Recognizing the 50th Anniversary of the Voting Rights Act

By James D. Wascher

Too many of us probably take our right to vote for granted. We never should, because so many Americans have struggled so hard and sacrificed so much to win that right. In the earliest days of our republic, the franchise was largely limited to free, white, male property owners. Property ownership requirements gradually fell by the wayside. Women gained the ballot when the 19th Amendment to the Constitution was ratified in 1920.[1] But racial barriers to voting remained rigid, especially in the deep South, even though the 15th Amendment to the Constitution has provided since 1870 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."

The Voting Rights Act of 1965[2] changed all of that, sweeping aside state and local laws and procedures that had disenfranchised hundreds of thousands of African-Americans, primarily in the South[3], and permanently changing the landscape of American politics. Historians have rightly called the Act the most effective civil rights legislation ever adopted.[4] It is essential for us to remember why such a law was even necessary just 50 years ago.

The 15th Amendment was one of three post-Civil War Reconstruction amendments to the Constitution that together abolished slavery and were intended to ensure that African-Americans enjoyed the full benefits of citizenship, including the right to vote. When Congress passed the 15th Amendment and sent it to the states for ratification in February 1869, only eight out of 26 northern and border states permitted blacks to vote.[5] Ironically, all 11 of the former Confederate states actually allowed blacks to vote at that time—but only because the Reconstruction Act of 1867 required these states to do so as a condition of being readmitted to the Union.[6] In fact, the readmission of Georgia, Texas, Virginia, and Mississippi later was conditioned on their ratification of the 15th Amendment itself.[7] The amendment would not have been adopted without the approval of those states.

For a brief period then, African-Americans enjoyed significant political power in the South. About 735,000 blacks—or more than 90 percent of adult black males—registered to vote in the South, compared with about 635,000 whites.[8] Hundreds of African-Americans were elected to state legislatures throughout the South.[9] The Mississippi state legislature elected two black men, Hiram R. Revels and Blanche K. Bruce, to the U.S. Senate, where Revels filled the vacancy left by Jefferson Davis when he resigned from the Senate to become president of the Confederate States of America.[10] Twenty other African-Americans were elected to the U.S. House of Representatives, and still others won statewide office in positions such as lieutenant governor, secretary of state, and supreme court justice.[11]

The deadlocked presidential election of 1876 proved to be the undoing of African-American political rights in the South. To obtain the disputed electoral votes of Florida, Louisiana, and South Carolina, allies of Republican candidate Rutherford B. Hayes apparently agreed to the withdrawal of federal troops from the South, effectively ending the Reconstruction era.[12] In short succession, most blacks were excluded from the political process in the South by an array of electoral changes, such as:

- At-large elections in areas where whites held a majority.
- Annexation of white neighborhoods into communities that had African-American majorities, or disconnection or retrocession of black neighborhoods from such communities.
- "White primaries" that excluded blacks from voting in the only election that really mattered (the Democratic primary).
- Consolidation of polling places to make them more cumbersome to get to.
- Failure to open polling places in black precincts, closing them early, or moving them without notice during election day
- Gerrymandering of legislative districts.[13]

Less subtle methods, including intimidation, violence, and

fraud, were also utilized to suppress African-American electoral participation.[14]

Members of Congress made one last attempt to revive enforcement of the 15th Amendment in 1890, when Massachusetts Congressman Henry Cabot Lodge[15] proposed legislation providing for federal boards of canvassers, to be appointed by the appropriate federal circuit court, that "would monitor elections, inspect registration lists, challenge doubtful voters, and, most important, certify the final count."[16] The Lodge Federal Elections Bill passed the House of Representatives 155-149 on a virtual party-line vote (with all Democrats against and all but two Republicans for), but it died after a massive filibuster in the Senate. It would be another 67 years before Congress passed any voting-rights legislation.

Southern political leaders were not satisfied with reducing the size of the black electorate, and they sought to eliminate it entirely soon after the Lodge bill was pigeonholed. Between 1890 and 1908, states across the South adopted new constitutions, amended their constitutions, or adopted legislation designed to ensure that no African-Americans would be able to register to vote. These measures included lengthy state, county, city, and even precinct residency requirements; literacy tests or "understanding clauses" that would require an applicant to interpret a clause of the state constitution to the satisfaction of a local registrar; property ownership requirements; poll taxes; and "grandfather clauses," which enfranchised only those whose father or grandfather had been eligible to vote in 1867—that is, whites only.[17] All of these constitutional and statutory provisions were race-neutral on their face, but their intent was bluntly explained by the president of the 1898 Louisiana state constitutional convention: "What care I whether it be more or less ridiculous or not? Doesn't it meet the case? Doesn't it let the white man vote, and doesn't it stop the negro from voting, and isn't that what we came here for?"[18] These measures were extraordinarily successful in disenfranchising African-Americans in the South. For example, black voter registration in Louisiana declined from 130,344 in 1897 to 5,320 just three years later.[19]

In the years following the wholesale disenfranchisement of African-Americans in the South, the battle to regain the right to vote was fought mainly in the courts, with varying degrees of success, by the National Association for the Advancement of Colored People (NAACP) under the leadership of future Supreme Court Justice Thurgood Marshall. The NAACP's greatest success in this area came in 1944, when the Supreme Court ruled that the white primary was unconstitutional and opened the way for African-Americans to vote in Democratic primary elections in the South.[20] Black voter registration in the South increased significantly after this decision, rising from 3% in 1940 to 29.4% by 1962.[21]

Beginning in 1962, other civil rights organizations took a different, more direct approach, launching voter-registration drives throughout the South, where they were particularly successful in urban areas. But the Student Nonviolent Coordinating Committee (SNCC) and the Congress of Racial Equality (CORE) also ventured into more rural areas where governmental and private resistance was especially fierce—and often violent.[22] SNCC's Bernard and Colia Lafayette went to Selma, Alabama, to open a field office in October 1962 to assist local activists in their efforts to register other blacks to vote.[23] At the time, only 156 of the 15,000 voting-age African-Americans "were registered in Selma's Dallas County, and only seventy-five even tried to register during the entire decade since 1952—all rejected, including twenty-eight college graduates."[24] The SNCC-supported voter-registration campaign, including marches, demonstrations, mass meetings, sit-ins, and "freedom schools" to teach prospective registrants the skills necessary to satisfy Alabama's onerous registration requirements, continued in Dallas County through 1963 and 1964. Those involved were subjected to beatings—Bernard Lafayette was pistol-whipped—arrests, and other forms of harassment.[25]

In the meantime, acting under authority granted by the Civil Rights Act of 1957,[26] attorneys from the Department of Justice fanned out across the South to identify jurisdictions where African-Americans had been disenfranchised in violation of the 15th Amendment and the 1957 Act. Among the first of the 61 voting-rights lawsuits filed by the Justice Department between January 1961 and June 1964 was the April 13, 1961, action seeking to enjoin the Dallas County Board of Registrars from discriminating against black applicants. It took 13 months for the case to come to trial, after which U.S. District Court Judge Daniel H. Thomas found that there was no basis for an injunction against the current board of registrars, since the violations had been committed by a prior board. The U.S. Court of Appeals for the Fifth Circuit reversed Judge Thomas on Sept. 30, 1963, and directed him to enjoin the discriminatory practices in Dallas County. Judge Thomas obliged, issuing a permanent injunction on Nov. 1, 1963. More than one year later, on Jan. 23, 1965, Judge Thomas issued a temporary restraining order prohibiting local officials, including Dallas County Sheriff Jim Clark, from interfering with registration efforts. On Feb. 4, 1965, Judge Thomas ordered the Board of Registrars to speed up the process—it was accepting only 100 applications on each of the two days per month that it was open—and set a July 1, 1965, deadline for registering all those who were eligible and wished to enroll.[27] Then-Assistant Attorney General for Civil Rights John Doar[28] wrote that "the litigation method of correction has been tried here [in Dallas County] harder than anywhere else in the South."[29]

Despite the heroic efforts of local civil rights leaders in Selma, SNCC and CORE representatives and Justice Department lawyers, only 179 new black voters had been added to Dallas County's rolls by December 1964 for a total of 335, or just about two percent of those eligible.[30] Local leaders then appealed to Dr. Martin Luther King Jr. and the Southern Christian Leadership Conference (SCLC) to assist them in their voting-rights campaign. King arrived in Selma on Jan. 2, 1965, and declared that "we will seek to arouse the federal government by marching by the thousands by the places of registration" and, if necessary, mounting another massive march on Washington, D.C., to "appeal to the conscience of the Congress" for voting-rights legislation.[31] The ensuing Alabama Project included mass meetings, marches to the courthouse in Selma, and boycotts of white-owned businesses. Sheriff Clark personally directed the official response to these protests, ordering the arrest of so many men, women, and children, including King himself, that King would write that "there are more Negroes in jail with me than on the voting rolls" in Dallas County. Clark himself punched an SCLC minister in the mouth and manhandled two female protesters, all within view of television news cameras.[32] Alabama state troopers attacked a night-time march in nearby Marion, after which a trooper shot Jimmie Lee Jackson as he was attempting to protect his mother from other troopers. Jackson

died eight days later, and his death prompted plans for a protest march from Selma 54 miles to the state capital in Montgomery.[33]

On Sunday, March 7, 1965, 600 marchers—both black and white—set out from Brown Chapel in Selma, led by SNCC Chairman John Lewis, now a congressman from Georgia, and Rev. Hosea Williams of SCLC. Just outside of town, after crossing the Edmund Pettus Bridge over the Alabama River, the march was stopped by a line of Alabama state troopers and a mounted civilian "posse" organized by Clark. After ordering the marchers to disperse, the troopers attacked with nightsticks and tear gas. The posse men followed, using clubs, whips, and barbed truncheons. In the chaos, Lewis's skull was fractured and 55 other marchers were injured badly enough to be sent to the hospital. An ABC television news crew rushed its film of the "Bloody Sunday" carnage to New York City, and, that night, ABC interrupted the premiere of *Judgment at Nuremberg*, a movie about the trial of Nazis accused of genocide, to show 15 minutes of footage depicting the attack, provoking outrage across the country.[34] The aborted march "proved to be the defining moment of the campaign, and in some ways the defining moment of the civil rights movement as a whole."[35]

Just eight days later, on March 15, 1965, President Lyndon B. Johnson appeared before a joint session of Congress and a national television audience to present a voting-rights bill of unprecedented scope. Johnson affirmed that "[t]here is no constitutional issue here. The command of the Constitution is plain. There is no moral issue. It is wrong—deadly wrong—to deny any of your fellow Americans the right to vote in this country. There is no issue of states' rights or national rights. There is only the struggle for human rights." He declared that "[w]hat 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 then came a thunderbolt, echoing the ubiquitous civil rights anthem of the era: "And we *shall* overcome."[36]

It had been just after his landslide election victory over Sen. Barry M. Goldwater in November 1964 that Johnson had directed Attorney General Nicholas Katzenbach "to write the goddamnedest toughest voting rights act that you can devise."[37] Katzenbach immediately assigned a team of Justice Department attorneys, led by Harold H. Greene of the Civil Rights Division and Sol Linderbaum of the Office of Legal Counsel, to draft proposed legislation to end African-American disenfranchisement, both with and without a constitutional amendment.[38] It was their bill—later laboriously tweaked by Senate Minority Leader Everett M. Dirksen and Majority Leader Mike Mansfield—that Johnson presented to the Congress. At about the same time that he gave Katzenbach his orders, however, Johnson had warned King that he did not think he could get a voting-rights bill through the Congress in 1965 without risking the loss of Southern congressional support for his Great Society programs.[39]

But the nationwide furor over Bloody Sunday gave Johnson both the resolve and the public support necessary to win both speedy and overwhelming approval of the Voting Rights Act. The House Judiciary Committee began hearings on the bill on March 18, 1965, just one day after the president formally presented the legislation to the Congress[40], and Senate hearings followed just five days later. The Senate passed the Voting Rights Act by a vote of 77-19 on May 28, 1965. The House adopted its own version on July 9, 1965, by a vote of 333-85, with strong bipartisan support in both chambers. After a conference committee resolved the differences between the two bills and each house approved the conference report, Johnson signed the legislation on Aug. 6, 1965. At his farewell press conference as president in January 1969, Johnson said that the Voting Rights Act was his greatest accomplishment. "I think it is going to make it possible for this Government to endure, not half slave and half free, but united."[41]

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The key provisions of the Voting Rights Act included:

- Section 2, which prohibited any state or political subdivision from enacting or enforcing any voting qualifications or prerequisites to voting, or procedures, standards, or practices that "deny or abridge the right to vote on account of race or color."
- Section 4, which created an "automatic trigger" for the review of new voting procedures, standards, or practices in any state or political subdivision that had used a discriminatory voting "test or device" in 1964 and where less than 50 percent of age-eligible persons were registered to vote or less than 50 percent of such persons actually voted in the 1964 presidential election. The automatic trigger originally applied to the states of Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia and to portions of Arizona, Hawaii, Idaho, and North Carolina. Section 4 also suspended existing tests and devices in the covered jurisdictions.
- Section 5, which required a state or political subdivision that was subject to the automatic trigger to submit any new voting qualification, prerequisite to voting, or standard, practice, or procedure for prior approval by the Justice Department or a three-judge federal district court panel in the District of Columbia. This practice became known as pre-clearance.
- Sections 6, 7, and 8, which authorized the attorney general to send federal voting "examiners" and "observers" to ensure that legally qualified persons could register to vote and then vote in all elections.

Although the so-called "special provisions" of the Voting Rights Act, including sections 4 and 5, were originally set to expire after five years, Congress extended them for another five

years in 1970, seven more years in 1975, an additional 25 years in 1982, and, most recently, for another 25 years in 2006. The 1970 extension amended the Section 4 automatic trigger formula by replacing 1964 election turnout data with 1968 data, and this new formula remained in place through all subsequent extensions. In 2013, the Supreme Court ruled that the Section 4 automatic trigger formula, as amended in 1970, was unconstitutional because its reliance upon data that was more than 40 years old no longer justified the intrusion of the "special provisions" on principles of federalism and state sovereignty.[42] By effectively eliminating the pre-clearance requirements of Section 5, the Supreme Court left the post hoc litigation remedy of Section 2 as the Voting Rights Act's only enforcement mechanism.

The 1975 extension expanded the protections of the Voting Rights Act to language minorities, including Hispanics and Asian-Americans. The 1982 extension amended Section 2 of the Act to provide that courts could find a voting practice to be discriminatory without proof that it was intended to be, so long as it had discriminatory results, overruling the Supreme Court's decision in *City of Mobile v. Bolden*, which had held that Section 2 only barred voting tests or devices that were "motivated by discriminatory purpose."[43]

The results of the Voting Rights Act—both immediate and long-term—have been dramatic. Federal examiners registered more than 27,000 African-American voters in nine counties in Alabama, Louisiana, and Mississippi within 19 days after the Act became effective[44], and more than 150,000 in five states by 1967. Another 780,000 registered with local authorities[45], often with the help of SNCC, CORE, SCLC, and other organizations. The proportion of African-Americans registered to vote in the South rose from 43 percent in 1964 to 61 percent in 1968, increasing from 7 percent to 59 percent in Mississippi, from 23 percent to 57 percent in Alabama, and from 32 percent to 59 percent in Louisiana.[46] Cager Lee, whose grandson Jimmie's death spurred the Bloody Sunday march and whose own father had been sold at a slave market, registered to vote on Aug. 20, 1965.[47] In the 1966 primary election for Dallas County sheriff, Jim Clark lost his bid for re-election—on the strength of African-American votes—but only after the Justice Department successfully sued under the Voting Rights Act to force the Dallas County Democratic Party to count many of those votes.[48]

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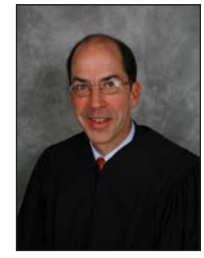
On the other hand, what was once known as the "Solid South"—because it was solidly Democratic in national, state, and local elections—has become solidly Republican. At the time that the Voting Rights Act was adopted, only two of the 22 senators from the states comprising the old Confederacy were Republicans: John Tower, who was elected in 1961 to succeed Lyndon Johnson representing Texas, and Strom Thurmond who, although elected as a Democrat, switched parties in 1964 to support Barry Goldwater against Johnson. Today, every single senator from the old Confederacy is a Republican. The South has formed the foundation for the electoral vote total of every successful Republican presidential candidate since 1988.

In his recent book on the Voting Rights Act, historian Gary May wrote that the Act has "transformed American democracy and in many ways was the last act of emancipation, a process Abraham Lincoln began in 1863." [52] We commemorate—and celebrate—its 50th anniversary this coming August. ☉



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Endnotes

[1]Alexander Keyssar, The Right To Vote: The Contested History of Democracy in the United States, 5-7 and Tables A4 to A-9, Basic Books 2000; "Voting Rights Timeline," American Civil Liberties Union, March 4, 2005, www.aclu.org/news/NewsPrint.cfm?ID=17621&c=32.

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[3]Gary May, Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy, 5, Basic Books 2013.

[4]Richard H. Pildes, "Introduction," in David L. Epstein, Richard H. Pildes, Rodolfto O. de la Garza and Sharyn O'Halloran, eds., The Future Of The Voting Rights Act, xi, Russell Sage Foundation, 2006.

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[6]*Id.* at 92; Eric Foner, Reconstruction: America's Unfinished Revolution 1863-1877, 276, Harper & Row 1988.

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[8]Xi Wang, "Rebuilding African American Voting Rights in the Nineteenth Century," in Richard M. Vallely, editor, The Voting Rights Act: Securing the Ballot, 9, CQ Press 2006.

[9]Eric Foner, *supra* note 6, at 355.

[10]*Id.* at 539; Philip Dray, Capitol Men: The Epic Story of Reconstruction Through the Lives of the First Black Congressmen, 59-60, Houghton Mifflin Company 2008.

[11]Eric Foner, *supra* note 6, at 353; Richard M. Vallely, The Two Reconstructions: The Struggle for Black Enfranchisement, 78-79, The University of Chicago Press 2004.

[12]Xi Wang, *supra* note 8, at 15.

[13]Gary May, *supra* note 3, at xi-xii; Alexander Keyssar, *supra* note 1, at 105.

[14]Richard M. Vallely, *supra* note 11, at 91-92; Alexander Keyssar, *supra* note 1, at 105-106; Garrine P. Laney, The Voting Rights Act of 1965, as Amended: Its History and Current Issues, 2, Congressional Research Service 2002.

[15]Lodge was later elected to the U.S. Senate from Massachusetts and, as chairman of the Senate Foreign Relations Committee, spearheaded the successful effort to reject ratification of the Treaty of Versailles after World War I.

[16]Xi Wang, *supra* note 8 at 16.

[17]C. Vann Woodward, Origins Of The New South 1877-1913, 321-349, Louisiana State University Press 1971; Alexander Keyssar, *supra* note 1, at 111-115.

[18]*United States v. Louisiana*, 225 F. Supp. 353 (E.D. La. 1963) (quoting Ernest B. Kruttschnitt).

[19]*Id.*

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[21]David Garrow, Protest at Selma: Martin Luther King, Jr. and the Voting Rights Act Of 1965, 7, 11,19, Yale University Press 1978.

[22] Steven F. Lawson, Running for Freedom: Civil Rights and Black Politics in America Since 1941, 85, Temple University Press, 1991.

[23]Gary May, *supra* note 3, at 12.

[24]Taylor Branch, Pillar Of Fire: American In The King Years 1963-65, 63, Simon & Schuster 1998.

[25]Gary May, *supra* note 3, at 12-24, 30-40.

[26]The third volume of Robert A. Caro's magnificent biography of Lyndon Johnson, Master Of The Senate: The Years Of Lyndon Johnson, Alfred A. Knopf 2002, tells how Johnson, as majority leader of the Senate, secured the adoption of the Civil Rights Act of 1957 to transform his expected candidacy for president in 1960 from a regional to a national level and how his Democratic Senate colleagues permitted the bill to pass, after successfully blocking any civil rights legislation for decades, in order to help Johnson achieve that goal.

[27]David Garrow, *supra* note 21, at 1-72; Congress And The Nation: Volume II 1965-1968: A Review of Government and Politics, 357, Congressional Quarterly Service, 1969.

[28]Doar served as special counsel to the U.S. House Judiciary Committee during its inquiry into the possible impeachment of President Richard M. Nixon in 1974. President Barack Obama presented Doar with the Presidential Medal of Freedom on May 29, 2012, citing his work in support of voting rights.

[29]David Garrow, *supra* note 21, at 34.

[30]Nick Kotz, Judgment Days: Lyndon Baines Johnson, Martin Luther King, Jr. and the Laws That Changed America, 256 (Houghton Mifflin Co. 2005).

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[34]Nick Kotz, *supra* note 30, at 281-285.

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[39]Nick Kotz, *supra* note 30, at 244.

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[41]Colin D. Moore, "Extensions of the Voting Rights Act," in Richard M. Valelly, ed., The Voting Rights Act: Securing the Ballot, 95, CQ Press 2006; www.presidency.ucsb.edu/ws/index.php?pid=29355

[42]*Shelby County, Alabama v. Holder*, 570 U.S.—(2013).

[43]446 U.S. 55 (1980).

[44]Congress And the Nation, *supra* note 27, at 362.

[45]Richard M. Valelly, *supra* note 11, at 205.

[46]James E. Alt, "The Impact of the Voting Rights Act on Black and White Voter Registration in the South," in Chandler Davidson and Bernard Grofman, eds., Quiet Revolution in the South: The Impact of Voting Rights Act 1965-1990, 374, Princeton University Press, 1994.

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[48]Gary May, *supra* note 3, at 188-191.

[49]David A. Bositis, "Impact of the 'Core' Voting Rights Act on Voting and Officeholding," in Richard M. Valelly, ed., The Voting Rights Act: Securing The Ballot, 121-122, CQ Press 2006.

[50]*Thornburg v. Gingles*, 478 U.S. 30 (1986).

[51]David Remnick, The Bridge: The Life And Rise Of Barack Obama, 6, 75, Alfred A. Knopf, 2010.

[52]Gary May, *supra* note 3, at ix.