

Preventing Voter Fraud or Encouraging Voter Suppression? Exploring North Carolina's Controversial VIVA Law



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Hallie Smith's Election Day Disappointment

- What does it mean to be “disenfranchised”? Was Hallie disenfranchised? What are the arguments for “yes, she was?” What are the arguments for “no, she was not?”
- What is your personal opinion?

Jeffrey O'Brien Votes Twice on Election Day

- Why was what Jeffrey did wrong and illegal?
- How would you feel if you had spent just as much time as Jeffrey volunteering, but you were instead working for Senator Jones's opponent?
- What is the law regarding voter fraud in NC?

NC Voter Fraud Laws



- In North Carolina, there are a number of different acts that might be considered voter fraud, some of which are misdemeanors and other felonies.
- For example, class 2 misdemeanors include things like taking a ballot out of the voting enclosure or helping someone use a mechanical device to mark a ballot.
- Crimes such as falsely registering, representing yourself as someone else, voting illegally, paying someone to vote a particular way, falsely swearing to any document (like an absentee ballot application), etc. is considered more serious and deemed a Class I felony. (The principal statutes are GS 163-273, -274, -275.)

Jeffrey O'Brien Votes Twice on Election Day

- Based on this information, what is Jeffrey guilty of?
- How often do you think this type of voter fraud occurs? (Allow students to discuss their thoughts and tell them you will come back to this point later.)
- What could have prevented Jeffrey from committing voter fraud?

Compare



- In what ways are these two scenarios similar? In what ways do they contrast?
- Would Jeffrey have been able to cast Tyrone's vote at Mrs. Smith's nursing home? Likewise, would Mrs. Smith have been able to cast her vote at Jeffrey or Tyrone's polling place?
- Where is the balance between preventing voter fraud and securing a citizen's ability and right to vote? How do we ensure both?

Voting & the Constitution

- The United States Constitution did not originally define who was eligible to vote, allowing each state to determine who was eligible. In the early history of the U.S., most states allowed only white male adult property owners to vote.
 - There were exceptions; for example women could vote in NJ if they met property requirements and some African Americans could vote in Northern States.
- Suffrage was expanded gradually to include African Americans, women, people over 18, American Indians, and more.

Voting Amendments

- 15th Amendment (1870)
 - Prohibits federal and state government from denying individuals the right to vote based on race, color, or prior servitude
- 19th Amendment (1920)
 - Guaranteed women the right to vote
- 24th Amendment (1964)
 - Prohibits the federal government from requiring payment of a poll tax as a qualification for voting in federal elections
 - *Harper v. Virginia Board of Elections* (1966) extended this ban on poll taxes to state elections
- 26th Amendment (1971)
 - Grants citizens 18 years and older the right to vote

Voting Rights Act (1965)

- The Voting Rights Act (VRA) bans racial discrimination in voting practices by the federal government as well as by state and local governments.
- Passed in 1965 after a century of deliberate and violent denial of the vote to African-Americans in the South and Latinos in the Southwest – as well as many years of entrenched electoral systems that shut out citizens with limited fluency in English – the VRA is often held up as the most effective civil rights law ever enacted. It is widely regarded as enabling the enfranchisement of millions of minority voters and diversifying the electorate and legislative bodies at all levels of American government.
- The 2006 reauthorization renewed several key protections, providing for language assistance, Election Day monitors, and Justice Department pre-approval of voting changes.



Voting Rights Act (1965)

- Perhaps the most effective parts of this law are Sections 4 & 5.
 - Sec 4 : defines election districts that need to apply for preclearance as ones that had a voting test in place as of November 1, 1964 and less than 50% turnout for the 1964 presidential election. Such districts must prove to the Attorney General or a three-judge panel of a Washington, D.C. district court that the change "neither has the purpose nor will have the effect" of negatively impacting any individual's right to vote based on race or minority status. Section
 - 4 formulas as of 2013 mandated that "Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia in their entirety; and parts of California, Florida, Michigan, New York, North Carolina, and South Dakota" ask for preclearance for electoral law changes.
 - Sec 5: prohibits eligible districts from enacting changes to their election laws and procedures without gaining official authorization. Section 5 was originally enacted for five years, but has been continually renewed since that time.
- Congress has reauthorized the VRA four times, most recently in 2006, when both the House and the Senate approved the measure overwhelmingly in a bipartisan manner. Congress conducted more than 20 hearings, heard from more than 90 expert witnesses, and collected more than 15,000 pages of testimony documenting the continued need for and constitutionality of the statute.

Shelby County v. Holder (2013) – Facts of the Case

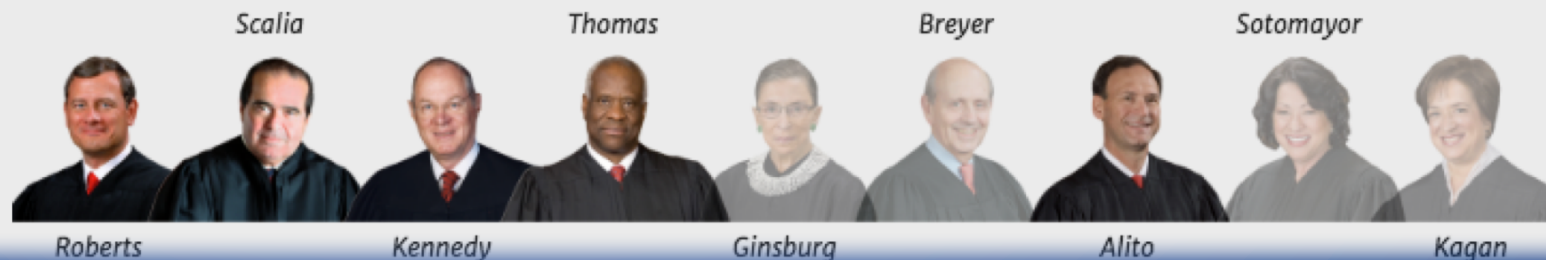
- The Fourteenth Amendment protects every person's right to due process of law.
- The Fifteenth Amendment protects citizens from having their right to vote abridged or denied due to "race, color, or previous condition of servitude."
- The Tenth Amendment reserves all rights not expressly granted to the federal government to the individual states. Article Four of the Constitution guarantees the right of self-government for each state.
- Shelby County, Alabama, filed suit in district court and sought both a declaratory judgment that Section 5 and Section 4(b) are unconstitutional and a permanent injunction against their enforcement.
- The district court upheld the constitutionality of the Sections and granted summary judgment for the Attorney General.
- The U.S. Court of Appeals for the District of Columbia Circuit held that Congress did not exceed its powers by reauthorizing Section 5 and that Section 4(b) is still relevant to the issue of voting discrimination.

Shelby County v. Holder (2013) - Question

- Does the renewal of Section 5 of the Voter Rights Act under the constraints of Section 4(b) exceed Congress' authority under the Fourteenth and Fifteenth Amendments, and therefore violate the Tenth Amendment and Article Four of the Constitution?
- In a 5-4 vote, the Court ruled, **yes, Section 4 of the Voting Rights Act is unconstitutional**. Chief Justice John Roberts delivered the majority opinion.

5-4 DECISION FOR SHELBY COUNTY, ALABAMA

MAJORITY OPINION BY JOHN G. ROBERTS, JR.



Shelby County v. Holder

- Read your assigned excerpt of the Court's ruling in *Shelby County* and answer the following questions on a separate sheet of paper:
 - Is your excerpt part of the majority or dissenting opinion? What evidence can you provide to support your claim?
 - What reasons does your excerpt provide for supporting or opposing the Court's ruling?
 - Do you agree with the Court's ruling? Why or why not?
- Be prepared to summarize your excerpt and share your thoughts about it with your group.

HB 589 Overview

- Required an approved photo ID at the polls
 - **Approved:** NC driver's license, learner's permit or provisional license; NC special ID card for non-drivers; US passport; US military ID or veterans ID card; Tribal card from federally or state recognized tribe; Out-of-state driver's license (only valid if voter's voter registration was within 90 days of the election)
 - **Not approved:** Student ID, Government Employee ID
- Shortened Early Period from 17 days to 10 day, but kept the same amount of hours for early voting.
- Eliminated straight ticket voting
- Eliminated same-day registration
- Eliminated preregistration for 16 and 17-year olds
- Eliminated state sponsored voter registration drives
- Eliminated out-of-precinct voting
- Allowed any North Carolina citizen to challenge the voter registration of another citizen, not just someone from their county.

HB 589 Struck Down

- In July 2016, the 4th Circuit Court of Appeals struck down major portions of HB 589, over turning an early lower court ruling that upheld the law. The last two paragraphs of the opinion state:

It is beyond dispute that “voting is of the most fundamental significance under our constitutional structure.” For “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” We thus take seriously, as the Constitution demands, any infringement on this right. We cannot ignore the record evidence that, because of race, the legislature enacted one of the largest restrictions of the franchise in modern North Carolina history.

We therefore reverse the judgment of the district court. We remand the case for entry of an order enjoining [stopping] the implementation of [VIVA’s] **photo ID requirement and changes to early voting, same-day registration, out-of-precinct voting, and preregistration.**”