

WILL THE VOTING RIGHTS ACT OF 1965 SURVIVE?

by Richard M. Valeyly, Swarthmore College

The Voting Rights Act was a monumental achievement of the modern struggle for racial equality in the United States. After legislators from both parties passed the law in 1965, sustained implementation was enabled by broad bipartisan support. Congress has renewed and strengthened the act several times, sometimes pushing into territory the Supreme Court was reluctant to sanction. The most recent reauthorization in 2006 was strongly supported by President George W. Bush, and by many Republicans as well as Democrats in Congress.

But the long stretch of broad support is at an end. During arguments in a 2009 case before the Supreme Court, both Chief Justice John Roberts and Justice Anthony Kennedy expressed concern that the act's enforcement authority may have outlived its utility. Their skepticism was directed at Section 5, which authorizes the Department of Justice to block changes in election rules in states designated for special scrutiny because of their history of legalized racial discrimination. Since 2009, state Republican leaders have swelled the chorus of doubters.

Could modern America's historic Voting Rights Act actually be eviscerated? Many people presume that racial progress is inevitable and irreversible. But a review of the nation's troubled racial past reveals that the long fight for equal citizenship has been subject to shocking reversals.

It Took Two Reconstructions

The acquisition of full democratic political rights for African Americans advanced through two historic Reconstructions of law, elections, and the capacities of the federal government to enforce equal treatment. The First Reconstruction remade southern politics in the decades following the Union victory in the Civil War; and the Second Reconstruction re-enfranchised African Americans and transformed all aspects of race relations in the mid-twentieth century.

Both Reconstructions furthered and depended upon bi-racial democratic alliances; and both opened new leadership posts and legislative careers to African-Americans (and more recently to Latinos as well). The election of Barack Obama as the first African-American president could not have happened without the Second Reconstruction.

The First Reconstruction and Its Undoing

The First Reconstruction began during the Civil War itself as President Abraham Lincoln and members of Congress laid plans for the restoration of the Union and the implementation of partial black suffrage rights. Changes pushed forward through the end of the 19th century, longer than is commonly known. As late as the mid-1890s, black political movements and their Republican allies were able to win at least sporadic victories in southern state politics. In North Carolina, for example, a bi-racial coalition of Populists and Republicans briefly gained control of

the governorship and legislature and managed to elect two U.S. Senators and an African-American representative in the House of Representatives.

But white supremacists in the South undid the electoral accomplishments of the First Reconstruction. Legal disenfranchisement of African-Americans began in Florida in 1889 and was completed by Georgia in 1907. At that juncture, the United States marked an unhappy “first” in the world-historical march of democratic political rights. A major, previously enfranchised group of Americans lost the right to vote and was pushed entirely out of party and electoral politics – all by quasi-democratic means. State-level referenda, statutes, and constitutional amendments were used to create burdensome prerequisites to voting rights by African Americans. Although extra-legal violence played a role, the success of “legal” disenfranchising maneuvers depended on acquiescence by the Supreme Court and the national political parties. Federal judges and Republican politicians turned the other way as southern Democrats did their dirty deeds, restricting U.S. democracy in an extraordinary way. No other democracy has repeated on the same scale such a process of legally unwinding democratic voting rights.

Take Two in the Mid-20th Century

The Second Reconstruction again rebuilt U.S. and southern politics to include African American voters. Starting in the mid-1940s, the NAACP mounted the first great voter registration drives in the wake of an important Supreme Court case outlawing whites-only primaries run by the Democratic Party in the South. Black registration increased rapidly from the 1940s, before a strong white backlash to the NAACP drive that set the stage for the well-known struggles of the 1950s and 1960s, dramatic efforts to secure a full range of equal rights. One peak accomplishment was the Voting Rights Act of 1965. Implementation was supported by the modern Supreme Court. It helped to ensure minority office-holding as well as voting rights – though conservative Supreme Court justices began to back off about 20 years ago.

Defending the Voting Rights Act

Much of the Second Reconstruction is beyond undoing, but the future of the modern Voting Rights Act – including its use to block new attempts to hinder minority voting – is again at issue. The Supreme Court is considering challenges from southern states governed by Republicans who are eager to remove federal oversight of their voting rules. The Obama administration has used Section 5 to block new voter ID laws in Texas and South Carolina, arguing that these measures hinder the voting rights of minorities. Challenges to the Voting Rights Act and its Section 5 enforcement provisions are now before the Court and will likely be decided by June 2013, with far-reaching implications.

As this pivotal drama plays out, President Obama’s Department of Justice is arguing the case for continued federal vigilance about minority voting rights. The situation would have been very different if Obama had lost his bid for reelection. What the Supreme Court will finally rule remains highly uncertain. But the result of the 2012 election was historic in more than one way. Not only was the nation’s first African American president reelected by a substantial majority of U.S. voters; the 2012 results also ensured that the Justices will hear a full-throated argument, spelling out why full enforcement of the historic Voting Rights Act continues to be necessary to ensure democratic rights for future generations of minority voters and potential officeholders. All Americans who care about the vitality of our democracy have a strong stake in the outcome.