Operation Protect & Defend – 2020-2021 Program

Celebrating the 14th Amendment to the U.S. Constitution

In 1866, in the wake of the Civil War, the U.S. Congress passed the 14th Amendment to the U.S. Constitution to ensure the rights of freedmen (emancipated slaves) across the country. The 14th Amendment to the U.S. Constitution, ratified in 1868, granted citizenship to all persons born or naturalized in the United States—including former slaves—and guaranteed all citizens "***equal protection of the laws***." One of three amendments passed during the Reconstruction era to abolish slavery and establish civil and legal rights for black Americans, it would become the basis for many landmark Supreme Court decisions over the years.

The 14th Amendment guaranteed the right to not be discriminated against based on race, a concern born of the knowledge that former Confederate States would look to disenfranchise African-Americans. Two years later, Congress found it necessary to supplement the 14th Amendment with the 15th Amendment, designating the right to vote as a specifically protected right in all of the states. While the 15th Amendment may seem redundant, the right to vote has always held a special place in a democratic society and when exercised is a means of ensuring that elected officials protect ALL rights under the Constitution.

Think about the importance of voting and the sacrifices generations before you have made in order to ensure that the vote extends to more and more Americans. As you go through these lessons, consider what role young voters can play in advancing the work of a democratic society. What is your responsibility?

"Nobody will ever deprive the American people of the right to vote except the American people themselves and the only way they could do this is by not voting."

President Franklin D. Roosevelt

"The most significant civil rights problem is voting. Each citizen's right to vote is fundamental to all the other rights of citizenship and the Civil Rights Acts of 1957 and 1960 make it the responsibility of the Department of Justice to protect that right."

Robert F. Kennedy, U.S. Attorney General and U.S. Senator (NY)

"Men and women in my lifetime have died fighting for the right to vote: people like James Chaney, Andrew Goodman and Michael Schwerner, who were murdered while registering black voters in Mississippi in 1964, and Viola Liuzzo, who was murdered by the Ku Klux Klan in 1965 during the Selma march for voting rights."

Jeff Greenfield

"Voting is the foundational act that breathes life into the principle of the consent of the governed."

DeForest Soarie

United States Constitution: Relevant Passages

Article 1, Section 4, Clause 1

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XIV (1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV (1870)

Section 1: 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.

Section 2: The Congress shall have power to enforce this article by appropriate legislation

Amendment XIX (1920)

Section 1: The right of the 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.

Section 2: Congress shall have power to enforce this article by appropriate legislation.

THE VOTING RIGHTS ACT OF 1965: Background

The 14th Amendment, signed into law in 1868, granted African-Americans citizenship and equal protection under the law. Most affected by the new amendment still lived in the South, which had just been defeated in the Civil War. Many whites in the South refused to comply with federal interference of any kind. Because Article 1, Section 4 of the U.S. Constitution left the power of establishing voting requirements to the states, states could establish voting requirements legally in most circumstances. The 15th Amendment, passed in 1870, changed that by granting to the federal government the authority to determine that states could not deny the right to vote on the basis of "race, color or previous servitude." The Enforcement Acts passed that same year gave the federal government the authority to enforce these laws, and this enforcement helped pave the way for over 2,000 African Americans to hold public office at the local, state and federal level of government. This period of stringent federal enforcement and African-American political progress has since been referred to as Radical Reconstruction.

Southern states fought both legally and otherwise against these federal actions. Under the Compromise of 1876, the federal government, which had been dominated by Republicans throughout the period, agreed to lift military rule and the stricter enforcement measures. This paved the way for Jim Crow laws, and a series of voting suppression methods passed by state governments. The grandfather clause (that allowed whites to bypass voting requirements), literacy tests, poll taxes, and other bureaucratic restrictions were used to strip away nearly all of the progress African-Americans had made during Radical Reconstruction.

Following decades of challenges and the Selma March of 1965, President Lyndon Johnson convinced Congress to pass the Voting Rights Act of 1965. The law's most significant sections were Sections 2, 4 and 5. Section 2 prohibited any kind of rules or procedures used to deny the right to vote based on race. Section 4 set criteria for which jurisdictions fell under the provision of the law, recognizing that not all jurisdictions discriminated against people of color regarding voting rights. Section 5 dictated that once a jurisdiction fit the established criteria under Section 4, the jurisdiction must receive permission from the federal government before it makes any changes to the voting requirements of the residents of that jurisdiction. The Voting Rights Act has been extended by Congress with bipartisan support several times, the last time in 2006.

The question now remains whether the Voting Rights Act is still necessary.

THE VOTING RIGHTS ACT OF 1965: A Summary

SECTION 2:

The Act's general provision declaring that **"**no voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color."

SECTION 4:

Subdivision (a) prohibits jurisdictions from requiring a person to comply with any "test or device" to register to vote or cast a ballot.

Subdivision (b) provides a "coverage formula" defining jurisdictions that shall proscribe to special provisions contained in the Act. The formula covers all jurisdictions that (1) maintained "any test or device" as a requirement of registering to vote or casting a ballot in 1964, and (2) less than half the jurisdiction's eligible citizens were registered to vote or voted in the 1964 presidential election. The law was later amended to include 1968 and 1972.

Subdivision (c) defines "test or device" to include (1) literacy tests; (2) educational or knowledge requirements; (3) proof of good moral character, or (4) proving qualifications by the voucher of another person.

Subdivision (d) provides for an exception for jurisdictions that successfully self-police the eradication of "tests or devices."

Subdivision (e) interprets the 14th Amendment to prohibit States from conditioning the right to vote on the "ability to read, write, understand, or interpret any matter in the English language."

SECTION 5:

All jurisdictions covered by the "coverage formula" shall seek federal approval when enacting any new voting qualification or standard different from that in effect on November 1, 1964. The jurisdiction has the burden of showing the changed qualification or standard "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."

An excerpt from President Lyndon Johnson's speech to Congress on the Voting Rights Act (Monday, March 15, 1965)

I speak tonight for the dignity of man and the destiny of democracy…

...This is the first nation in the history of the world to be founded with a purpose. The great phrases of that purpose still sound in every American heart, North and South: "All men are created equal"--"government by consent of the governed"--"give me liberty or give me death." Well, those are not just clever words, or those are not just empty theories…

Many of the issues of civil rights are very complex and most difficult. But about this there can and should be no argument. Every American citizen must have an equal right to vote…

Yet the harsh fact is that in many places in this country men and women are kept from voting simply because they are Negroes.

Every device of which human ingenuity is capable has been used to deny this right. The Negro citizen may go to register only to be told that the day is wrong or the hour is late, or the official in charge is absent. And if he persists, and if he manages to present himself to the registrar, he may be disqualified because he did not spell out his middle name or because he abbreviated a word on the application.

And if he manages to fill out the application he is given a test. The registrar is the sole judge of whether he passes this test. He may be asked to recite the entire Constitution, or explain the most complex provisions of state law. And even a college degree cannot be used to prove that he can read and write.

For the fact that the only way to pass these barriers is to show a white skin…

What happened in Selma is part of a far larger movement which reaches into every section and State of America. It is the effort of American Negroes to secure for themselves the full blessings of American life.

Their cause must be our cause too. Because it is not just Negroes, but really it is all of us, who must overcome the crippling legacy of bigotry and injustice.

And we shall overcome.

The Voting Rights Act was signed into law in August of 1965

VOTING RIGHTS: ESSENTIAL VOCABULARY

1. 14th Amendment

2. 15th Amendment

3. Poll taxes

4. Test or device (i.e., literacy test)

5. Voting Rights Act of 1965

6. Preclearance

7. 10th Amendment

8. Voter ID laws

9. Redistricting

10. At large districts

11. Gerrymandering

12. Racial gerrymandering

13. Political/partisan gerrymandering

14. Efficiency gap

15. Disenfranchise

16. Jurisdiction

17. Remedy

150 Cheers for the 14th Amendment

By Amanda Bellows July 8, 2018, The New York Times

Why are some events forgotten while others loom large in national memory? The Civil War, the deadliest American conflict, is a formative part of our history. Lincoln's Gettysburg Address and Mathew Brady's photographs of soldiers remain etched in the public consciousness. We remember the Emancipation Proclamation, which declared that slaves in Confederate-held territory were from that point free.

But the fundamental story of the 14th Amendment, which extended citizenship to African-Americans, has been overlooked. One hundred and fifty years since the amendment's ratification, that story is worth remembering.

When the Civil War began in 1861, approximately four million African-Americans were enslaved. Lincoln's Emancipation Proclamation, in 1863, left three-quarters of a million people in bondage. Because the proclamation presaged slavery's demise, however, African-Americans across the nation joyfully celebrated its anniversary in the years after.
Only after Confederate defeat in the spring of 1865 did the United States formally and entirely end slavery — ratifying the 13th Amendment later that year. At last, the A.M.E. bishop and former slave W. J. Gaines remembered, "the dark night, so full of suffering and unrequited toil, was gone forever." Even so, African-American freedmen and women were not yet citizens. They remained in a kind of legal limbo in which they lacked constitutionally based civil rights.

For them, the decade of rebuilding that followed the Civil War was at once a time of trepidation and of hope for a better future. Called Reconstruction, it was characterized by political strife, economic peril and racial violence. In 1865, Andrew Johnson, Lincoln's successor, welcomed former Confederates back into the Union, many of whom sought to re-establish control over emancipated African-Americans. Former Confederate states created laws known as "black codes" that restricted former slaves' mobility and choice of employment and denied them civil and political rights. Black codes created conditions that were startlingly similar to slavery in parts of the South.

Congress responded by passing the Civil Rights Act of 1866, which declared that anyone born in the United States was a citizen, and promised African-Americans equal protection under law. Johnson, sparring with Congress, vetoed the bill, but the legislators overrode him. Still, the law did not go far enough to guarantee rights to freed slaves. The Republican-led Congress consequently urged the passage and ratification of an amendment to the Constitution that would make unassailable the definition of American citizenship by birthright.

On July 9, 1868, the required majority of states ratified the 14th Amendment, which granted citizenship to anyone born in the country, including African-Americans. Now, every American born or naturalized in the United States was promised due process and equal protection of the laws. The 14th Amendment also forbade states from passing legislation that restricted the "privileges and immunities" of citizens, without precisely defining what these were.

Would the 14th Amendment adequately safeguard the rights of the nation's black citizens? The abolitionist Frederick Douglass had feared that white Southerners would hardly

"consent to an absolutely just and humane policy toward the newly emancipated black people so long enslaved and degraded." Indeed, in the years that followed Reconstruction, Southern states enacted oppressive laws that segregated blacks and undid the work of the 15th Amendment, in 1870, that granted black men the right to vote.

Some scholars see the 14th Amendment's ambiguity as a weakness. The historian Stephen Kantrowitz argues that "the amendment's failure to specify equality of political rights would haunt the next century of American history." In addition, the Supreme Court interpreted the 14th Amendment narrowly during the late 19th century. In a series of rulings that included Plessy v. Ferguson in 1896, which established the doctrine of "separate but equal," the Supreme Court interpreted the 14th Amendment in a way that did not require the federal government to protect blacks from violence and allowed seemingly race-neutral laws to be applied in unequal ways.

By the turn of the century, black disenfranchisement was nearly complete in the South. In a letter to Harper's Weekly in 1904, a Georgian declared that "the vast majority of Southern Negroes today do not even know that they are entitled to vote."

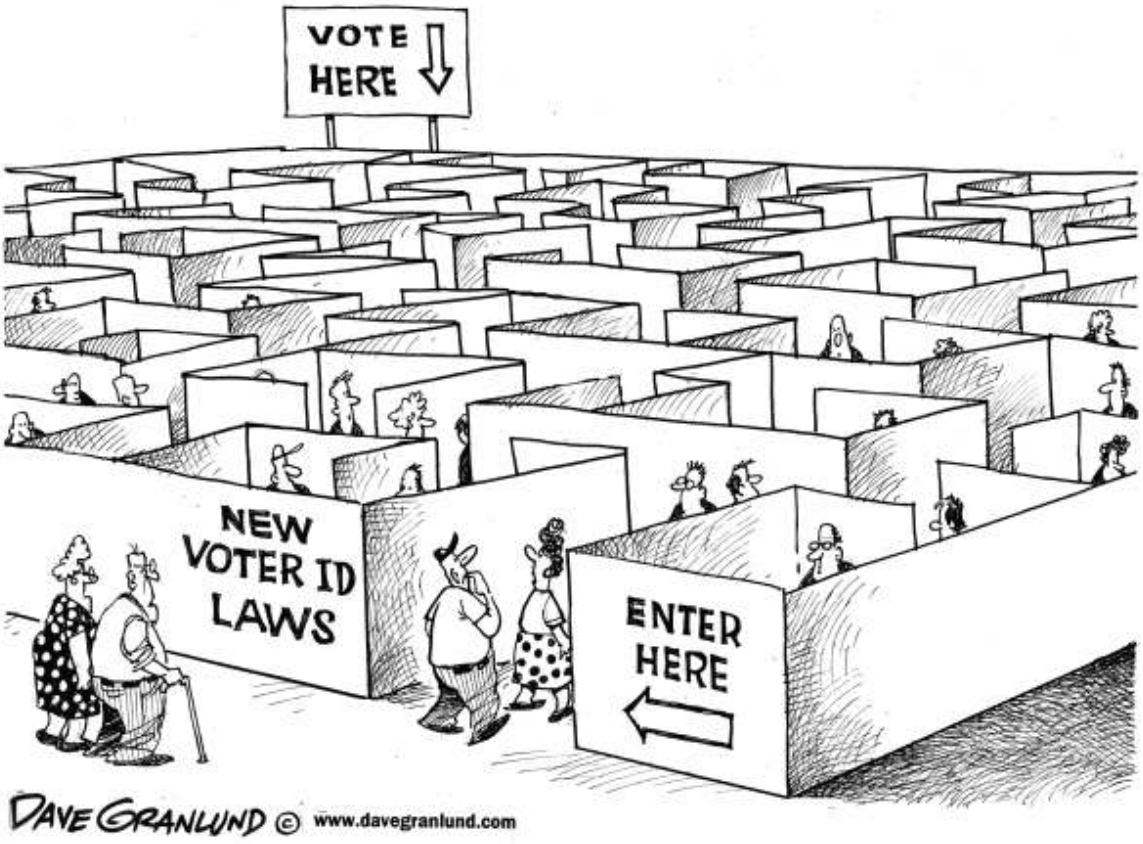
During the civil rights era beginning in the 1950s, however, the Supreme Court reversed course. It found sizable new meanings in the 14th Amendment, holding that it guaranteed desegregated public schools, permitted interracial marriage and ensured equal political representation at the state level. The 14th Amendment also served as the basis for decisions striking down policies that discriminated against pregnant women and denied funding for undocumented children to attend public schools in the 1970s and 1980s. Section 5 of the 14th Amendment gave Congress "power to enforce, by appropriate legislation, the provisions of this article."

An even broader interpretation of the 14th Amendment may reshape American society in the 21st century. In *Zadvydas v. Davis* in 2001, the Supreme Court ruled that indefinite government detention of aliens violated the Constitution's due process clause. More recently, Obergefell v. Hodges in 2015 led to the overturning of states' bans on gay marriage. The court cited the due process clause of the 14th Amendment in the majority opinion, arguing that "the fundamental liberties protected by the 14th Amendment's due process clause extend to certain personal choices central to individual dignity and autonomy, including intimate choices defining personal identity and beliefs."

In the last 50 years, the Supreme Court's evolving interpretations of the 14th Amendment have led to an expansion of civil rights. Its decisions have also produced a system of federalism that significantly differs from that of 1868 through the reallocation of power from the states to the federal government. Thanks to the 14th Amendment, with its plain text authorizing Congress to act in perpetuity, the contours of our federal system continue to shift.

The question remains: How will the Supreme Court interpret the rights promised by this critical amendment in future cases of national importance? We can only hope that, in the words of Frederick Douglass, it will continue to "give full freedom to every person without regard to race or color in the United States." While 150 years have passed since the ratification of the 14th Amendment, it is not too late to give this powerful document its due.

Amanda Brickell Bellows is a lecturer in history at the New School and a project historian at the New-York Historical Society.



Political cartoon analysis:

1. What prior knowledge do you need to have to understand the cartoon?

2. What is the topic of the cartoon?

3. What is the cartoonist's message about this topic?

Mail In/Absentee Voting Cases

During the summer of 2020, the Supreme Court faced a number of absentee voting issues.

- On April 6, on the eve of the Wisconsin primary election, in a 5-4 decision, the Supreme Court reversed a judge's order granting a 6 day extension of the deadline for election officials to receive absentee ballots. In the midst of the COVID-19 crisis, almost one million more voters requested absentee ballots than in 2016. As a result of the Court's decision, thousands of ballots were thrown out for arriving too late. In a forceful dissent, Justice Ginsburg wrote that the majority's decision "boggles the mind" as "a voter cannot deliver . . . a ballot she has not yet received. Yet tens of thousands of voters who timely requested absentee ballots" were asked to do just that.
- On June 26, the Court refused to reinstate a Texas lower court ruling allowing any voter concerned about COVID-19 to request an absentee ballot. Unlike California, many states place significant restrictions on the right to vote absentee or by mail. In Texas, mail-in ballots are available only if voters are 65 or older, cite a disability or illness, will be out of the county during the election period or are confined in jail. There was no reasoning provided by the Court's majority.
- On July 2, the Supreme Court, in an emergency 5-4 ruling, blocked a lower court's decision that, citing the COVID-19 pandemic, would have made it easier for the residents of 3 Alabama counties to vote by absentee ballot in a July 14 primary runoff election. As a result of the Court's decision, absentee ballots had to be accompanied by an affidavit signed by either a notary public or 2 adult witnesses. There was no reasoning provided by the majority.
- On October 5, 2020, the Supreme Court, in another emergency ruling, without objection, temporarily reinstated South Carolina's witness signature requirement for mail-in voting. The rule requires a witness's signature on a voter's ballot envelope before it can be counted.

Mail In/Absentee Voting by State

- 16 states only allow absentee voting for reasons similar to Texas: Alabama, Arkansas, Connecticut, Delaware, Indiana, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, New Hampshire, New York, South Carolina, Tennessee, Texas, and West Virginia.
- 29 states have "no excuse" absentee balloting which means no excuse is needed to obtain an absentee ballot: Alaska, Arizona, California, D.C., Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Wisconsin, and Wyoming.
- 5 states have all mail in ballot elections: Colorado, Hawaii, Oregon, Utah, and Washington.

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

Background of the Case

Congress enacted the Voting Rights Act of 1965 to address entrenched racial discrimination in voting. Section 2 of the Act bans any "standard, practice or procedure" that "results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color" and applies nationwide. Section 4 provides a "coverage formula" defining "covered jurisdictions" as States or political subdivisions that maintained tests or devices as prerequisites to voting and had low voter registration or turnout in the 1960s and early 1970s. Such tests or devices included literacy and knowledge tests, good moral character requirements and the need for vouchers from registered voters. Section 5 applies to those covered jurisdictions and provides that no change in voting procedures can take effect until approved by specified federal authorities in Washington, D.C. This approval is known as "preclearance."

The coverage formula and preclearance requirement were set to expire after five years but have been reauthorized several times including in 2006 when the Voting Rights Act was extended for an additional 25 years. Coverage still turns on whether a jurisdiction had a voting test in the 1960s or 1970s and had low voter registration or turnout during that time.

In June of 1966, the Supreme Court ruled 8-1 in *South Carolina v. Katzenbach* that the Voting Rights Act was Constitutional, noting that the enforcement clause of the 15th Amendment gave congress "full remedial powers" to prevent racial discrimination in voting. The Act was a "legitimate response" to the "insidious and pervasive evil" which had denied blacks the right to vote since the Fifteenth Amendment's adoption in 1870.

In 2010, Shelby County, Alabama, sued the federal government seeking a declaratory judgment that Section 4(b) and Section 5 are facially unconstitutional, as well as a permanent injunction against their enforcement.

Court Ruling

Chief Justice Roberts, who wrote the majority opinion, discussed the history of the Act finding it to be "a drastic departure from basic principles of federalism." The Court noted that the 10th Amendment reserves to the States all powers not specifically granted to the Federal Government, including "the power to regulate elections." The Court also found that Section 4, which applied to nine states and several counties, was "an equally dramatic departure from the principle that all States enjoy equal sovereignty."

The majority acknowledged that "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.'" Citing *Northwest Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009).

The Court was troubled by the preclearance procedure, pointing out that "[t]he Federal Government does not, however, have a general right to review and veto state enactments before they go into effect. A proposal to grant such authority to 'negative' state laws was considered at the Constitutional Convention, but rejected in favor of allowing state laws to take effect, subject to later challenge under the Supremacy Clause."

The Court found Section 4 unconstitutional based on the use of the "coverage formula", which had not been updated since the 1970s. This ruling basically eliminates any remedy of preclearance.

The Court indicated that "[n]early 50 years later, things have changed dramatically. Largely because of the Voting Rights Act, '[v]oter turnout and registration rates' in covered jurisdictions 'now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels.'"

Dissent

Justice Ginsburg, joined by Justices Breyer, Sotomayor and Kagan argued that Congress, after extensive hearings, overwhelmingly voted that Section 5 continue in force unabated and that the Court should defer to that judgment. The minority felt that preclearance had been an effective tool to combat voting discrimination and should have been retained. A study had shown that "[t]he Justice Department estimated that in the five years after [the VRA's] passage, almost as many blacks registered [to vote] in Alabama, Mississippi, Georgia, Louisiana, North Carolina, and South Carolina as in the entire century before 1965."

The dissent quoted the 15th Amendment directly, which targets racial discrimination in voting rights: "Congress shall have power to enforce this article by appropriate legislation." In contrast to the 1st Amendment which states that Congress "shall make no law", the 14th and 15th Amendments give Congress sweeping enforcement powers.

The minority also found that the "bailout" provisions of the Act, later passed by Congress, alleviated any undue burden of preclearance by allowing jurisdictions to be removed after successful application to the Department of Justice.

Critical Thinking Questions: *Shelby County v. Holder*

1. Why shouldn't the federal courts leave elections to the states based on the 10th Amendment?

2. What should a jurisdiction have to show to avoid having to comply with preclearance requirements?

3. What findings should Congress have to make to reauthorize the coverage formula and preclearance requirements?

Veasey v. Abbott, 830 F.3d 216 (5th Cir. 2016) ("*Veasey I*")

Background of the Case

In 2011, the Texas Legislature enacted Senate Bill 14 (SB 14), requiring voters to present specific forms of identification at the polls. These include: (1) a Texas driver's license; (2) a U.S. military ID; (3) a U.S. citizenship certificate; (4) a U.S. passport; (5) a license to carry a concealed handgun; or (6) an Election Identification Certificate. A voter cannot use these forms of ID, if the ID expired within 60 days. Student IDs were not accepted.

Exceptions were given to disabled persons if they provide documentation of their disability. Those without a photo ID can file a provisional ballot and must fill out a form under penalty of perjury stating a religious objection to being photographed or that the ID was lost recently because of a natural disaster. If a voter forgot his or her ID, the voter can cast a provisional ballot after filling out a form under penalty of perjury stating he or she is eligible to vote, and then the voter must produce ID within six days. Voters who are 65 or older may vote early by mail and thus avoid ID requirements at the polls.

Court Ruling

The Fifth Circuit Court of Appeals found the Legislature may have passed SB 14 with the purpose of discriminating against minorities because it knew of the likely disproportionate effect SB 14 had on minority voters and the law was only somewhat related to the Legislature's stated purpose of preventing voter fraud. It also found SB 14 violated Section 2 of the Voting Rights Act because it had a discriminatory effect by burdening Texas voters living in poverty who are less likely to have the required forms of ID and are more likely to be minorities because "they continue to bear the socioeconomic effects caused by decades of racial discrimination." The court, however, did not think all of SB 14 was unlawful and remanded the case for the lower court (the district court) to impose a more suitable remedy.

Abbott v. Veasey, 888 F.3d 792 (5th Cir. 2018) (*"Veasey II"*)

Background of the Case

While *Veasey v. Abbott* was pending for the lower court (the district court) to impose a remedy, the parties developed one on their own for the upcoming election. The Legislature then passed the compromise into law as Senate Bill 5 (SB 5). SB 5 allowed voters without a required ID to cast a regular ballot after completing a "Declaration of Reasonable Impediment" under penalty of perjury stating why they did not have an ID. The seven possible reasons were: (1) no transportation, (2) lack of documents necessary to obtain a required ID, (3) work schedule, (4) lost or stolen ID, (5) disability or illness, (6) family responsibility, and (7) ID applied for but not yet received. SB 5 prohibited election officials from questioning the voter's reason for not having an ID. SB 5 also allowed voters to use an ID that expired more than 60 days before Election Day, and required the state to set up more places for voters to get Election Identification Certificates. Notably, SB 5 fixed each of the problems plaintiffs pointed out in their original lawsuit.

Court Ruling

When analyzing SB 5, the appellate court (Fifth Circuit) noted that it must uphold "an otherwise constitutionally and legally valid [voting] plan ... enacted by the appropriate state governmental unit." The court refused to assume any discriminatory intent by the Legislature in passing SB 14 carried over to and infected SB 5. Because SB 5 obviously improved upon SB 14, plaintiffs had to show the Legislature had a discriminatory purpose when passing SB 5 specifically, which they could not do. Plaintiffs were also not allowed to rely on evidence that SB 14 suppressed minority votes when trying to show SB 5 would do the same. Because plaintiffs had no evidence that SB 5 suppressed minority votes, they could not prove it violated the Voting Rights Act. The court stated that plaintiffs could bring a future lawsuit if SB 5 proved to be unsuccessful at fixing voter suppression.

Critical Thinking Questions: *Veasey v. Abbott*

1. What restrictions would you put on voting to prevent fraud but encourage people to vote?

2. How much should discriminatory intent affect a subsequent legislative fix?

Political cartoon analysis:

1. What prior knowledge do you need to have to understand the cartoon?

2. What is the topic of the cartoon?

3. What is the cartoonist's message about this topic?

Luna v. County of Kern, 291 F. Supp. 3d 1088 (E.D. Cal. 2018)

Background of the Case

On April 22, 2016, plaintiffs, who are Latino citizens and registered voters in Kern County, brought this lawsuit against the County of Kern, California, Kern County's Board of Supervisors, and other County officials, challenging Kern County's 2011 redistricting plan under Section 2 of the Voting Rights Act. Plaintiffs alleged that the County's 2011 redistricting plan impermissibly diluted (weakened) the Latino vote in Kern County and thereby denied Latinos the opportunity to elect representatives of their choice, violating the Equal Protection Clause of the 14th Amendment of the U.S. Constitution.

Court Ruling

After an eleven-day bench trial, Judge Dale Drozd of the U.S. District Court for the Eastern District of California considered several primary questions: Does the number of minority voters in Kern County warrant a second district that is a minority-majority district? What is the extent of any history of official discrimination against Latinos in the state? Is the voting racially polarized (e.g., do Latino voters as a group historically favor the same candidates)? Have members of the minority community been elected to office in this county?

The court held that plaintiffs have established, by a preponderance of the evidence, that (1) the Latino community in Kern County is sufficiently numerous and geographically compact to constitute the majority in a second supervisorial district'; (2) the Latinos in Kern County are politically cohesive; and (3) that the majority in Kern County votes sufficiently as a bloc to usually defeat Latino-preferred candidates." The court reasoned that there is undisputed evidence of historical discrimination against Latinos dating back to the 1920s, when Kern County had some of the largest chapters of the Ku Klux Klan. In the 1960s, the Kern County White Citizens Council emerged to push back against the civil rights movement in Kern County. The system of racial exclusion of Mexican-Americans in education, property laws and public spaces was present throughout the state of California from the 1920s into the 1960s. The court found that "[a]ccordingly, the court concludes that Latino voters in Kern County have been deprived of an equal opportunity to elect representatives of their choice, in violation of Section 2 of the Voting Rights Act."

After the Court Ruling

After the district court's ruling, the district court's decision was not appealed. Instead, the parties reached a settlement. The parties agreed to a new Interim Redistricting Plan, which would be used in the next two elections for the Kern County Board of Supervisors and which the court found was "adequate and necessary to remedy the violation of Section 2 of the Voting Rights Act."

Rucho v. Common Cause, 139 S. Ct. 248 (2019)

Background of the Case

Voters and other plaintiffs in North Carolina and Maryland sued to challenge their states' congressional districting maps claiming the maps were unconstitutional partisan gerrymanders. North Carolina plaintiffs claimed the district plan discriminated against Democrats, while Maryland plaintiffs claimed the district plan discriminated against Republicans. The plaintiffs alleged violations of the First Amendment, the Equal Protection Clause of the 14th Amendment, the Elections Clause, and Article I, §2. The District Court in both cases ruled in favor of the plaintiffs and the defendants appealed directly to the Supreme Court.

Court Ruling

The Supreme Court, in an opinion written by Chief Justice Roberts, held that the issue of partisan gerrymandering is a political question that must be resolved outside the federal courts. While the Court recognized that in both cases before it, partisan gerrymandering had occurred, there are no "judicially discoverable and manageable standards for resolving them" within the bounds of the United States Constitution. The Constitution does not require proportional representation. The Court found that the Framers of the Constitution recognized the issue of partisan gerrymandering and left its resolution to the state legislatures.[1]

Dissent

Justice Kagan, joined by three other Justices, dissented. She wrote that the harm was so egregious in the cases before the Court that a rule could readily be tailored to address it, while leaving lesser violations up to the state legislatures to remedy.

Critical Thinking Questions: *Rucho v. Common Cause*

1. Does this decision allow for an exception to race-based gerrymandering as long as the line-drawers say the right words to justify their decisions?

2. What idea do you have for halting the practice of partisan gerrymandering?

---

[1] On October 28, 2019, a three-judge panel in North Carolina held that North Carolina's congressional districting maps were unconstitutional partisan gerrymanders in violation of the North Carolina state constitution. *Harper v. Lewis* , 19 CVS 012667 (Oct. 28, 2019) (non-published).

Redistricting Exercise: Can you gerrymander?

Legislative districts come in many shapes and sizes. When a Boston paper in 1811 described the shape of a Massachusetts district as a salamander, which was approved by Massachusetts Governor, Elbridge Gerry, his name became synonymous with contorting districts to yield political advantage for parties, interests, or incumbents, often at the expense of minority groups.

The task of redistricting is usually carried out by state legislatures or more local governments for local districts. As of 2018, eight states use redistricting commissions to draw Congressional districts (California included). Redistricting is inherently political and easily turned to the advantage of a particular party or interest, or to incumbents, generally. Although some redistricting plans may be more blatantly political than others, grouping voters in legislative districts usually works to the advantage of some and to the disadvantage of others.

Those disadvantaged by redistricting often go to court, as the plaintiffs recently did in Kern County, California. ***The round of redistricting that followed the 2000 census triggered over 150 lawsuits in at least forty states.***

The cases focus on several questions. The two primary challenges:

1. How much variation in population size between districts is permissible?
2. Does partisan (political party) gerrymandering violate the equal protection clause of the Constitution? (Many of the challenges continue to be based on racial gerrymandering).

The Supreme Court has not yet struck down districts solely on the grounds that they give an unconstitutional political advantage to one political party over another. The Court, in *Thornburg v. Gingles*, has, however, ruled against gerrymanders that dilute (lessen) the power of racial minorities when race or ethnicity was the deciding factor in drawing the district lines.

To better understand the politics of gerrymandering, you are going to do some redistricting. While the grid below shows D for Democrats and R for Republicans, historically those have been W for white and B for black, or in the case of the Kern County districts, W for White and L for Latino. The principal is the same: Give one group a voting advantage over another by drawing convoluted borders.

Exercise No. 1 Instructions: Start with this districting plan. ***Four districts***, ***25 voters in each***, identified by their party. Do a simple count and determine

1. How many Democrats are there total? _____
2. How many Republicans are there total? _____
3. How many of the seats belong to Ds (Democrats)? _____
4. How many belong to Rs (Republicans)? _____
5. Are the seats proportional to the party membership? _____

D	D	R	R	R	R	R	D	R	D
D	D	R	R	R	R	R	R	D	D
D	D	R	R	R	R	R	D	D	D
D	D	R	R	R	R	R	D	R	R
R	D	R	R	R	D	R	D	R	R
R	D	D	D	D	D	D	D	D	R
R	R	D	D	D	D	D	R	D	R
R	R	R	R	D	R	D	D	R	D
R	D	R	D	D	R	D	R	R	D
R	R	D	R	D	D	R	R	R	R

Exercise No. 2 Instructions: Your next task: gerrymander the state into ***four districts*** and give ***Republicans as many seats as possible,*** while making sure that ***25 voters are in each*** district. The districts MUST each be contiguous, which means you can NOT have the district in "pieces"--all the voters in a given district must be connected by your boundary for that district.

1. How many seats are you able to secure for the Republicans? _____
2. Is this proportional to the number of Republican party voters? _____
3. How were you able to draw districts in a way that did not reflect the voter numbers?

D	D	R	R	R	R	R	D	R	D
D	D	R	R	R	R	R	R	D	D
D	D	R	R	R	R	R	D	D	D
D	D	R	R	R	R	R	D	R	R
R	D	R	R	R	D	R	D	R	R
R	D	D	D	D	D	D	D	D	R
R	R	D	D	D	D	D	R	D	R
R	R	R	R	D	R	D	D	R	D
R	D	R	D	D	R	D	R	R	D
R	R	D	R	D	D	R	R	R	R

Exercise No. 3 Instructions: Final task: Gerrymander the state into four districts and give Democrats as many seats as possible while making sure that 25 voters are in each district. The districts much be contiguous, again.

1. How many districts are you able to secure for the Democrats? _____
2. Is this proportional to the number of Democratic party voters? _____
3. How were you able to draw districts in a way that did not reflect the voter numbers?

D	D	R	R	R	R	R	D	R	D
D	D	R	R	R	R	R	R	D	D
D	D	R	R	R	R	R	D	D	D
D	D	R	R	R	R	R	D	R	R
R	D	R	R	R	D	R	D	R	R
R	D	D	D	D	D	D	D	D	R
R	R	D	D	D	D	D	R	D	R
R	R	R	R	D	R	D	D	R	D
R	D	R	D	D	R	D	R	R	D
R	R	D	R	D	D	R	R	R	R