
 - c. Susan B. Anthony
 - d. Elizabeth Cady Stanton
12. What was true of the transformative, but all too brief, period of Reconstruction?
- a. African Americans voted in large numbers.
 - b. African Americans held office in all levels of government.
 - c. The national government acted to protect the rights of African Americans.
 - d. All of the above
13. This man proposed a powerful draft of the 15th Amendment, which would have protected the right to vote on the grounds of race, color, nativity, property, education, and creed.
- a. Henry Wilson
 - b. Andrew Johnson
 - c. Abraham Lincoln
 - d. Andrew Jackson
14. Which of the following was a way that African American voting rights were denied in the years following Reconstruction?
- a. Poll taxes
 - b. Literacy tests
 - c. Intimidation and violence
 - d. All of the above
15. What is the name of the system of laws passed to suppress the African American vote after the ratification of the 15th Amendment?
- a. Black Codes
 - b. Secession
 - c. Jim Crow laws
 - d. Declared the election results null and void
16. Which demographic group was granted citizenship in 1924?
- a. Native Americans
 - b. Chinese immigrants
 - c. World War I veterans
 - d. Everyone living in America over the age of 18
17. The most transformative legislative advance for the protection of voting rights was _____.
- a. The Jim Crow laws
 - b. The Platt Amendment

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13.7 Test Your Knowledge

- c. The Voting Rights Act
 - d. The Bill of Rights
18. The requirement that certain states with poor voting rights histories had to obtain permission from the national government before they changed their voting laws was known as _____.
- a. The 24th Amendment
 - b. Preclearance
 - c. Federalism
 - d. The Civil Rights Act
19. Years after the passage of the Voting Rights Act, the Supreme Court struck down the formula used to apply the preclearance requirement of the Voting Rights Act in which case?
- a. *South Carolina v. Katzenbach*
 - b. *Harper v. Virginia Board of Elections*
 - c. *Giles v. Harris*
 - d. *Shelby County v. Holder*
20. In the Supreme Court, and in the country, debate about the scope of constitutional protections for the right to vote _____.
- a. Ended with the passage of the 14th Amendment
 - b. Continues today
 - c. Was never really a serious debate
 - d. Occurred only in the 1800s

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Module 13: Voting Rights in America 13.7 Test Your Knowledge

Answer Key

1. D
2. D
3. B
4. C
5. A
6. D
7. C
8. A
9. B
10. D
11. C
12. D
13. A
14. D
15. C
16. A
17. C
18. D
19. B
20. B