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Voting Issues Today

The Voting Rights Act 1965-2014

Congress tried to eliminate voting discrimination through three different civil rights acts passed between 1957 and 1964, but they all proved ineffective. Under these laws, the U.S. Department of Justice (DOJ) had to bring individual lawsuits to prove that a locality's practice was discriminatory. If the DOJ succeeded, local officials would simply put a new obstacle into place, forcing the DOJ to go back to court and start all over again. The process was painfully slow and disjointed.

Schemes like those in Dallas County that discriminated against black voters could be found throughout the South in 1964, despite being illegal. One of the great accomplishments of the Selma movement was to make it clear to policymakers in Washington that the existing laws didn't work. If they wanted to derail discrimination, more had to be done.

The Voting Rights Act of 1965 was different from previous laws. First, it affirmed the right to vote throughout the nation and outlawed practices that kept black people from voting. In addition to these provisions that applied everywhere, the Act included special rules for states and localities that had a history of voter discrimination.

Places covered by the special provisions were not allowed to make any changes that affected voting without "preclearance" from the U.S. attorney general or the U.S. District Court for the District of Columbia. And the burden of proving that the change wouldn't have a discriminatory effect was on the jurisdiction, not the DOJ. In addition, the attorney general could dispatch federal examiners to oversee voter registration and federal observers to monitor the polls on election days.

What places were subject to these provisions? According to the law, any jurisdiction that had used a "test or device" to restrict registration or where less than 50 percent of eligible voters were registered to vote. Nine entire states—Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia—qualified for the special treatment, as did parts of California, Florida, New York, Michigan, North Carolina and South Dakota.

These provisions stood—and were strengthened by Congress—until 2013, when the *Shelby County v. Holder* case came before the U.S. Supreme Court. In the *Shelby County* case, the court ruled that it was no longer fair to require these jurisdictions to submit proposed changes to their voting procedures to the DOJ for its approval. The reason? The court said that the preclearance requirement of the Voting Rights Act had accomplished its purpose as evidenced by the fact that black citizens in the South were now registered and voted at the same rates as white citizens.

The court's ruling, however, was not a unanimous one. The justices who disagreed with the majority's decision said that the Voting Rights Act's preclearance requirement was the reason why Southern states had made progress and that it was still necessary to prevent voting discrimination. "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," Justice Ruth Bader Ginsburg wrote in her dissenting opinion.

The impact of the Supreme Court decision on the power of the Act to protect voting rights remains to be seen.

Focus Questions

Why was the federal government unable to effectively protect the right to vote before passage of the Voting Rights Act?

How does the Voting Rights Act compare to the 15th Amendment? What's similar, and what's different?

What did it mean to be subject to "preclearance"? What jurisdictions were affected?