



— LEGAL POLICY FOCUS —

# The Voting Rights Act

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## EXECUTIVE SUMMARY

- The story of voting rights in America is the story of progress. Although America once limited the franchise to white, male, property owners, today every American over the age of 18 has the right to vote. This right is protected not only by the U.S. Constitution but also by federal statute.
- The **15th Amendment**, adopted after the Civil War, enfranchised formerly enslaved men by prohibiting the denial or abridgement of the right to vote “on account of race, color, or previous condition of servitude.”
- Despite this constitutional guarantee, for many years the states that made up the former Confederacy used intimidation, threats, and discriminatory voting practices to keep significant numbers of black people from the polls.
- In 1965, Congress passed the landmark **Voting Rights Act** to give the federal government broad power to enforce the 15th Amendment.
- The Voting Rights Act worked. Within just a few years, millions of black citizens registered to vote and soon began voting in numbers comparable with whites.
- The Voting Rights Act’s prohibition of discriminatory voting practices is permanent and applies nationwide.
- But the section of the Act that gives the federal government veto power over local elections rules in some parts of the country was supposed to be *temporary*.
- The Voting Rights Act was passed to guarantee the franchise. It was never intended to prohibit states from enacting common sense election rules aimed at preventing voter fraud and abuse.
- The federal government still has an important role to play in deterring and prosecuting voting rights violations, but Washington, D.C., should not micromanage local election procedures in jurisdictions that have no recent history of voting discrimination.

## MORE INFORMATION

### *What You Should Know*

The story of voting rights in America is the story of our nation’s onward march to freedom. It is a story of progress and it is a story of hope—hope that a nation conceived in liberty would grow to fulfill that promise. And fulfill that promise it has! Today, every American citizen over the age of 18 has the right to vote, and this right is protected not only by the U.S. Constitution but also by federal statute.

### *Why You Should Care*

- Voting is a fundamental right of every American over the age of 18, protected by federal statutory and constitutional law.
- Unfortunately, some people want to use the history of voting discrimination against black citizens to prevent or eliminate current common sense voting policies.
- Invoking the specter of “Jim Crow” to attack election rules that are applied equally to all citizens regardless of race undermines the integrity of our elections and subverts our democracy.

### *Background*

The **15th Amendment**, adopted in 1870 after the Civil War, enfranchised formerly enslaved men by prohibiting the denial or abridgement of the right to vote “on account of race, color, or previous condition of servitude.”<sup>1</sup> (Women did not secure the right to vote in the United States until 1920.) During the Reconstruction period, black men registered to vote in droves and were elected to state, local, and federal offices across the Deep South.<sup>2</sup>

But when Reconstruction ended in 1877, and federal troops pulled out of the South, white supremacists began a campaign of intimidation and violence to keep black voters from the polls.<sup>3</sup> White officials also began to adopt a variety of discriminatory practices, such as poll taxes and subjective literacy tests,<sup>4</sup> to prevent African Americans from voting or registering to vote. Indeed, between 1890 and 1910, every state of the former Confederacy passed laws that, while race-neutral on their face, were intentionally aimed

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1 U.S. CONSTITUTION, AMEND. XV.

2 Eric Foner, *Rights and the Constitution in Black Life During the Civil War and Reconstruction*, 74 *THE JOURNAL OF AMERICAN HISTORY* 865 (1987).

3 See Daniel Byman, *White Supremacy, Terrorism, and the Failure of Reconstruction in the United States*, 46 *INTERNATIONAL SECURITY* 53 (2021).

4 *Id.*; see also ABIGAIL THERNSTOM, *WHOSE VOTES COUNT? AFFIRMATIVE ACTION AND MINORITY VOTING RIGHTS* 15 (1987) (explaining the ways in which southern registrars manipulated tests to disfranchise black citizens) (hereinafter *WHOSE VOTES COUNT?*).

at disfranchising black citizens.<sup>5</sup> These tactics kept significant numbers of black people from voting for another three quarters of a century.<sup>6</sup>

In 1965, the Rev. Martin Luther King, Jr. and other civil rights leaders launched a major campaign for voting rights based in Selma, Alabama, the heart of the Jim Crow South. On March 7, demonstrators planned to walk from Selma to the state capitol in Montgomery to protest Alabama’s racist voting practices. Before they could get far, however, they were met with resistance by local officials and white vigilantes who opposed their cause. State troopers viciously assaulted the marchers, who were led by future U.S. Congressman John Lewis. Television footage of the attacks played a major role in galvanizing public support for federal intervention.<sup>7</sup>

On March 15, just one week after what came to be known as “Bloody Sunday,” President Lyndon B. Johnson proposed legislation to ensure that black citizens finally would have access to the ballot—a constitutional right that had been denied them for too long. On August 6, 1965, ninety-five years after the adoption of the 15th Amendment, President Johnson signed the bipartisan **Voting Rights Act** into law.<sup>8</sup>

“  
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”

### ***The Voting Rights Act of 1965***

Under our constitutional system, elections are generally under the purview of state and local governments. The **1965 Voting Rights Act**<sup>9</sup> was a major exception to this federalist principle,<sup>10</sup> one made necessary by persistent and widespread violations of the 15th Amendment throughout the Deep South.

**Section 2** of the 1965 Act codified the 15th Amendment and outlawed race-neutral practices used for the purpose of *intentionally* discriminating in voting or voter

5 See ALLAN J. LICHTMAN, *THE EMBATTLED VOTE IN AMERICA* 94 (2018).

6 See, e.g., WHOSE VOTES COUNT?, *supra* n. 4 at 2 (in 1940 only three percent of the 5 million southern blacks of voting age were registered to vote).

7 The Martin Luther King, Jr. Research and Education Institute at Stanford University, *Voting Rights Act of 1965*, <https://kinginstitute.stanford.edu/encyclopedia/voting-rights-act-1965> (last visited December 8, 2021); Christopher Klein, *How Selma’s Bloody Sunday Became a Turning Point in the Civil Rights Movement*, History Channel (July 18, 2020), <https://www.history.com/news/selma-bloody-sunday-attack-civil-rights-movement>.

8 Klein, *supra* n. 7.

9 Pub. L. 89-110, title I (1965).

10 Nathan Persily, *The Promise and Pitfalls of the New Voting Rights Act*, 117 *YALE L. J.* 174, 177 (2007).

registration.<sup>11</sup> **Section 3** permitted the federal courts to send observers to monitor local elections where necessary to protect voting rights.<sup>12</sup> These sections applied nationwide and were intended to be permanent.

But simply empowering the federal courts to remedy violations of voting rights was, at that time, akin to bringing a knife to a gun fight—especially where southern legislatures were adept at evading federal court orders by rapidly passing new laws to disfranchise blacks in new ways.<sup>13</sup> So Congress also enacted **Section 5**, a tough, but targeted, measure aimed at breaking southern resistance to voting rights once and for all.

In jurisdictions with a history of widespread black disfranchisement, Section 5 banned literacy tests; gave the federal government veto power (in a process known as “preclearance”)<sup>14</sup> over any changes to election procedures; and permitted the federal government to send election examiners to monitor election activity at the direction of the Attorney General.<sup>15</sup> Section 5 was set to expire in 1970.

### ***Constitutional Context***

The drafters of the Voting Rights Act of 1965 understood that the Constitution does not permit the federal government to nationalize election processes permanently. Nor does it permit the federal government to treat some states less favorably than others. So, the drafters crafted a formula that would apply Section 5 only to those places that had intentionally discriminated (and not to the nation as a whole or even to particular named states). Under this formula, outlined in **Section 4**, jurisdictions were “covered” by Section 5 if they:

- (1) used a literacy test to screen people registering to vote *and*
- (2) had voter registration or turnout that was below 50 percent in the 1964 presidential election.<sup>16</sup>

How did Congress come up with this formula? As Abigail Thernstrom explains in *Voting Rights—and Wrongs: The Elusive Quest for Racially Fair Elections*, it did so by

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11 Pub. L. 89-110, title I at § 2 (1965) (outlawing voting practices or procedures “imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.”).

12 Pub. L. 89-110, title I, § 3(a) (codified at 52 U.S.C. 10302(a)). The court may only issue such an order if it is appropriate to protect voting rights. Such action is not required if there are few voting incidents, incidents are corrected, the effect of incidents has been eliminated, and no reasonable probability of occurring in the future. *Id.*

13 Michael J. Pitts, *Section 5 of the Voting Rights Act: A Once and Future Remedy*, 81 DENV. U. L. REV. 226, 229 (2003).

14 Jurisdictions were required to obtain preclearance from either the Attorney General or the District Court for the District of Columbia, as even federal courts in Southern states could not be trusted to enforce the Act. *See WHOSE VOTES COUNT?*, *supra* n. 4 at 17.

15 *Id.*

16 Pub. L. 89-110, title I, § 4(b) (1965).

trial and error, until it landed on a formula that would cover most of the Jim Crow South.<sup>17</sup> Although literacy tests had been upheld by the Supreme Court,<sup>18</sup> it was well known that southern officials were manipulating tests to stop black citizens from registering.<sup>19</sup> So, the framers of the 1965 Act created a presumption of discrimination (rebuttable in federal court)<sup>20</sup> wherever such tests were used and voter registration or turnout was particularly low. Thus, while the statute did not mention them by name, as soon as the Act took effect, the states of Alabama, Louisiana, Mississippi, Georgia, and South Carolina, as well as large portions of North Carolina, became subject to federal control for the next five years.<sup>21</sup>

**Section 5** was intended to be a *temporary remedy for intentional discrimination*. It was never intended to be permanent. Nor was it intended ever to apply to jurisdictions, such as Massachusetts or New York, without a history of widespread discrimination against black voters. Rather, Section 5 was emergency legislation that was intended to last just long enough to break southern defiance of the U.S. Constitution.

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”

Indeed, in 1966, the U.S. Supreme Court upheld the constitutionality of Section 5 on just these grounds. In *South Carolina v. Katzenbach*,<sup>22</sup> Chief Justice Earl Warren acknowledged that the Act was “an uncommon exercise of congressional power.”<sup>23</sup> But, he explained, it was nevertheless justified by “exceptional conditions,” including “nearly a century of systematic resistance to the Fifteenth Amendment” in certain parts of the country.<sup>24</sup>

The Supreme Court held that, in order to deal with such an intractable problem, Congress was entitled to develop “inventive” ways of proving intent to discriminate in violation of the 15th Amendment.<sup>25</sup> And Section 4’s formula was exactly that—a carefully calibrated means of using burden-shifting to prove intentional discrimination.

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17 ABIGAIL THERNSTROM, *VOTING RIGHTS--AND WRONGS: THE ELUSIVE QUEST FOR RACIALLY FAIR ELECTIONS* 6 (2009) (hereinafter *VOTING RIGHTS AND WRONGS*).

18 See *Williams v. Mississippi*, 170 U.S. 213 (1898).

19 *VOTING RIGHTS AND WRONGS*, *supra* n. 17 at 15 (“In the 1960s southern registrars were observed testing black applicants on such matters as the number of bubbles in a soap bar, the news contained in a copy of the *Peking Daily*, the meaning of obscure passages in state constitutions, and the definition of terms such as *habeas corpus*. By contrast, even illiterate whites were being registered.”).

20 *Id.*

21 See *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).

22 *Id.*

23 *Id.* at 334-35.

24 *Id.* at 328.

25 *Id.* at 327.

As Abigail Thernstrom so clearly puts it,

*The Voting Rights Act would not have survived constitutional scrutiny had its scope been greater or its trigger less accurate— had it hit states outside the South and allowed federal intrusion into traditional state prerogatives to set electoral procedure where there was no evidence of appalling Fifteenth Amendment violations.*<sup>26</sup>

### ***Impact of the Voting Rights Act***

The 1965 Act had an enormous and immediate impact: Millions of black citizens registered to vote and began voting in numbers comparable with whites.<sup>27</sup> In fact, between 1965 and 1967, Alabama registration of black citizens increased from 19.3% to 51.6%. During the same time period, Mississippi black registration increased from 6.7% to 59.8%.<sup>28</sup>

Data for more recent elections shows that in the presidential elections that took place in 2016, 2018, and 2020 the voter turnout rates of blacks citizens in Mississippi *exceeded* that of whites.<sup>29</sup> Not surprisingly, then, a former Department of Justice official has described the Voting Rights Act as “one of the most important-and most successful— statutes ever passed by Congress to guarantee the right to vote free of discrimination.”<sup>30</sup>

“  
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### ***Amendments and Extensions***

In its 1966 *Katzenbach* decision, the Supreme Court upheld the constitutionality of Section 5 only because it was a temporary and narrowly targeted remedy for *intentional* discrimination. Yet, today, Section 5 has become a vehicle for the federal government to block voting rules with a disproportionate *impact* on certain minority groups and to micromanage, indefinitely, elections in jurisdictions with no history of racial discrimination.

<sup>26</sup> VOTING RIGHTS AND WRONGS, *supra* n. 17 at 29.

<sup>27</sup> U.S. COMMISSION ON CIVIL RIGHTS, VOTING RIGHTS ACT: TEN YEARS LATER 53 (1975).

<sup>28</sup> VOTING RIGHTS AND WRONGS, *supra* n. 17 at 32.

<sup>29</sup> Hans A. von Spakovsky, Testimony Before the Committee on the Judiciary, Subcommittee on the Constitution, United States Senate (September 22, 2021) (hereinafter Spakovsky Testimony), <https://www.heritage.org/testimony/restoring-the-voting-rights-act-combating-discriminatory-abuses>.

<sup>30</sup> *Id.*

How did we get here? Although **Section 5** was set to expire after just five years, Congress extended this provision five times—in 1970, 1975, 1982, 1992, and 2006.<sup>31</sup> Currently, Section 5 is not set to expire until 2031. In addition to extending the expiration date, Congress also changed the substantive application of Section 5.

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### 1. Changes to the coverage formula

The 1965 coverage formula (outlined in **Section 4**) subjected to federal review those jurisdictions that had employed a literacy test in determining voter eligibility to the effect that their registration levels or voter turnout rates were less than 50% of the voting age population in the presidential election of 1964.

**The 1970 amendments** expanded coverage, by using the 1968 presidential election as the statistical trigger.<sup>32</sup> This seemingly small change arbitrarily swept into the preclearance net a number of jurisdictions outside of the Jim Crow South that had not intentionally prevented black citizens from voting.<sup>33</sup>

**The 1975 amendments** altered the coverage formula so that it relied on data from the 1972 presidential election.<sup>34</sup> When Congress reauthorized Section 5 in 1982, 1992, and (most recently) in 2006, it continued to base the coverage formula on this 1972 data.

### 2. Substantive changes

Originally, Section 5 was understood to apply only to voting procedures used to disfranchise black voters. However, in 1969, the Supreme Court, in ***Allen v. State Board of Elections***,<sup>35</sup> interpreted Section 5 to include any changes to voting laws and procedures that “diluted” the black vote. Instead of changes that denied black citizens *access* to the ballot box, Section 5 now applied to the *weight* of black votes. The Court, thus, expanded Section 5 to require preclearance of changes such as the annexation of additional land into a voting precinct as part of redistricting, the decision to change from from single-member voting districts to one at-large district, or a change from elected office to appointed office.<sup>36</sup>

31 Pub. L. 91-285 (1970); Pub. L. 94-73 (1975); Pub. L. 97-205 (1982); Pub. L. 109-246 (2006).

32 Pub. L. 94-73, tit. II, § 202 (1975).

33 See VOTING RIGHTS AND WRONGS, *supra* n. 17 at 32 (noting that, under the 1970 version of the Act, three counties in New York City were covered, even though black citizens had been freely voting in New York since the enactment of the 15th Amendment, and blacks had for fifty years been elected to New York City municipal offices.)

34 Pub. L. 94-73, tit. II, § 202 (1975).

35 393 U.S. 544 (1969).

36 VOTING RIGHTS AND WRONGS, *supra* n. 17 at 50.

In 1970, Congress banned literacy tests nationwide.<sup>37</sup> The 1965 Voting Rights Act had relied on literacy tests in its coverage formula because fraudulent tests were being used by southern registrars to intentionally to disfranchise black citizens. But with **the 1970 amendments**, Congress extended the ban to even those jurisdictions that had applied such tests to all races evenhandedly.<sup>38</sup>

The **1975 amendments** expanded the Act further, by prohibiting discrimination against any “language minority” group constituting 5% or more of the eligible citizen voting population.<sup>39</sup> This included Asian Americans, Native Americans, Alaska Natives, and persons of “Spanish heritage.”<sup>40</sup>

“  
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”

### ***Applying Section 4 and Section 5: Shelby County v. Holder***

In 2013, the Supreme Court struck down Section 4’s coverage formula on the ground that Congress had not updated the criteria for coverage since 1975. In ***Shelby Cty. v. Holder***,<sup>41</sup> a jurisdiction in the “covered” state of Alabama, sued the U.S. Attorney General in federal court in D.C., challenging as unconstitutional both Section 5 and the coverage formula contained in Section 4. The Court agreed that the statistical trigger of **Section 4** cannot be constitutionally justified by data from the 1970s that supposedly reveal injustices that occurred half a century ago. Rather, any continued federal interference must be based on recent evidence of voting discrimination.

In reaching this conclusion, the Court noted that, absent legitimate justification, federal micromanagement of state election activity conflicts with the constitutional principles of federalism and “equal sovereignty of the states.”<sup>42</sup> Writing for the majority, Chief Justice John G. Roberts stated that, “Congress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions; it cannot rely simply on the past.”<sup>43</sup>

Roberts noted that the discriminatory practices upon which the coverage formula was originally based have been discontinued. Moreover, voter registration and turnout has

<sup>37</sup> Pub. L. 91-285, tit. II § 201 (1970).

<sup>38</sup> VOTING RIGHTS AND WRONGS, *supra* n. 17 at 35.

<sup>39</sup> Pub. L. 94-73, § 203 (1975).

<sup>40</sup> *Id.* at § 207 (1975).

<sup>41</sup> 570 U.S. 529 (2013).

<sup>42</sup> *Id.* at 535.

<sup>43</sup> *Id.* at 553.



increased dramatically since the Act’s passage. In short, the Chief Justice noted, “[o]ur country has changed.”<sup>44</sup> Congress cannot ignore this fact and continue to rely upon 40-year-old data to create a presumption of 21st century discrimination.

Although the Court did not strike down Section 5, its ruling in *Shelby County* effectively renders it inoperative, as no jurisdiction can be subject to Section 5 preclearance unless Congress enacts a new, constitutionally permissible, coverage formula. Nevertheless, and contrary to media coverage and commentary from some advocacy groups suggesting that the Court eliminated voting rights protections,<sup>45</sup> the bulk of the Act, guaranteeing the right to vote free of intentional discrimination, remains intact.

### ***Applying Section 2: Brnovich v. Democratic National Committee***

In 2021, the Supreme Court ruled that **Section 2** of the Voting Rights Act does not prohibit states from employing ordinary measures to protect the integrity of the election process. In *Brnovich v Democratic National Committee*,<sup>46</sup> the Court upheld an Arizona law that permits only voters, their family members, or their caregivers to deliver a completed ballot. Arizona’s goal in passing the law was combating voter intimidation and fraud by campaign staff, political activists, or special interest groups that often seek to collect and deliver ballots *en masse* (a practice known as “ballot harvesting” or “vote harvesting”).<sup>47</sup> The Court also upheld Arizona’s long-time policy of disqualifying ballots that are accidentally cast in the wrong precinct.

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Arizona long required voters to cast their ballots in the precinct in which they live. In 2016, Arizona passed a law prohibiting the collection and delivery of absentee ballots by third parties, such as campaign staff, political activists, or special interest groups. This practice is commonly referred to as “vote harvesting” or “ballot harvesting.” Arizona’s goal in passing the law was combating voter intimidation and fraud by third party harvesters.

<sup>44</sup> *Id.* at 557.

<sup>45</sup> See, e.g., Zachary Roth, *Voting Rights in Danger After Shelby County v. Holder*, MSNBC (June 20, 2014), <https://www.msnbc.com/msnbc/voting-rights-danger-one-year-after-shelby-county-supreme-court-ruling-msna353971>; League of Women Voters, *Voters Lack Vital Protections One Year After Shelby Decision* (June 25 2014), <https://www.lwv.org/newsroom/press-releases/voters-lack-vital-protections-one-year-after-shelby-decision>.

<sup>46</sup> 594 U.S. \_\_\_, 141 S. Ct. 2321 (July 1, 2021).

<sup>47</sup> Ariz. H.B. 2023 (2020).

In his opinion for the Court, Justice Samuel Alito explained that, while these rules may impose some burdens on voters, not all inconveniences are discriminatory.

*[E]very voting rule imposes a burden of some sort. Voting takes time and, for almost everyone, some travel, even if only to a nearby mailbox. Casting a vote, whether by following the directions for using a voting machine or completing a paper ballot, requires compliance with certain rules. But because voting necessarily requires some effort and compliance with some rules, . . . [m]ere inconvenience cannot be enough to demonstrate a violation of [the Act].<sup>48</sup>*

In a footnote, Alito elaborated on the difference between “openness and opportunity,” which are required by the Voting Rights Act, and “absence of inconvenience,” which is not. For example,

*suppose that an exhibit at a museum in a particular city is open to everyone free of charge every day of the week for several months. Some residents of the city who have the opportunity to view the exhibit may find it inconvenient to do so for many reasons—the problem of finding parking, dislike of public transportation, anticipation that the exhibit will be crowded, a plethora of weekend chores and obligations, etc. Or, to take another example, a college course may be open to all students and all may have the opportunity to enroll, but some students may find it inconvenient to take the class for a variety of reasons. For example, classes may occur too early in the morning or on Friday afternoon; too much reading may be assigned; the professor may have a reputation as a hard grader; etc.<sup>49</sup>*

Significantly, the Court made clear that **statistical disparities alone are insufficient to prove voting discrimination**. To the contrary, the law requires findings of discrimination to be based on proof of intent to discriminate, as discerned from the “totality of circumstances.” While evidence of disproportionate racial impact may contribute to a finding that certain practices are discriminatory, raw statistical disparities do not, by themselves, render illegal policies that seek to prevent voter fraud.<sup>50</sup> The Court in *Brnovich*, thus, refused to rewrite the statute to adopt a disparate impact standard and instead reaffirmed the statute’s requirement of **discriminatory intent**.

<sup>48</sup> *Brnovich*, Slip Op. at 16.

<sup>49</sup> *Id.* at 16-17, n. 11.

<sup>50</sup> The Court further explained that when it comes to proving intent, the size of any racial disparity is important. While a large statistical disparity can, when considered as part of the totality of the circumstances, suggest the presence of discrimination, a tiny statistical disparity is less likely to indicate that a system is not open equally to all. In *Brnovich*, the racial disparity allegedly caused by precinct requirement was small in absolute terms: Roughly 99% of Hispanic voters, 99% of African-American voters, and 99% of Native American voters voted in the correct precinct, compared to roughly 99.5% of non-minority voters. *Brnovich*, Slip Op. at 28.

## ***The Current Debate***

Current efforts to expand the Voting Rights Act and to continue to extend Section 5 are based on the assumption that official suppression of minority votes is once again commonplace. This is false. Much has changed in America since the Civil Rights movement of the 1960s. Today, voting discrimination is exceedingly rare. And, where such discrimination does occur, the permanent provisions of the Voting Rights Act are now more than sufficient to remedy it.

Nevertheless, a number of politicians and activists are **proposing amendments** to the Voting Rights Act that would, among other things: (1) extend Section 5 for decades into the future; (2) ban or require federal preclearance of strong voter ID requirements; and (3) limit the evidence that a state can offer to defend changes to their election laws. Such reforms are unnecessary. They also threaten to **undermine the integrity of our elections** and subvert our democracy.

## ***Addressing Misperceptions***

**Misperception #1: Widespread disfranchisement of black citizens remains common.**

- The VRA worked: In **1964 Mississippi, only 6.7 percent** of blacks were registered to vote; **today, 83.1 percent** are registered.
- Today, African Americans vote in record **numbers**. In the South, blacks **outvoted** whites in one-third of presidential elections since 1965. Nationwide, black turnout (**66.2%**) exceeded white turnout (64.1%) in 2012, and blacks have continued to vote in **record numbers** in recent elections.
- In 1965, intentional voting discrimination was frequent and widespread. Today, it is exceedingly rare.

**Misperception #2: The Supreme Court “gutted” the Voting Rights Act’s key provisions.**

- Recent Supreme Court rulings are consistent with the goals of the original Voting Rights Act: deterring and remedying *intentional* discrimination.
- Recent Supreme Court rulings do not affect the Voting Rights Act’s nationwide ban on voting discrimination, which remains fully intact.
- Allowing jurisdictions with no history of discrimination to enact common-sense election integrity measures helps to strengthen voting rights.

**Misperception #3: In order to protect voting rights, the federal government must have the power to preclear changes to local voting policies.**

- The Constitution’s election clause only permits federal intervention **when states are not operating properly**.
- No other federal statute applies only to specific parts of the country and requires localities to get permission from the federal government to implement a law.
- Half a century after the demise of Jim Crow, arbitrary statistical formulas are not an accurate method of identifying discriminators.
- The federal government has the authority to enforce voting rights without micromanaging local rules through preclearance.<sup>51</sup>

**Misperception #4: Election integrity measures suppress minority votes.**

- **Bans on ballot harvesting** are aimed at protecting minorities, older Americans, and voters with disabilities from voter intimidation.
- **Voter ID requirements** are the most reliable way to verify identity and prevent fraud and “have no negative effect on registration or turnout, overall or for any group defined by race, gender, age, or party affiliation.”<sup>52</sup>

### **Conclusion**

The Voting Rights Act was passed to prevent racist election officials from using seemingly neutral policies (such as literacy tests) to deny ballots to black citizens. It was never intended to prohibit states from enacting common sense election rules (such as voter identification requirements or prohibitions on vote harvesting), aimed at preventing fraud. Although the federal government has an important role to play in deterring and prosecuting voting rights violations, the federal government should not micromanage local election procedures in jurisdictions with no recent history of voting discrimination.

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<sup>51</sup> Indeed, where there has been a finding of discrimination by a federal court, the federal government may step in by, among other things, sending federal election observers to monitor elections in the discriminatory jurisdiction. 52 U.S.C. 10302(a).

<sup>52</sup> Spakovsky Testimony, *supra* n. 29.