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Module 13: Voting Rights in America

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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.

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