

THE SUPREME COURT AND VOTING RIGHTS

From the 1870s through the early 1900s, the Supreme Court began to cut back on the 15th Amendment in cases like [*United States v. Reese \(1876\)*](#) and [*Giles v. Harris \(1903\)*](#)—breaking the 15th Amendment’s promise of racial equality at the ballot box and green lighting Jim Crow discrimination in the South.

However, the Supreme Court began to reverse course a few decades later. And while the Supreme Court rejected the suffragists’ 14th Amendment argument in *Minor v. Happersett*, the Court *did* eventually extend the 14th Amendment’s protections to cover voting rights.

The Supreme Court has continuously said that the right to vote is a fundamental right protected under the 14th Amendment. As the Supreme Court explained, the right to vote is “preservative of all rights.”

As a result, the Court has struck down various laws for infringing on the right to vote—most notably, Jim Crow laws discriminating against African Americans.

For instance, in [*Harper v. Virginia Board of Elections \(1966\)*](#), the Court struck down the use of poll taxes in state and local elections as a violation of the 14th Amendment’s Equal Protection Clause. There, Annie Harper couldn’t pay a \$1.50 poll tax. She argued that it violated the 14th Amendment’s promise of equality. And she won. The Court concluded that wealth had no rational connection to a person’s eligibility to vote.

In recent years, the Supreme Court has considered a variety of voting rights issues. Let’s walk through a few of the big ones.

REAPPORTIONMENT

One key area of voting rights cases covers the issue of congressional representation and the principle of “one-person, one-vote.” Over time, many state legislatures had not redrawn legislative districts to match changes in population. (This included districts for electing members of Congress.) During this period, urban areas across a number of states grew in population—leading to electoral district maps that gave more electoral strength to rural areas than to urban areas.

CONSTITUTION 101

Module 13: Voting Rights in America

13.4 Info Brief

The Warren Court's reapportionment cases addressed this issue—reshaping political power in legislatures across the country. In 1946, the Supreme Court concluded that it would *not* address constitutional challenges to legislative maps in [Colegrove v. Green](#).

Justice Felix Frankfurter famously wrote, the challengers “ask of this Court what is beyond its competence to grant. [E]ffective working of our government revealed this issue to be of a peculiarly political nature and therefore not fit for judicial determination.

“[C]ourts ought not to enter this political thicket.”

The Supreme Court reversed course in [Baker v. Carr \(1962\)](#). There, Tennessee citizens brought a challenge to the state's legislative districts. The Tennessee legislature had established those districts *six* decades earlier. The challengers argued that the state's legislative districts ignored population shifts that had occurred in the state over that time.

In a 6-2 opinion authored by Justice William Brennan, the Supreme Court concluded that it *could* consider these sorts of challenges under the 14th Amendment's Equal Protection Clause.

Two years later, the Court went further in [Reynolds v. Sims \(1964\)](#). The case involved state legislative districts in Alabama. These districts ranged in size from 15,000 people to 635,000 people. That's a massive difference! Chief Justice Earl Warren authored the Court's landmark opinion.

The Court attacked legislative malapportionment and established the “one-person, one-vote” standard—requiring legislative districts to be roughly the same size. The Court argued that malapportionment means vote dilution. And that vote dilution violated the 14th Amendment's [Equal Protection Clause](#).

Warren: “Legislatures represent people, not trees or acres. Legislatures are elected by voters, not farms or cities or economic interests.”

“As long as ours is a republican form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect representatives in a free and unimpaired fashion is a bedrock of our political system.”

The Court's reapportionment decisions led to changes in districts across a number of states that had not previously responded to similar population shifts within their borders. Chief Justice Earl Warren called these reapportionment rulings the Court's most important decisions during his tenure—a tenure that included other landmark decisions like [Brown v. Board of Education](#).

CONSTITUTION 101

Module 13: Voting Rights in America

13.4 Info Brief

GERRYMANDERING

Another key area of voting rights cases covers the issue of gerrymandering. Gerrymandering covers efforts by politicians to draw district lines for their state legislatures or for electing members of Congress to benefit a particular party or a particular group. Racial gerrymandering arises when politicians take race into account to set district lines. And partisan gerrymandering covers districting efforts by politicians to benefit a particular political party. The Supreme Court has played a role in policing *racial* gerrymandering.

For instance, consider [*Shaw v. Reno \(1993\)*](#). This was one of the first racial gerrymandering cases to come before the Supreme Court. North Carolina had created a congressional reapportionment plan that created two majority–African American districts. One of them was an unusual shape—designed to track Interstate 85.

Residents challenged this oddly shaped district under the 14th Amendment’s Equal Protection Clause, arguing that North Carolina designed this district to enable the election of an additional African American representative. In a 5–4 ruling, the Court rejected the North Carolina districting decision. The Court concluded that, while North Carolina’s plan was not expressly based on race, the district was so extraordinary in its shape that it constituted an effort to impermissibly draw district lines on the basis of race.

The Court determined that such a suspiciously drawn district would not pass constitutional muster under the Equal Protection Clause unless the state could show that it had a compelling justification for designing the district as it did. The *Shaw* decision helped establish a framework for analyzing the use of race in the legislative districting process—in other words, for evaluating racial gerrymandering claims.

So, the bottom line is that following *Shaw*, you can’t draw districts that look funny without some sort of strong reason. The key point is that the Court doesn’t want states to give race too much weight in the districting process.

Finally, in an important decision decided recently, the Supreme Court turned away from policing *partisan* gerrymandering. The case was [*Rucho v. Common Cause \(2019\)*](#).

There, the Supreme Court weighed in on whether it had the power to review partisan gerrymandering challenges. Again, these are challenges to district maps for benefiting one political party over another. The Court observed that partisan gerrymandering extends back to early America. (The word “gerrymandering” comes from Elbridge Gerry, a Massachusetts leader from the Founding era.) The original Constitution left issues relating to voting—including districting decisions—largely to the states. And it didn’t grant any explicit role to the courts.

CONSTITUTION 101

Module 13: Voting Rights in America

13.4 Info Brief

Finally, the Court concluded that there was no manageable standard for reviewing partisan gerrymandering challenges. Justice Elena Kagan authored the dissent—joined by Justices Breyer, Ginsburg, and Sotomayor. Justice Kagan explored possible ways of assessing partisan gerrymandering claims. She also argued that the courts were the only institutions well-suited to step in to stop partisan gerrymandering. (Elected representatives can't be trusted to police themselves. And they can use gerrymandering to insulate themselves from the electorate.)

CONGRESSIONAL REGULATION

Another key area of cases covers the powers that the Constitution grants Congress to regulate voting. One of the civil rights movement's landmark achievements was the Voting Rights Act of 1965 ("VRA"). Congress passed it under its powers granted by the 14th Amendment and the 15th Amendment.

The VRA created mechanisms to enforce the 15th Amendment's ban on racial discrimination in voting—most notably "preclearance," a requirement that certain states with poor voting rights histories obtain national permission before altering their voting laws. The VRA included a formula for determining which states and counties needed to get preclearance to change their election practices. So, preclearance didn't apply everywhere.

Only *some* states and counties were required to seek approval before changing election policies, based on their history of discrimination in voting. This was strong constitutional medicine—providing the *national* government with an important role in protecting voting rights and attacking Jim Crow laws discriminating against African Americans.

Shortly after the VRA passed, the Supreme Court considered a challenge to the VRA's constitutionality brought by South Carolina—[*South Carolina v. Katzenbach*](#). The Supreme Court—in an opinion authored by Chief Justice Earl Warren—rejected South Carolina's challenge and upheld the VRA's preclearance requirement as a valid exercise of Congress's power to enforce the 15th Amendment.

The Court concluded that the 15th Amendment gave Congress "**full remedial powers**" to ban racial discrimination in voting. In the Court's view, the VRA was a "**legitimate response**" to the "**insidious and pervasive evil**" of the Jim Crow laws that prevented African Americans from voting since the ratification of the 15th Amendment in 1870.

And when they framed and ratified the 15th Amendment, the Reconstruction generation made Congress "**chiefly responsible**" for enforcing its promise to ban racial discrimination in voting.

CONSTITUTION 101

Module 13: Voting Rights in America

13.4 Info Brief

The Supreme Court recently returned to the issue of the VRA's constitutionality in [*Shelby County v. Holder*](#). When the VRA was passed in 1965, the preclearance provision was set to expire after five years. But Congress extended its life in 1970, 1975, and 1982, and then for an additional 25 years in 2006.

In *Shelby County*, the challengers argued that the VRA used an outdated formula for determining which states and localities were covered by the preclearance requirement and that the formula violated the Constitution. In a 5-4 ruling authored by Chief Justice John Roberts, the Supreme Court agreed.

The Court struck down the VRA's preclearance formula. The Court concluded that this provision exceeded the scope of Congress's power under the 14th and 15th Amendments. The Court determined that the 2006 extension was unconstitutional because the coverage formula was based on data about racial discrimination from the 1970s and had not been changed since 1982. So, it was based on very old data. The Court observed that the South had changed a great deal since the pre-VRA Jim Crow days.

While the VRA had done its job in its own day—attacking racial discrimination in voting—it remained strong constitutional medicine, in tension with the states' traditional authority to determine their own voting rules. Under these circumstances, the Court concluded that the selective application of the preclearance requirement ran afoul of what it described as “**a fundamental principle of equal sovereignty’ among the States.**” As a result, the VRA's preclearance mechanism can't be enforced unless Congress passes a new coverage formula.

Justice Ruth Bader Ginsburg dissented—joined by Justices Breyer, Kagan, and Sotomayor. Justice Ginsburg argued that the VRA fell within Congress's power to protect against racial discrimination in voting under the 14th and 15th Amendments.

The 15th Amendment's text and history show a commitment to attacking racial discrimination at the ballot box.

The Court's previous decisions—including *Katzenbach*—confirmed Congress's broad powers to enforce the 15th Amendment's commands. The VRA has worked—defeating Jim Crow, transforming voting (especially in the South), and increasing African American voter participation. And Congress was careful when it decided to reauthorize the VRA in an overwhelming, bipartisan vote in 2006.

Ginsburg: “*Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.*”

CONSTITUTION 101

Module 13: Voting Rights in America

13.4 Info Brief

VOTER ID LAWS

Finally, one of the biggest debates over voting rights today involves the constitutionality of state voter ID laws. The Supreme Court addressed this issue a little over a decade ago in [*Crawford v. Marion County Election Board \(2008\)*](#). There, the Supreme Court reviewed a constitutional challenge to a 2005 Indiana law requiring voters to show photo identification before casting their ballots.

The challengers—including the local Democratic Party and groups representing minority and elderly citizens—argued that the Indiana law was an unconstitutional burden on the right to vote. In a 6-3 ruling, the Supreme Court upheld the Indiana law, but the Court divided over the reasoning (3-3-3). (So, there was no majority opinion.)

Three justices—John Paul Stevens (author), John Roberts, and Anthony Kennedy—voted to uphold the law. They concluded that Indiana had a legitimate interest in preventing fraud, modernizing its elections, and safeguarding voter confidence—and that the law promoted those interests. And they thought that the ID law’s burden wasn’t great—falling on only a small part of the population.

The Court referred to these burdens as “**neutral and nondiscriminatory**.” Three *other* justices—Antonin Scalia (author), Samuel Alito, and Clarence Thomas—also voted to uphold the law, but on different grounds. They argued that laws like these fell within the traditional powers of the states and that the Court should simply defer to state and local officials.

Finally, three justices dissented. Justice David Souter—joined by Ruth Bader Ginsburg—concluded that the state had shown no evidence of fraud and that there was a real burden on certain populations, including the elderly and the poor. And Justice Breyer argued that while some voter ID laws might be constitutional, the facts in this case forced him to conclude that the Indiana law was unconstitutional.

Voter ID laws remain a topic of constitutional debate today. But this is only the tip of the iceberg. Americans continue to debate a range of constitutional issues that touch on voting rights.