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The Dismantling of the Voting Rights Act

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Many Americans living today have no recollection or real knowledge of the days when African Americans were not allowed to drink from the same water fountains as whites, couldn't use public restrooms, and were prevented from casting votes in local and national elections. Decades ago landmark legal breakthroughs outlawed the most extreme kinds of racial discrimination. Congressional legislation and Supreme Court rulings expanded rights. Now, in a cruel irony, the Supreme Court is approving many legislative efforts to roll back full access to the ballot by racial minorities.

The Supreme Court Turnaround on Voting Rights Enforcement

In 1964, Congress passed the Civil Rights Act to outlaw segregation and discrimination in all businesses and other settings open to the general public. Additional provisions of that landmark act banned discrimination in employment on the basis of race, color, religion, sex, or national origin. Title I of the Civil Rights Act barred the use of unequal voter registration procedures, but did not eliminate literacy tests, the main device that southern states used at that time to keep African Americans from voting. But one year later, Congress passed the Voting Rights Act of 1965, which outlawed literacy tests and guaranteed African Americans the right to vote throughout the country. These breakthroughs followed protests and pivotal events: the March on Washington for Jobs and Freedom in 1963, the murder of voting rights activists in the South during Freedom Summer in 1964, and the confrontation between Civil Rights protestors and state troopers at the Edmund Pettus Bridge, in Selma, Alabama, on what was known as "Bloody Sunday" on March 7, 1965. After the state troopers beat peaceful marchers, President Lyndon Johnson called on Congress to pass the voting rights bill, setting the stage for a steady expansion of voting rights and participation by African Americans and other racial minorities in ensuing months, years, and decades.

But legal support for full voting rights took a U-turn in June 2013, when the Supreme Court ruling in *Shelby County v. Holder* struck down a key enforcement provision, Section 4, of the 1965 Voting Rights Act. In his explanation of that five to four decision, Chief Justice John Roberts acknowledged that the Voting Rights Act originally "employed extraordinary measures to address extraordinary problems" of racial discrimination. But he opined that nearly fifty years later Section 4 relies on an outdated formula for deciding which areas of the country should be singled out for advance federal scrutiny of any changes to voting rules and procedures.

To justify its decision, the Court published a chart comparing shifts in white and black voter registration levels from 1964 to 2004 in the states originally subjected to extra scrutiny by the Voting Rights Act. In 1965 in Alabama, the white registration rate was 69 percent and the black rate 19 percent. However, by 2004, the white registration rate was 74 percent and the black registration rate had increased to 73 percent. The progress was due to the original Voting Rights Act, Justice Roberts acknowledged, but he also concluded that extra scrutiny is now no longer required to ensure equal voting rights in Alabama and other states previously singled out.

New Obstacles to Equal Voting Rights

Joined by three other justices, Justice Ruth Bader Ginsburg wrote the dissenting opinion in *Shelby County v. Holder.* She argued that voting rights enforcement should continue, because the states originally subject to special scrutiny had switched from "first-generation barriers to ballot access" to "second-generation barriers" like racial gerrymandering and laws requiring at-large voting in places with a sizable black minority. The old Jim Crow laws such as literacy tests and poll taxes may be dead, she noted, but they have been replaced by the new Jim Crow laws such as racial gerrymandering and restrictive voter identification laws.

In fact, Section 4 rules about preclearance of voting rule changes to protect against discrimination originally covered nine states and parts of six others, and right after the *Shelby County* decision, eight states originally under preclearance started to move forward with new voting rights restrictions. Some of the steps they took had already been rejected by the Justice Department as discriminatory under the previous Section 4 provision of the Voting Rights Act.

Statistical data is now piling up to show that blacks are facing fresh impediments to voting and winning elective power in Southern states. For example, North Carolina's new voter identification law takes away protections that guard against voter disenfranchisement and includes many measures to make registration and voting harder. The law shortens early voting by one week, ends same day registration, bans student identification cards from being used at the polls, increases the number of poll observers who can challenge voter eligibility, and eliminates preregistration initiatives for high school students. North Carolina's governor called the new law a "safeguard" against fraudulent voting, but research has shown little evidence of such fraud in North Carolina. Many North Carolinians have pushed back against these new voting restrictions and related policies with sit-ins at the state capitol called "Moral Monday" protests.

Beyond changes in voting requirements and procedures, racial gerrymandering has also been used to limit black political clout. After the 1965 Voting Rights Act was passed by Congress, many public officials, particularly in southern states, shifted tactics from barring black voting to manipulating district lines to dilute the impact of minority votes. An example is currently alleged by black lawmakers in Alabama. The Alabama Legislative Black Caucus and others sued the state in August 2012 to challenge redistricting plans drawn for the state House of Representatives and Senate that pack black voters into black majority districts, reducing their influence in other districts. Additional forms of minority vote dilution proceed less visibly at the local level, including shifts to at-large elections for local officials that shrink black influence.

As the Supreme Court noted in its 2013 decision, Congress could enact a new formula requiring nationwide federal scrutiny of state and local voting rules. At the beginning of 2014, a bipartisan group of Congressional members introduced such legislation – but, so far, the measure is stalled. Given the political climate in Washington, DC, Congress is unlikely to act. The need will only grow, however, as states and localities move backwards on voting rights. As explained by Democratic Congressman John Lewis of Georgia, one of the marchers beaten during the 1965 confrontation at the Edmund Pettus Bridge in Selma, full enforcement scrutiny and pushback against the new waves of voting restrictions is imperative to preserve equal citizenship in the United States.