

Fall 2016, Vol. 16, NO. 1

respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

Still Fighting for Voting Rights

by Jodi L. Miller

People have been fighting for the right to vote since the passage of the 15th Amendment in 1870. The Voting Rights Act (VRA), passed in 1965, eased the fight somewhat. However, this being the first presidential election since the U.S. Supreme Court struck down parts of the VRA with its 2013 decision, *Shelby v. Holder*, the fight is far from over.

The 15th Amendment to the U.S. Constitution guaranteed all men the right to vote “regardless of race, color or previous condition of servitude.” In addition, the 19th Amendment, ratified in 1920, prevents the denial of the right to vote on account of gender; and the 26th Amendment, passed in 1971, guarantees that any citizen who is 18 or older, has the right to vote. The reality in the 1960s, however, was to keep African-Americans from casting a ballot or even registering to vote. The methods used to disenfranchise African-American voters were often intimidation and violence.

What the VRA did

The VRA, signed into law by President Lyndon Johnson in August 1965, prohibited discrimination in voting nationwide on the basis of race or being a member of a language minority group. A special provision of the VRA was Section 5, which required certain jurisdictions with a history of discrimination to obtain pre-clearance from the U.S. Attorney General before implementing any changes to voting laws. Jurisdictions

covered by Section 5 included nine states in their entirety (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia), as well as parts of six other states (California, Florida, New York, North Carolina, Michigan and South Dakota). The Section 5 provision was meant to expire after five years; however, Congress renewed it five times, the last time in 2007.

With its 2013 decision in *Shelby*, the U.S. Supreme Court struck down [>continued on page 5](#)

Voter ID Laws—Solving a Nonexistent Problem

by Phyllis Raybin Emert

State by state, lawsuit after lawsuit, the federal court system is slowly striking down voter ID laws and proof of citizenship requirements to vote. Challenges to these laws claim they unfairly target the voting rights of minorities, the elderly, the poor and students.

Many critics cite the 2013 U.S. Supreme Court decision in *Shelby v. Holder*, which weakened the Voting Rights Act (VRA), for the influx of voter ID laws. Certain sections of the VRA required specific states that had a history of racial discrimination, to obtain what is called “pre-clearance” from the U.S. Attorney General before making any changes in voting rights laws (see related VRA story for background). Among other things, the ruling in *Shelby* essentially eliminated the pre-clearance section of the VRA. Immediately after the decision, more than a dozen states passed strict voter ID laws requiring photo identification and proof of citizenship in order to vote.

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This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

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Gerrymandering—An Invented Word for a Serious Issue

by Robin Foster

The term gerrymander dates back to 1812. The word was coined to mock Massachusetts Governor Elbridge Gerry's manipulation of district lines into a shape that resembled a salamander. Gerry + salamander = gerrymander. All these years later, the term has stuck.

It's a **bipartisan** issue, as both Republicans and Democrats use gerrymandering to keep **incumbent** parties in office. The Brennan Center for Justice, a **non-partisan** law and policy institute, defines gerrymandering as "a practice whereby line-drawers manipulate district lines to establish a political advantage for a particular party."

According to FiveThirtyEight.com, a polling aggregation website, for the November election, only 37 of 435 seats in the U.S. House of Representatives are considered "competitive," meaning that the incumbent is projected to win. This is largely due to gerrymandering.

"In most districts, House members are so certain to win general elections that they only have to worry about primary challenges from their own party," FiveThirtyEight has stated.

Drawing lines

Since the 1964 U.S. Supreme Court decision in *Reynolds v. Sims*, states have been required to create legislative districts that are roughly equal. Redistricting—redrawing district boundaries—occurs every 10 years following the federal census and is designed to make sure that the U.S. Congress and state legislatures are representative of their **constituents** as people move around and demographics shift. As a result of the 2010 census, for example, New Jersey lost one of its seats in the U.S. House of Representatives, leaving it with 12.

The majority of the states allow their legislatures to draw congressional and legislative districts, which means that whatever political party is in power at the state level at the time redistricting commences, is the party that has control. *The Washington Post* reported that redistricting plans have been challenged in more than three-quarters of the states.

New Jersey is one of two states (Hawaii is the other) that has a bi-partisan commission

draw its district lines. New Jersey's commission is comprised of 13 commissioners, six from each political party and one chosen by those 12 who has not held a state, public or party office within the last five years. The goal is to reach a compromise between both parties. This approach has the support of the Bipartisan Policy Center, a non-profit think tank.

Issue heats up in Arizona

Fed up with elected officials redrawing district maps to keep themselves and their political parties in power, in 2000 Arizona voters approved a ballot initiative that shifted redistricting power from the state legislature to a politically neutral independent committee, creating the Arizona Independent Redistricting Committee.

The Republican-led state legislature sued the committee, arguing it violates the U.S. Constitution's Elections Clause, which states: "the times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof." The Arizona legislatures argued the state's district maps must only be drawn by the elected legislatures of the state, claiming voters do not have the authority to strip the power from the state legislature through the creation of an independent committee.

Federal judges in Arizona rejected the legislatures' challenge, reasoning the term "legislature" in the Elections Clause should be interpreted to include "the entirety of the state's legislative process," including ballot initiatives passed by voters.

In June 2015, the U.S. Supreme Court issued its 5-4 decision in *Arizona State Legislature v. Arizona Independent Redistricting Committee*, agreeing with the lower court that Arizona's independent redistricting commission does not violate the Elections Clause. In the Court's decision, Justice Ruth Bader Ginsburg stated that the Constitution's use of the term "legislature" in the Elections Clause includes "the legislative power of the voters through ballot initiatives." She wrote, "The animating principle of our Constitution is that the people themselves are the originating source of all the powers of government."

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Racial gerrymandering

According to Fair Vote.org, a non-partisan, non-profit organization, political gerrymandering used to bolster a political party's success can be contested but is usually found to be legal. The U.S. Supreme Court ruled that partisan gerrymandering is unconstitutional, but set such a high standard of proof that winning a legal challenge is very difficult.

Racial gerrymandering, however, is illegal. Fair Vote defines racial gerrymandering as "manipulating legislative district lines to under-represent racial minorities" and refers to tactics such as "packing" and "cracking" that can be illegal. Packing is when line-drawers pack as many minority voters as possible into one district and cracking is when minority voters are divided up among many districts so they can never obtain a majority of votes. The purpose of packing and cracking is to dilute the political influence of minorities.

Michael Li, senior counsel for the Brennan Center for Justice's Democracy Program, says that cases of racial gerrymandering can be hard to determine, but generally, "a district can't combine minorities together who otherwise have little or nothing in common...The people included in a district must have something in common besides race."

In March 2016, the U.S. Supreme Court heard a case in which two Virginia voters challenged a 2012 Republican-led redistricting plan. The **plaintiffs** charged that Republican lawmakers gerrymandered Virginia's district boundaries in order to concentrate African-American voters into Rep. Bobby Scott's district, thereby making the surrounding districts predominantly white. At stake in this challenge was the question: did Republican-led legislatures redraw district maps in order to ensure

that Scott, Virginia's only African-American congressman remain Virginia's only African-American congressman?

Republican representatives claimed they were harmed when a lower court's alternate plan moved "unfavorable Democratic voters" into their districts, decreasing the chances for their own re-elections and appealed their case to the U.S. Supreme Court. In May 2016, the Court issued its unanimous decision dismissing the **appeal**, ruling that the Republican congressmen lacked standing and couldn't show that their re-elections would be harmed politically by the new redistricting plan. The end result was that

Virginia's 2012 Republican-led redistricting plan was tossed out.

In another case, federal judges struck down 28 North Carolina state legislative

districts in addition to its congressional districts, in August 2016, ruling them illegal racial gerrymanders. Because the decision comes so close to the election, however, the federal court is allowing the fall elections to continue with the illegally drawn district maps.

In the court's ruling, United States Circuit Court Judge James Wynn wrote that postponing 2016 legislative elections "would cause significant and undue disruption to North Carolina's election process. Nonetheless, plaintiffs, and thousands of other North Carolina citizens, have suffered severe constitutional harms

stemming from defendants' creation of 28 districts racially gerrymandered in violation of the equal protection clause."

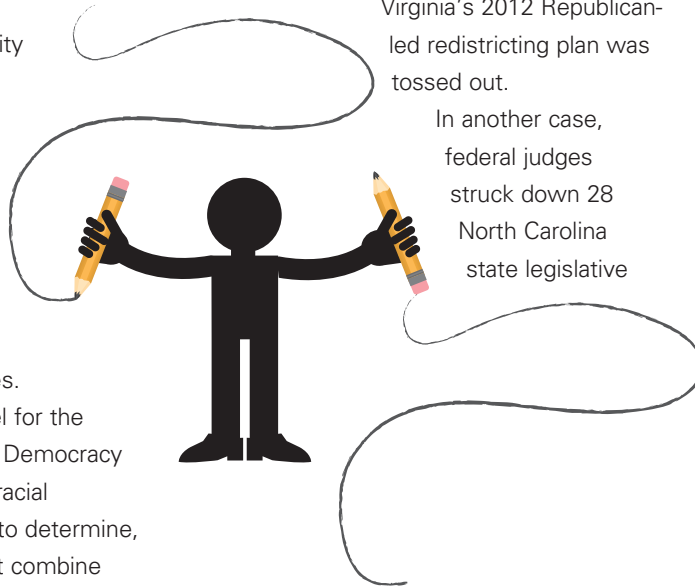
No guidance

At the center of these redistricting challenges is the reality that there are no hard-and-fast guidelines as to how states must draw district maps, only that voting districts must be roughly equal in population. In addition to equalizing total population, the U.S. Supreme Court requires states to consider the race of its district populations when drawing district maps, so that minorities have a fair chance at being represented. However, race cannot be the dominant issue in determining those district boundaries.

Voicing his frustration with the Court, Bill Janis, a former Virginia delegate, who helped develop the state's congressional map, told *The Washington Post*, "You can't let the porridge be too hot, you can't let the porridge be too cold. But they won't tell us what temperature the porridge has to be."

The next census will be conducted in 2020, with another round of redistricting beginning in 2021. So far, efforts to curb gerrymandering have occurred on a case-by-case and state-by-state basis. But, according to the Brennan Center, as many as 10 states are considering some measure of redistricting reform, including the creation of independent redistricting commissions.

"Gerrymandering has been with us since the very early days of the nation," Li says. "While there is debate about the best way to end the practice, one mechanism that has won lots of support is to take redistricting out of the hands of lawmakers and give it to a commission of citizens who are not directly involved in the political process. These citizen commissions have proven to increase openness and have tended to result in maps that are more balanced and fair, as well as more competitive." ■



Paying Your Debt to Society with Your Vote

by Cheryl Baisden

In every state but Maine and Vermont, anyone convicted of committing a violent or other serious crime, classified under the law as a felony, loses more than just their freedom when they enter prison. Depending on the laws of the state they reside in, they temporarily, or in a few states permanently, lose the right to vote, leaving them “disenfranchised.”

“Disenfranchisement is the denial of the right to vote to people who otherwise would be eligible—that is, people who are citizens and 18 or older,” says Laura Cohen, a professor and director of the Criminal and Youth Justice Clinic at Rutgers School of Law—Newark. “Many states disenfranchise people who have committed serious crimes, or felonies, in some places permanently. In New Jersey, anyone who is serving a prison term or is on parole or probation for a **felony** is not allowed to vote. After they have completed their sentence, their voting rights are automatically restored.”

Nationwide, an estimated 5.8 million Americans—or one out of every 40 adults—have lost the right to vote under felony disenfranchisement laws, according to The Sentencing Project, a non-profit, Washington, D.C. research organization. Nearly 75 percent of them have served their sentences and been released from prison. Breaking it down racially, The Sentencing Project statistics show that one of every 13 African-Americans has lost their voting rights due to felony disenfranchisement laws, compared to one in every 56 non-black voters.

A racial divide

“Because African-Americans and Latinos are grossly over-represented in the criminal justice system—more than 60 percent of the people behind bars are people of color, although they make up only 32 percent of the country’s population—disenfranchisement laws disproportionately affect these groups,” explains Professor

Cohen. “In fact, more than one-third of the disenfranchised in the United States are black, which is not surprising, as felony disenfranchisement laws arose out of the Jim Crow era, when poll taxes, literacy tests, and other methods were used to restrict the ability of black people to vote.”

Professor Cohen points out that when people cannot vote, they lose their ability to affect the outcome of elections and, consequently, are unable to influence the public policy and law-making decisions of legislators at either the state or federal level. As a result, the power of these minority communities is diluted and discriminatory policies are perpetuated.

The Sentencing Project points to the war on drugs in the 1980s as a key reason behind today’s racial imbalance in prisons, with more minorities having been arrested



and prosecuted for drug offenses.

Over the last two decades, lawmakers in several states have attempted to ease voting restrictions, according to the Brennan Center for Justice, but the efforts rarely have **bipartisan** support. Statistics show that minority voters tend to cast ballots for Democratic candidates, which often leads Republicans to oppose restoring voting rights to felons.

For example, while Wyoming restored voting rights to nonviolent felons in 2015 with bipartisan support, the Democrat-

controlled Maryland Legislature had to override two vetoes by Republican Governor Larry Hogan in order to return voting rights to an estimated 44,000 former prisoners who were on probation. And in 2012, South Carolina’s Republican lawmakers actually tightened restrictions. Now, South Carolina felons on probation are denied the right to vote, along with prisoners and parolees.

A life sentence

Convicted felons in Florida, Iowa and Kentucky face the strictest penalties—lifetime loss of voting rights. Over the years, the governors of all three states have issued executive orders aimed at easing those restrictions, but new administrations reversed or diluted those actions once they took office, maintaining regulations that in some cases have been in place for generations.

Florida’s history of disenfranchisement, which dates back to the end of the Civil War, began by targeting newly emancipated slaves, who often ended up with prison records for such ‘offenses’ as looking at a white woman. Today, nearly 150 years later, the state’s felon voting policies continue to have the heaviest impact on minorities. An investigation by the U.S. Civil Rights Commission following the 2000 presidential election, where a U.S. Supreme Court decision on the Florida ballots rendered Republican George Bush victorious over Democrat Al Gore, found that an estimated 12,000 voters, mostly minorities, were incorrectly identified as felons and dropped from the voter rolls in that election. Those voters represented 22 times Bush’s margin of victory in the election. He won the state of Florida by only 537 votes.

Calculations done by Commission Acting General Counsel Edward Hailes determined that roughly 4,700 African-American Gore voters were most likely prevented from voting. “We did think it was outcome-determinative,” Hailes told *The Nation*.

And, he added, *>continued on page 8*

Voting Rights *continued from page 1*

Section 4 of the VRA, which essentially left Section 5 of the Act unenforceable. Section 4 dealt with the formula used to determine which jurisdictions are subjected to pre-clearance.

In the Court's majority opinion, Chief Justice John Roberts wrote, "Our country has changed..." and the formula "was based on 40-year-old facts having no logical relation to the present day."

Pre-clearance is still part of the VRA; however, since there is no formula to determine which jurisdictions are covered by it, the 15 states that were subjected to pre-clearance, whether as a whole or in part, were left to make changes concerning voting laws with no federal oversight.

Effects of weakened VRA

So, what's happened in the three years since the Court rendered its decision? According to a 2016 report, titled *Democracy Diminished*, published by the NAACP Legal Defense and Educational Fund, after the *Shelby* decision was rendered, 13 states passed laws that threatened voting rights at the state or local level. Of those states, 10 would have been covered by the VRA's pre-clearance rules, meaning the restrictive laws would never have been passed in the first place.

Democracy Diminished, a publication of the Thurgood Marshall Institute at LDF, revealed that, although it gets less attention, 85 percent of the pre-clearance work done under Section 5 was at the local level. "Common changes at the state or local level that potentially are discriminatory," according to the report, "include: reducing the number of polling places; changing or eliminating early voting days and/or hours; replacing district voting with at-large elections; implementing **onerous** registration qualifications like proof of citizenship; and removing qualified voters from registration lists."

In Alabama, for instance, after instituting a photo ID law (see related story for more on voter ID laws), the state "also proposed closing 31 driver's license offices, situated predominantly in rural areas of Alabama's Black Belt," according to the report. The report also revealed that, according to 2014 numbers from the state, 250,000 to 500,000 registered voters in Alabama lack a driver's license.

Targeting African-Americans

A weakened VRA also severely impacted North Carolina voters. One month after the *Shelby* ruling, the state passed a law with sweeping voter restrictions. Among other things, the law required a strict voter ID, cut a week of early voting, and eliminated same-day

voter registration.

In July 2016, the Fourth Circuit Court of Appeals said the law "targeted African-Americans with almost surgical precision" and struck it down, reversing a lower court opinion, which had upheld it. In a unanimous opinion, Judge Diana Motz wrote, "Before enacting that law, the legislature requested data on the use, by race, of a number of voting practices. Upon receipt of the race data, the General Assembly enacted legislation that restricted voting and registration in five different ways, all of which disproportionately affected African-Americans....Faced with this record, we can only conclude that the North Carolina General Assembly enacted the challenged provisions of the law with discriminatory intent."

Before the *Shelby* ruling, 40 counties in North Carolina were subject to pre-clearance and between 1980 and 2013 the Justice Department had refused to pass 55 proposed voting changes, ruling they were discriminatory.

Still has teeth

According to Myrna Perez, deputy director of the Brennan Center for Justice's Democracy Program, before the 2013 *Shelby* decision, jurisdictions covered by Section 5 needed to prove to the federal government that a proposed voting law was not discriminatory, putting the burden of proof on the state. Now, the burden has shifted to voters who need to challenge discriminatory voting laws through the court system (a lengthy process) under Section 2 of the VRA, which did survive scrutiny from the Court. Perez points out that the provisions of the VRA requiring language access also survived.

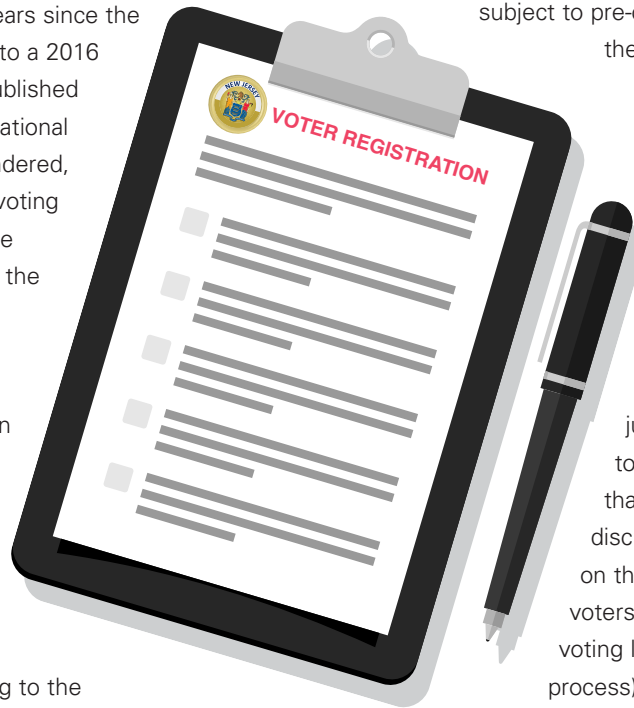
"Section 2 is an effective tool against discrimination," Perez says, "but it takes longer, is more expensive and lets a discriminatory law go into effect, putting the burden on the **plaintiff** to prove it is discriminatory."

Perez contends the process is "resource intensive" and points to the fact that it took four years to have the Texas voter ID law ruled discriminatory. The Brennan Center was one of many organizations that brought suit against Texas on behalf of voters.

"Section 2 has some teeth," Perez says, "but doesn't have the efficiency or the speed of Section 5."

Amending the VRA

In its *Shelby* decision, the Court indicated that it would be open to considering a new formula for determining what states could be subject to pre-clearance.



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Voter fraud

Proponents of voter ID laws claim the laws are necessary to prevent voter fraud; however, there is little evidence that this is a widespread problem. According to an article in *The Washington Post*, four government investigations, two journalistic investigations and seven academic research papers revealed that in-person voter fraud, the type that voter ID laws would address, is minuscule. For instance, a *New York Times* investigation that examined five years of Justice Department records, revealed only 26 convictions for voter fraud.

Wisconsin Governor Scott Walker told student journalists at Arizona State University, who conducted their own research on voter fraud (reaching the same conclusion as *The New York Times*) that the number of cases doesn't matter. "All it takes is one person whose vote is canceled by someone not voting legally and that's a problem," Gov. Walker said.

In an interview with an Arizona newspaper, Lorraine Minnite, author of *The Myth of Voter Fraud*, said, "Voter fraud remains rare because it is irrational behavior. You're not likely to change the outcome of an election with your illegal fraudulent vote."

Discrimination in Texas

Texas tried to pass one of the most restrictive voter ID laws in the country in 2011. It did not get pre-clearance from the U.S. Attorney General; however after the ruling in *Shelby*, Texas enacted the law. A student ID, tribal ID, utility bill, or even a voter registration card was not accepted as proof to vote, although a concealed handgun license was acceptable

The state of Texas has spent millions of dollars in several lawsuits defending the law, which has been found to be discriminatory against Hispanics, African-Americans, and the poor. Lower courts found more

than 600,000 registered voters in Texas lacked the particular type of ID required by the Texas law.

In July 2016, the Fifth Circuit Court of Appeals ruled 9 to 6 that the Texas voter ID law violated the VRA and that the state had to come up with a plan to allow these registered voters to cast a ballot in the November 8th presidential election. The court did not strike down the law entirely. It told the lower court judge to determine, after the presidential election, if the state purposely discriminated against minorities. If there was an intention to discriminate, Texas could once again be subject to federal supervision over changes in its voter ID law. Oral arguments will begin on that claim early in 2017.

According to Myrna Perez, deputy director of the Brennan Center for Justice's Democracy Program, the Fifth Circuit Court is one of the most conservative federal courts in the country. "For them to rule the law discriminatory, proves that discrimination still exists," Perez says. The Brennan Center filed one of the lawsuits in Texas, representing the Texas State Conference of the NAACP and the Mexican American Legislative Caucus of the Texas House of Representatives.

In early August 2016, Texas agreed to let voters—without the required IDs—vote in the November election if they possessed a government document with their name and address, including a voter registration certificate, birth certificate, utility bill or bank statement, or government check. Those voters will also be required to sign an affidavit advising they weren't able to procure any of the required IDs.

Mixed bag from the courts

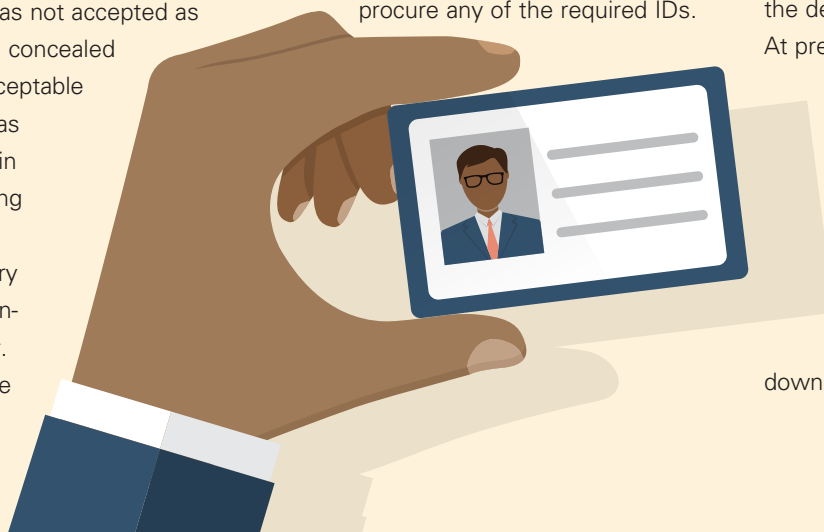
Decisions regarding voter ID laws in other states have run the gamut. In July 2016, the Fourth Circuit Court of Appeals struck down North Carolina's voter ID law ruling that it purposely tried to **disenfranchise** African-Americans voters. North Carolina's governor applied to the U.S. Supreme Court for a stay application asking for the law to be re-instated. In late-August, the Court issued a 4 to 4 order. Because the Court couldn't reach a majority (since it is minus one justice at the moment), the Fourth Circuit Court ruling stands.

Also in July, there were two decisions regarding Wisconsin voter laws. One federal ruling stated that residents who couldn't obtain proper identification could still vote by signing an affidavit. Another federal district court judge ruled that Wisconsin's photo ID law was unconstitutional and that voter IDs should be able to be obtained from Motor Vehicle Offices.

U.S. District Judge James D. Peterson wrote in the court's decision, "The Wisconsin experience demonstrates that a preoccupation with mostly phantom election fraud leads to real incidents of disenfranchisement, which undermine rather than enhance confidence in elections, particularly in minority communities. To put it bluntly, Wisconsin's strict version of voter ID law is a cure worse than the disease."

On August 10, a three-judge panel of the federal appeals court blocked the first lower court ruling concluding that the decision was too broad and lenient. At press time, both decisions were being appealed.

In August 2016, a federal judge, Daniel L. Hovland, issued a temporary injunction and blocked North Dakota's ID law from going into effect, stating the law made it too difficult for Native Americans to vote. Judge Hovland did not strike down the law, but *>continued on page 7*



Voting Rights *continued from page 5<*

The Voting Rights Amendment Act of 2014 and the Voting Rights Advancement Act of 2015 address the concept of a new formula, however, both are languishing in Congress.

Under the Voting Rights Advancement Act of 2015, introduced in June 2015, states with 15 or more voting violations over the past 25 years, or 10 if one of the violations is statewide, would be required to submit their election changes for federal approval. This formula would immediately cover 13 states (Alabama, Arkansas, Arizona, California, Florida, Georgia, Louisiana, Mississippi, New York, North Carolina, South Carolina, Texas and Virginia).

So why haven't either of these acts passed? Perez blames the political climate in Washington and the fact that some politicians are manipulating the rules. "Congress is dysfunctional and can't get anything done and they are not making access to the ballot box a priority," she says.

In a *New York Times* opinion piece, Jim Sensenbrenner, a Republican Congressman from Wisconsin and a sponsor of the



Voting Rights Amendment Act of 2014, wrote, "Ensuring that every eligible voter can cast a ballot without fear, deterrence and prejudice is a basic American right. I would rather lose my job than suppress votes to keep it....The 2016 primary season has been marred by hateful rhetoric and ugly politics. Passing the Voting Rights Act of 2015 would be Congress's most enlightened response."

In a letter to the editor of *The New York Times*, Rev. Jesse L. Jackson, civil rights activist and a former presidential candidate, took it a step further. "We need to add a right-to-vote amendment to the Constitution that gives every

American an explicit individual right to vote and that gives Congress the authority to create a unified national voting system with certain common sense minimum standards," Rev. Jackson wrote.

As for Chief Justice Roberts' implication that "the country has changed" with regard to racism, Perez says, "I think things have indeed changed but discrimination at the ballot box does exist and without Section 5, we're missing an important tool." ■

Voter ID Laws *continued from page 6<*

North Dakota's secretary of state said his decision would not be appealed.

On June 29, 2016, District Judge Richard Leon sided with the states of Alabama, Georgia, and Kansas in requiring documentary proof of citizenship to vote. However, in September 2016, a federal appeals court blocked the requirement. At press time, the case was being returned to the district court for a full hearing.

A separate ruling in May 2016 by District Court Judge Julie Robinson stated that Kansas violated the National Voter Registration Act. In July, Kansas passed a temporary regulation dealing with more than 17,000 people who registered to vote at motor vehicle offices but did not present a birth certificate or other proof of citizenship. While these people were originally not allowed to vote at all, their ballots now will be considered provisional and only votes for federal races, such as the presidency, will be counted, but not state and local races. At press time, Kansas

had appealed the ruling to the 10th Circuit Court of Appeals.

Long history of disenfranchisement

The 15th Amendment guaranteed the right to vote shall not be denied on account of "race, color, or previous condition of servitude."

Due to scarce evidence of voter fraud, Bernard W. Bell, a professor at Rutgers School of Law—Newark, believes strict voter ID laws and proof of citizenship requirements are designed to "suppress the vote of minority residents, the poor, and students, and thus assist the prospects for Republican officials."

"Efforts to disenfranchise minority voters have had a long history, going back to the Reconstruction era following the Civil War," Professor Bells explains. "Congress had ample evidence in the 1960s [when the VRA was passed] to show various requirements had long been and still were being used to suppress

voting by minority residents." He also notes that in the *Shelby* decision, the Court "does not deny that there are still efforts to suppress minority voting. Rather, it simply found that Congress unreasonably failed to update its formula for deciding which areas needed oversight by the federal government."

Professor Bells says, "The Constitution does not establish a general 'right to vote,' however, the U.S. Supreme Court, as early as 1870, referred to voting as a fundamental right and noted its critical role in preserving all other rights." Professor Bell explains that the American ideal is a "government of the people, by the people, and for the people," a phrase coined by Abraham Lincoln in his Gettysburg Address. He agrees that election officials should be reasonably sure that only eligible voters cast ballots, but, he says, the 15th Amendment cancels out voting laws that present burdens to minorities and others, even if the effect is not intentional. ■

Paying Your Debt *continued from page 4*

following the election “other people began to see that in very competitive elections, you could make a difference by keeping certain voters from participating.”

Virginia takes the lead

With the 2016 presidential election just around the corner, that exact point may be the reason why an executive order issued in April by Virginia’s Democratic governor, Terry McAuliffe, caused such a stir. Governor McAuliffe planned to use his executive power to restore voting rights to more than 200,000 felons who had

served their prison time and completed their parole or probation. With one in five African-American adults in the state unable to vote due to a felony conviction, Gov. McAuliffe planned to issue a new order every month restoring voting rights to each new group of individuals who met the criteria.

The move was quickly challenged in court by Republican lawmakers, who questioned the governor’s right to issue a blanket order, and called the act “political opportunism,” since he is a supporter of the Democratic presidential candidate.

Political advantage, it seems, was initially the objective of stripping felons of the right to vote in the state. In developing his plan to restore voting rights to the disenfranchised, Gov. McAuliffe’s advisors located a 1906 report that quoted Virginia State Senator Carter Glass as saying newly strengthened

disenfranchising laws would “eliminate the darkey as a political factor in this State in less than five years, so that in no single county of the Commonwealth will there be the least concern felt for the complete supremacy of the white race in the affairs of government.”

Before the movement to restore voting rights to felons, Virginia was one of the states that maintained a lifetime ban.

With a 4 to 3 decision, in July 2016, the Virginia Supreme Court agreed with the legislators that blanket restoration of voting rights was beyond the governor’s authority, but he could restore them on a case-by-case basis.

Taking the ruling in stride, Gov. McAuliffe began reviewing individual cases, and by August had restored voting rights to the 13,000 felons who had registered to vote after he signed his executive order. The governor has vowed to reinstate the voting rights of the remaining 200,000 felons as well.

“I personally believe in the power of second chances and in the dignity and worth of every single human being,” Gov. McAuliffe said in an August speech. “These individuals are gainfully employed. They send their children and their grandchildren to our schools. They shop at our grocery stores and they pay taxes. And I am not content to condemn them for eternity as inferior, second-class citizens.” ■

Glossary

appeal — legal proceeding where a case is brought from a lower court to a higher court to be reheard. **bipartisan** — supported by two political parties. **constituents** — persons represented by a government officeholder. **disenfranchise** — to deprive of a privilege or right (i.e., the right to vote). **felony** — a serious criminal offense usually punished by imprisonment of more than one year. **incumbent** — one who currently holds an office. **onerous** — difficult or burdensome. **nonpartisan** — not adhering to any established political group or party. **plaintiff** — person or persons bringing a civil lawsuit against another person or entity.



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