

# UNiversitas: Journal of Research, Scholarship, and Creative Activity

---

Volume 11  
Number 1 *Forum Theme 1: Building a Culture of Academic Integrity & Forum Theme 2: Constitution Day 2015: The Voting Rights Act of 1965*

---

Article 13

3-2016

## The Voting Rights Act at Today's Supreme Court

Scott Peters

University of Northern Iowa, [scott.peters@uni.edu](mailto:scott.peters@uni.edu)

Follow this and additional works at: <https://scholarworks.uni.edu/universitas>

*Let us know how access to this document benefits you*

Copyright ©2016 Scott Peters

---

### Recommended Citation

Peters, Scott (2016) "The Voting Rights Act at Today's Supreme Court," *UNiversitas: Journal of Research, Scholarship, and Creative Activity*. Vol. 11: No. 1, Article 13.

Available at: <https://scholarworks.uni.edu/universitas/vol11/iss1/13>

This Forum Theme 2 is brought to you for free and open access by UNI ScholarWorks. It has been accepted for inclusion in UNiversitas: Journal of Research, Scholarship, and Creative Activity by an authorized editor of UNI ScholarWorks. For more information, please contact [scholarworks@uni.edu](mailto:scholarworks@uni.edu).

**Offensive Materials Statement:** Materials located in UNI ScholarWorks come from a broad range of sources and time periods. Some of these materials may contain offensive stereotypes, ideas, visuals, or language.



## The Voting Rights Act at Today's Supreme Court

Part of the journal section "Forum: Constitution Day 2015: The Voting Rights Act of 1965"

Scott Peters "The Voting Rights Act at Today's Supreme Court"

1. Professor Johnson mentioned that the Voting Rights Act is often seen as the most successful piece of civil rights legislation. I would actually go farther than that. I would say if one was to make a list of the top ten most effective pieces of legislation by the U.S. Congress, the 1965 Voting Rights Act would be up near the top. **It quickly achieved its desired effect.[1]** Within two years after its passage, voter registration levels among African-Americans increased in every state of the old Confederacy, often dramatically. In Mississippi, where fewer than 10 percent of eligible Black voters were registered before the Act, by late 1967, 60 percent of such voters were registered. The gap in registration between Whites and Blacks had also narrowed considerably and would continue to narrow throughout the late 1960s and early 1970s. Today there is a slight difference in registration rates between African Americans and Whites, but most of that can be attributed to differences in education levels and income levels, education and income being two factors we know significantly affect the likelihood of voting.

2. As I see it, there are three major ongoing issues with the Voting Rights Act today, two of which I will focus on here. The first of these issues, which I will mention only briefly, is sometimes referred to as "racial gerrymandering," or the drawing of voting district boundaries to enhance the representation of racial minorities. That is, one can draw legislative districts to try ensure that members of underrepresented groups get represented in legislatures. This is permissible under the Voting Rights Act, with some limitations. Of course, the ability to control district boundaries can also be used to dilute minority representation, which is forbidden under the VRA. As one might imagine, these issues can be quite thorny: there is a fine line between, on the one hand, enhancing minority representation by creating districts where a racial or ethnic minority is more likely to be elected and, on the other, packing so many racial or ethnic minority members into several voting districts that all other surrounding districts become more White, thus effectively diluting minority representation. The Supreme Court has heard and continues to hear a number of cases about these issues, most recently *Alabama Legislative Black Caucus v. Alabama* (2015).

3. The second significant ongoing issue with the Voting Rights Act stems from a 2014 Supreme Court decision that struck down a key part of the Act, *Shelby County v. Holder*. In order to understand this decision, it is necessary to provide a short overview of the legislation itself. In order to do that I want to point three key parts of the law. Section 2 is the main part of the law. It prohibits the use of any discriminatory qualifications, rules or practices that either deny the vote or dilute the vote. The law can

be enforced either by the United States bringing suit against the state that's alleged to have violated it, or by individual citizens bringing suit and alleging that their rights have been abridged. Section 4 is what is referred to as the "coverage provision," and it designates certain jurisdictions—states and some particular counties—that, based on a formula based on pre-1965 voter registration levels, are subject to something called "preclearance" from the U.S. Department of Justice. The preclearance provision is set out in Section 5 of the law. In short, **covered jurisdictions**, as defined in Section 4, were required under Section 5 to get the approval of the Justice Department *before* they did anything to change their voter qualifications, voting rules, voter districts, or electoral boundaries.

4. In the *Shelby County* case, the Supreme Court reviewed Sections 4 and 5 of the Act. Although the Court left Section 5 undisturbed, it ruled that the formula relied upon in Section 4 was no longer rationally connected to the goal of combating racial discrimination in voting because the criteria it used was largely based on pre-1965 facts. The effect of this decision is that currently no jurisdiction is subject to the Act's Section 5 preclearance provision.

5. If Congress could create new criteria, a new formula that would replace Section 4, then those newly covered jurisdictions would be required to get preclearance for any changes to their voting systems. Congress, you may have noticed, cannot pass much of anything these days so the likelihood of this being passed in the near future is pretty low. For the moment, then, states can effectively do anything with their voting laws without getting prior approval of the federal government. Now, keep in mind that the United States or affected individuals can always file suit under Section 2, but this can only happen after those laws go into effect; there is no longer the safeguard of preclearance.

6. This ruling comes at a particularly interesting time, because states have been quite active in recent years in enacting restrictive voting provisions, particularly restrictions on voter registration. This map indicates states that, since 2010, have **increased voting restrictions**.<sup>[2]</sup> One may notice that roughly half of the states that have increased voting restrictions are the states that were covered under Section 4 of the VRA. A number of these states have been enacted not just voter ID laws, which is the most common new restriction enacted, but they have also scaled back on early voting, reduced the number of alternate voting sites, and decreased support of voter registration drives.

7. Why is this happening? These laws are relatively recent, and it takes social scientists some time to study such things, but a few pretty good studies have come out that sheds some light on such events. UNI's Ramona McNeal has done research on this with a coauthor. They look back a little farther than 2010 and find that restrictive voting laws happen in states where Republicans control the legislature or the gubernatorial seat, and in states that have higher levels of racial diversity (Hale and McNeal 2010). Bentele and O'Brien (2013) have more recently found that the number of proposals for restrictive voting laws are largely driven by the levels of minority turnout in the previous election, as well as by things like the number of illegal immigrants in the area and increased turnout among lower classes. Passage of such laws is driven primarily by who controls the legislature, with such laws much more likely to pass when Republicans are in charge. They are also more likely to pass if elections are competitive and in states that have larger levels of minority turnout. Hicks, et al. (2014) confirms these findings and offers a more cohesive explanation. As they see it, voting rights are being used today in a partisan way: restrictive voting laws are used to demobilize the opposition, making it harder for the opposing party's supporters to vote. In short, access to the franchise is increasingly becoming a

partisan political issue. Democrats support increasing access to the franchise, knowing very well that probably means that they are going to get more votes, while Republicans support more restrictions to the franchise, knowing that will probably benefit them at the polls.

8. The rationale for a lot of voter restrictions is based in legitimacy of elections and the desire to make sure that only qualified voters are voting. But one recent study (Bowler et al. 2015) found very little linkage between voter ID laws and confidence in elections. In fact, confidence seems to stem from the professionalism and the quality of administration of election laws. The authors use a 17-point index that measures how well elections are administered; it includes things like how many absentee ballots are uncounted, how many provisional ballots are filed, how many provisional ballots are uncounted, and other indicators of effective, well-run elections. States that had higher ratings on this score saw higher levels of confidence in their elections. Voter ID law had no effect, though it is interesting to note, given the partisan nature of this issue, that Republicans were less confident in the fairness of elections than Democrats were.

9. There is, in fact, very little evidence of in-person voter fraud in the US. Justin Levitt, a law professor at Loyola Law School, Los Angeles, keeps tabs on investigations around the country about voter fraud and he's found a total of [31 cases since 2000](#) where people may have cast a fraudulent vote. On the other hand, while many argue that requiring a voter ID depresses voter turnout, so far the best carried out social science studies on this have had mixed findings. A couple of studies have found yes maybe it depresses turnout, especially among democratic voters. But several other very well done studies have found little effect on turnout. There is not very overwhelming evidence at this point that these laws do in fact depress turnout.

10. One quick note before I wrap up, the next battle at the Supreme Court is coming during the current Supreme Court term. In the case *Evenwell v. Abbott*, the Supreme Court is considering what "one person, one vote" means. The Supreme Court has said since 1960s that states must draw districts according to the one person one vote principle, attempting to equalize representation among districts as much as possible. The question before the Supreme Court this term is, Who is that one person? On what basis should districts be equalized? Should it be measured by total population or by the total number of eligible voters? [This map](#) depicts districts where a relatively low share of the population is comprised of people who are eligible to vote. Another way to look at it would be that these are parts of the country with very high levels of undocumented immigrants who are noncitizens and therefore not qualified to vote. If the Supreme Court were to rule that "one person, one vote" means "one eligible voter, one vote," states' electoral maps could change considerably with significant effects that would probably shift political influence within many states away from more urban, Democratic parts of the state to more rural, Republican-leaning parts of many states. Although it does not directly involve the Voting Rights Act, it could have serious ramifications for how states and localities draw districts, and without preclearance provisions in effect the Justice Department will have a harder time monitoring the effects of such changes.

#### References

Bentele, Keith G. and Erin E. O'Brien. 2013. "Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies." *Perspectives on Politics*, 11(4): 1088-1116.

Bowler, Shaun, Thomas Brunell, Todd Donovan and Paul Gronke. 2015. "Election Administration and Perceptions of Fair Elections." *Electoral Studies*, 38(June): 1-9.

Hale, Kathleen and Ramona McNeal. 2010. "Election Administration Reform and State Choice: Voter Identification Requirements and HAVA." *Policy Studies Journal*, 38(2): 281-302.

Hicks, William D., Seth C. McKee, Mitchell D. Sellers, and Daniel A. Smith. 2015. "A Principle or a Strategy? Voter Identification Laws and Partisan Competition in the American States." *Political Research Quarterly*, 68(1): 18-33.

Lind, Dara. 2015. "19 Maps and Charts That Explain Voting Rights in America." *Vox*. <http://www.vox.com/2015/8/6/9107183/voting-rights-map-chart>

---

[1] Several charts linked to in this presentation came from an informative post at the online magazine Vox (Lind 2015).

[2] It should be noted that this map is very broad in how it defines new voting restrictions. Iowa classifies here as a state that has enacted new voting restriction simply because Governor Branstad upon taking office reversed an executive order of Governor Culver's that had allowed former felons to have the right to vote. Under this broad criteria used in this map, this action counts as restrictive voting measure since it took away the right to vote from people who had it previous to that time. Also, to be fair, some states have enhanced access to the ballot. A current round-up can be found at <https://www.brennancenter.org/analysis/voting-laws-roundup-2015>.



This work is licensed under a [Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License](https://creativecommons.org/licenses/by-nc-nd/4.0/)

