

COURTESY OF UNDERWOOD ARCHIVES VIA GETTY IMAGES

I. Federal Statutes and Case Law

1879

***Strauder v. West Virginia* 100 U.S. 303**

Summary of Facts and Issues: A West Virginia statute provided that only white male persons who were 21 years of age and citizens of the state were eligible to serve as jurors.¹

Impact of Ruling: The U. S. Supreme Court ruled that a statute denying, on the basis of race, an otherwise qualified person the right and privilege of serving as a juror impermissibly discriminated on the basis of race in violation of the Fourteenth Amendment.²

1884

***Ex Parte Yarbrough* 110 U.S. 651**

The Ku Klux Cases

Summary of Facts and Issues: Several members of the Ku Klux Klan were charged under various federal criminal statutes (passed specifically to address expansion of the Ku Klux Klan) with conspiring to intimidate and threaten African Americans, including for the purpose of voter suppression.³ The defendants challenged the constitutionality of the criminal statutes, arguing that they were beyond the scope of federal authority.

Impact of the Ruling: The U.S. Supreme Court upheld the criminal statutes, finding that the federal government clearly had authority to “protect the elections of which its existence depends.”⁴ The Court also held that, although the Fifteenth Amendment does not expressly grant the right to vote to African Americans, it effectively did so in states that previously denied them the right to vote.⁵

1903

***Giles v. Harris* 189 U.S. 475**

Summary of Facts and Issues: The plaintiff argued that several Alabama laws related to voter registration and qualifications effectively barred African Americans from voting, albeit not explicitly.⁶ The voting laws included a “grandfather clause” that automatically qualified previously registered white voters, but excluded African



A policeman applies an arm lock on comedian Dick Gregory after he left the Leflore County Court House to help Negroes register to vote, Greenwood, MS. (1963)

American voters and subjected them to stringent qualification tests.⁷ The plaintiff asserted that these laws were unconstitutional under the Fourteenth and Fifteenth Amendments to the United States Constitution.

Impact of Ruling: The U.S. Supreme Court ruled that it lacked jurisdiction and authority to grant the requested relief. Specifically, the Court held that the requested relief—enrolling the plaintiff as a registered voter—would not remedy the wrong alleged (i.e., that the voting procedures were discriminatory and therefore unconstitutional).⁸ The Court also held that it did not have jurisdiction to supervise and rule upon state court voting procedures.⁹ This holding essentially gave states permission to pass discriminatory voting procedures and signaled that the federal courts would not intervene.

Subsequent History: Although it does not appear that *Giles v. Harris* has ever been explicitly overturned, the Supreme Court later issued several rulings striking down similar voting restrictions and “grandfather clauses.”¹⁰

1915

***Myers v. Anderson* 238 U.S. 368**

Summary of Facts and Issues: A municipal voter registration and qualification ordinance required that a prospective voter fall into one of three categories: (1) own property; (2) be a naturalized citizen or the son of a naturalized citizen (versus a native-born citizen); or (3) have been registered to vote prior to January 1, 1868.¹¹ The last requirement, commonly known as a “grandfather clause,”¹² effectively barred all African Americans from voting (unless they owned property or were naturalized citizens), because the cutoff date was prior to ratification of the Fifteenth Amendment to the United States Constitution, while allowing white citizens to vote without meeting those requirements, as they or their forebears were allowed to vote prior to the Fifteenth Amendment.

Impact of Ruling: The U.S. Supreme Court held that the grandfather clause violated the Fifteenth Amendment because it “re-creat[ed] and re-establish[ed] a condition which the Amendment prohibits”¹³ Although the Court observed that the property and citizenship requirements appeared to be constitutional, it held that they too must be struck down since they were intertwined with the unconstitutional provision.¹⁴

1927

***Nixon v. Herndon* 273 U.S. 536**

Summary of Facts and Issues: A Texas statute stated that, “in no event shall a negro be eligible to participate in a Democratic party primary election held in the State of

Texas”¹⁵ Plaintiffs filed suit, arguing that it violated the Fourteenth Amendment.

Impact of Ruling: The U.S. Supreme Court struck down the statute. The Court first held that it had jurisdiction to hear the matter and to award damages, thus rejecting the defendants’ claim that the suit raised a non-justiciable political question.¹⁶ The Court then held that the voting restriction clearly violated the Fourteenth Amendment since it discriminated on the basis of race.¹⁷

1932

***Nixon v. Condon* 286 U.S. 73**

Summary of Facts and Issues: A Texas law allowed political parties to establish “State Executive Committees” with the authority to set voter qualifications.¹⁸ The committee for the Texas Democratic Party adopted a resolution stating that only white individuals could be qualified to vote in primary elections.¹⁹ The law and resolution were challenged under the Fourteenth Amendment to the United States Constitution.

Impact of Ruling: The U.S. Supreme Court held that the committee in question derived its authority from the state and acted on behalf of the state.²⁰ As the Court stated: “Delegates of the state’s power have discharged their official functions in such a way as to discriminate invidiously between white citizens and black.”²¹ Its conduct was therefore subject to the Fourteenth Amendment, and the provision in question was held unconstitutional.²²

1935

***Grovey v. Townsend* 295 U.S. 45**

Summary of Facts and Issues: The Texas Democratic Party, at its convention, adopted a resolution permitting only white individuals to vote in its primary.²³ The plaintiff, an African American, was denied the right to vote based on this resolution.²⁴ He filed suit, arguing that his rights had been violated under the Fourteenth and Fifteenth Amendments to the United States Constitution.

Impact of Ruling: The U.S. Supreme Court held that the voting limitation was not the result of state action. Specifically, it ruled that “the qualifications of citizens to . . . vote at party primaries have been declared by the representatives of the party in convention assembled, and this action upon its face is not state action.”²⁵ Accordingly, the Fourteenth and Fifteenth Amendments did not apply to the restriction, and the dismissal of the suit was affirmed.²⁶ Until it was overruled, this ruling effectively allowed states, through their political parties, to explicitly discriminate against African Americans by precluding them from participating in the selection of candidates for office.

Subsequent History: In *Smith v. Allwright*, the U.S. Supreme Court relied upon intervening case law holding the Constitution authorized Congress to regulate primary as well as general elections, *U.S. v. Classic* (1941) 313 U.S. 299, to overrule *Grovey v. Townsend*.²⁷

1939

***Lane v. Wilson* 307 U.S. 268**

Summary of Facts and Issues: An Oklahoma voter registration scheme set two primary voting criteria: (1) automatic qualification for those who had voted in the general election of 1914, and (2) a 12-day registration period for any prospective voter who had not voted in 1914.²⁸ Only white individuals had voted in the 1914 election through operation of a “grandfather clause” that had been deemed unconstitutional in a prior case.²⁹ Any individual who did not register during the 12-day window was permanently barred from voting.

Impact of Ruling: The United States Supreme Court struck down the registration scheme and held that the Fifteenth Amendment “nullifies sophisticated as well as simple-minded modes of discrimination.”³⁰ The Court reasoned that the registration scheme was merely a perpetuation of the unconstitutional grandfather clause, and that the 12-day period was “too cabined and confined” to undo its harms.³¹

1942

***Hill v. Texas* 316 U.S. 400**

Summary of Facts and Issues: A Texas law set criteria to serve on a grand jury that included, among other requirements, the prior payment of a poll tax, the ownership of property, and the ability to read and write.³² An African American charged with a crime moved to quash the indictment on the grounds that African Americans had been systematically excluded from the grand jury, in keeping with a years-long scheme to exclude African Americans from serving on grand juries.³³ Evidence adduced at the hearing revealed that an African American had not served on a grand jury for at least the preceding 16 years.³⁴

Impact of Ruling: The U.S. Supreme Court held that the petitioner had made out a prima facie case of racial discrimination in the selection of grand jurors.³⁵ It reasoned that the “continuous omission” of African American jurors could not have been by chance or accident, and that the record showed that the jury commissioners had “made no effort to ascertain whether there were within the county members of the colored race qualified to serve as jurors.”³⁶

1944

***Smith v. Allwright* 321 U.S. 649**

Summary of Facts and Issues: An African American man sued election judges in Harris County, Texas for their refusal to give him a ballot or to permit him to cast a ballot in the primary election of July 1940, for the nomination of Democratic candidates for the United States Senate and House of Representatives, Governor, and other state officers.³⁷ The refusal was alleged to have been solely because of the race and color of the proposed voter. The judges argued that the Constitution did not prohibit their conduct, since political primaries were political party affairs, handled by the party and not governmental officers.

Impact of Ruling: The U.S. Supreme Court relied on *U.S. v. Classic* (1941) 313 U.S. 299 to overrule *Grovey v. Townsend* and hold that “state delegation to a party of the power to fix the qualifications of primary elections is delegation of a state function that may make the party’s action the action of the state.”³⁸ The Court found that the state “statutory system for the selection of party nominees for inclusion on the general election ballot makes the party which is required to follow these legislative directions an agency of the state in so far as it determines the participants in a primary election. The party takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by a political party.”³⁹

1960

***United States v. Raines* 362 U.S. 17**

Summary of Facts and Issues: The Civil Rights Act of 1957 guaranteed, among other rights, the right to vote regardless of race; it also empowered the U.S. Attorney General to seek an injunction against any conduct deemed to violate that right.⁴⁰ The Attorney General used these provisions to file suit against various election officials in Terrell County, Georgia, alleging that the officials had conspired to discriminate against African Americans who sought to register to vote.⁴¹ The defendants challenged the statute under which the Attorney General had filed suit.⁴²

Impact of the Ruling: The U.S. Supreme Court held that the statute, as applied in this case, was “clearly” constitutional because the defendants were engaged in state action that violated the Fifteenth Amendment, and thus the Civil Rights Act was “appropriate legislation” to enforce the Fifteenth Amendment.⁴³ *Raines*, accordingly, was another in the line of cases that reaffirmed federal authority to seek injunctions and criminal prosecutions against state officials who violate African Americans’ civil rights.

Gomillion v. Lightfoot 364 U.S. 339

Summary of Facts and Issues: An Alabama redistricting law redefined boundaries of the City of Tuskegee from a square to a 28-sided figure that resulted in exclusion of nearly all African American residents, but that retained all white residents.⁴⁴ The redistricting scheme was challenged in court on the basis that it violated the Fifteenth Amendment. The State of Alabama argued that federal courts lacked jurisdiction to address the constitutionality of the law, claiming that states have unfettered rights to reorganize local political subdivisions.⁴⁵

Impact of Ruling: The U.S. Supreme Court rejected Alabama's arguments, holding that federal judicial review is appropriate where "state power is used as an instrument for circumventing a federally protected right,"⁴⁶ in this case the Fifteenth Amendment. The matter was remanded to the lower court, where the law in question was struck down.⁴⁷

1961**Gremillion v. Nat. Ass'n for the Advancement of Colored People 366 U.S. 293**

Summary of Facts and Issues: A set of Louisiana laws prohibited organizations from doing business in Louisiana if the organization was affiliated with any out-of-state organization whose officers or members were members of the Communist Party or related organizations.⁴⁸ The laws also required various filings and affidavits disclosing the organization's membership, and they imposed criminal penalties for failure to do so.⁴⁹ The National Association for the Advancement of Colored People (NAACP) challenged the laws, arguing that the provisions violated the First Amendment right to freedom of association.⁵⁰

Impact of Ruling: The U.S. Supreme Court struck down the affiliation law because "it is not consonant with due process to require a person to swear to a fact that he cannot be expected to know . . . or alternatively to refrain from a wholly lawful activity."⁵¹ The Court struck down the disclosure law as violating the First Amendment.⁵²

1962**Wood v. Georgia 370 U.S. 375**

Summary of Facts and Issues: A Georgia grand jury was empaneled and instructed by a judge to investigate allegations of "bloc voting" by African Americans in Bibb County, Georgia. It was specifically alleged that candidates had paid large sums of money to obtain African American votes.⁵³ An elected sheriff in the county issued a press release criticizing the judge's actions and arguing that it was a "deplorable example[] of race agitation."⁵⁴ The sheriff was charged and convicted of contempt of

court, and he appealed the conviction. The Georgia Court of Appeals largely affirmed the conviction.⁵⁵

Impact of Ruling: The U.S. Supreme Court reversed the conviction as violating the First Amendment, holding that "in the absence of some . . . showing of a substantive evil actually designed to impede the course of justice in justification of the exercise of the contempt power to silence the petitioner, his utterances are entitled to be protected."⁵⁶

1964**Henry v. City of Rock Hill 376 U.S. 776**

Summary of Facts and Issues: African American protestors assembled to peacefully protest segregation, and they failed to disperse when ordered.⁵⁷ They were arrested and later convicted of breach of the peace.⁵⁸ On appeal, the South Carolina Supreme Court affirmed the convictions, holding that there was "ample evidence here to support the conclusion that the police acted in good faith to maintain the public peace, to assure the availability of the streets for their primary purpose of usage by the public, and to maintain order in the community."⁵⁹

Impact of Ruling: The U.S. Supreme Court vacated the convictions, finding that they had been charged with an offense "so generalized as to be . . . not susceptible of exact definition."⁶⁰ Under the Court's precedent, the Fourteenth Amendment "does not permit a State to make criminal the peaceful expression of unpopular views."⁶¹

Civil Rights Act of 1964

Summary of Law: The Act generally prohibits discrimination on the basis of race, color, religion, sex, or national origin. For example, the Act requires that voting rules be applied equally across races⁶² and it forbids discrimination by private businesses open to the public (e.g., restaurants and hotels).⁶³ The Act also mandates desegregation of public facilities⁶⁴ and public schools,⁶⁵ and prohibits discrimination in employment.⁶⁶ Finally, the Act forbids discrimination in public federally funded programs, and also established the Equal Employment Opportunity Commission.⁶⁷

Impact of Law: The Act dramatically strengthened civil rights protections in the United States. It sought to prohibit and undo the harms imposed by legal segregation,⁶⁸ and also gave the federal government power to enforce and implement the promises of *Brown v. Board of Education* (1954) 347 U.S. 483.⁶⁹ Title II, addressing discrimination in public accommodations, was perhaps the most immediately transformative aspect of the Act given the persistence of segregation (particularly in the South) at restaurants, motels, and other businesses.⁷⁰

Subsequent History: The Civil Rights Act of 1964 led to several other pieces of major civil rights legislation, including the Voting Rights Act of 1965 and the Fair Housing Act of 1968. This subsequent legislation was designed to “complement and reinforce” the 1964 Act,⁷¹ and together these and other statutes made significant progress in the struggle toward racial equality, though as reflected in this report, that progress has been uneven.

1965

Voting Rights Act of 1965

Summary of Law: The Voting Rights Act of 1965 was designed to strengthen and implement the protections of the Fifteenth Amendment. The Act, in section 2, forbids all states from implementing any voting procedure that curtails voting rights on the basis of race.⁷² Sections 4 and 5 of the Act applied to “covered” jurisdictions with histories of imposing discriminatory voting procedures.⁷³ Such covered jurisdictions were barred from implementing various forms of voter qualification procedures absent approval by federal authorities. Sections 4 and 5 were initially set to be temporary, but were repeatedly extended by Congress.

Impact of Law: The Voting Rights Act, and particularly section 5 of the Act, was “one of the nation’s most effective tools to eradicate racial discrimination in voting.”⁷⁴ Prior to the Act, the primary approach to combatting racially discriminatory voting laws was through case-by-case litigation, which was resource-intensive and slow; even where plaintiffs prevailed, the success was often fleeting as jurisdictions would then enact new discriminatory policies.⁷⁵ The Act, by contrast, successfully halted voting discrimination before it could harm voters.⁷⁶

Subsequent History: In *Shelby County v. Holder* (2013) 570 U.S. 529, discussed below, the U.S. Supreme Court struck down section 5 of the Act, essentially holding that the preclearance formula was no longer needed given the national progress made to limit voting discrimination.⁷⁷ *Shelby County* “opened the floodgates to laws restricting voting throughout the United States,” including, for example, strict voter identification laws in Texas, Mississippi, and Alabama.⁷⁸

Cox v. Louisiana 379 U.S. 559

Summary of Facts and Issues: A Louisiana statute prohibited picketing or parading in front of a courthouse with the intent to obstruct court proceedings.⁷⁹ A minister and others were charged and convicted under the statute for leading protests against racial discrimination and segregation.⁸⁰

Subsequent History: The U.S. Supreme Court considered whether the convictions were constitutional. Although the Court held that the statute was constitutional on its face, it also held that the conviction violated the rights to due process and freedom of speech because the highest police officials of the city, in the presence of the sheriff and mayor, in effect told the demonstrators that they could meet across the street from courthouse, 101 feet from the courthouse steps.⁸¹

1966

Brown v. Louisiana 383 U.S. 131

Summary of Facts and Issues: Five African Americans sought to protest segregationist policies at a public library in Louisiana that effectively required African Americans to use a bookmobile rather than the library itself.⁸² The protestors entered the library and declined to leave upon request.⁸³ They were subsequently arrested, and were later convicted of breach of the peace.⁸⁴

Impact of Ruling: The U.S. Supreme Court reversed the convictions, noting that the individuals did nothing more than “stage a peaceful and orderly protest demonstration . . .”⁸⁵ Its ruling was premised on the First and Fourteenth Amendment rights to freedom of speech, assembly, and the right to petition the government to redress grievances.⁸⁶ The Court further held that the breach of the peace statute had been used as a pretext to punish those engaging in protected and fundamental rights.⁸⁷

1967

Kilgarlin v. Hill 386 U.S. 120

Summary of Facts and Issues: In 1965, the State of Texas passed a reapportionment plan for both the House and Senate of the Texas Legislature.⁸⁸ Appellants challenged the scheme and argued, among other assertions, that the scheme amounted to a racial gerrymander in violation of the Fourteenth Amendment.⁸⁹ Specifically, the appellants argued that the reapportionment plan was intended to, and had the effect of, minimizing the voting strength of African Americans in violation of the equal protection clause of the Fourteenth Amendment.⁹⁰

Impact of Ruling: The U.S. Supreme Court upheld much of the plan, but struck down one portion that diluted the voting power of voters in certain districts. The Court relied on the “equal population principle,” set out in *Reynolds v. Sims* (1964) 377 U.S. 533, which requires that the population per representative be substantially equal.⁹¹ In this case, a portion of the redistricting scheme resulted in substantial variation among districts in population per representative, and so those provisions were struck down.⁹²

Walker v. City of Birmingham 388 U.S. 307

Summary of Facts and Issues: City officials in Birmingham, Alabama obtained an injunction prohibiting certain civil rights activists from leading or participating in unpermitted street protests and marches.⁹³ After the protestors deliberately violated the injunction, city officials sought to hold them in contempt of court.⁹⁴ In response, the protestors argued that the underlying injunction was unconstitutional, but the state court declined to consider the constitutionality of the injunction. The protestors were held in contempt and sentenced to several days in jail.⁹⁵

Impact of Ruling: The U.S. Supreme Court upheld the contempt convictions.⁹⁶ It acknowledged that the injunction might well have been unconstitutional, but ultimately held that the protestors could not first violate an injunction and then challenge its constitutionality.⁹⁷

Subsequent History: In *Shuttlesworth v. City of Birmingham* (1969) 394 U.S. 147, the U.S. Supreme Court addressed the claims of another individual associated with the same protest as in *Walker*. Specifically, Mr. Shuttlesworth, an African American minister, had been convicted of violating a Birmingham ordinance prohibiting unpermitted parades or other demonstrations.⁹⁸ Mr. Shuttlesworth attempted several times to get a permit under the ordinance, as required by the injunction, and was rejected in terms demonstrating that “under no circumstances would he and his group be permitted to demonstrate in Birmingham.”⁹⁹ The Court reversed the conviction, holding that the ordinance, and the way it was implemented, was so broad that it violated the First Amendment right to freedom of speech.¹⁰⁰

1968**Cameron v. Johnson 390 U.S. 611**

Summary of Facts and Issues: The U.S. Supreme Court addressed the constitutionality of Mississippi’s Anti-Picketing Law.¹⁰¹ The law was passed in response to a group of civil rights organizations that had organized pickets in front of a Mississippi courthouse, and it forbade picketing that interfered with entry into and exits from courthouses.¹⁰² The law was passed during an extended, months-long daily protest against voter suppression, and it was used to halt the protest.¹⁰³ The petitioners argued, in part, that the statute was vague, overbroad, and that it was passed with the discriminatory intent to halt African American protestors.¹⁰⁴

Impact of Ruling: The U.S. Supreme Court upheld the constitutionality of the law. It held that the law was not unduly vague nor overly broad.¹⁰⁵ It also rejected the claim

that the law was selectively enforced against the picketers, finding that law enforcement had a duty to enforce the law once it was passed.¹⁰⁶

1969**Gaston County v. United States 395 U.S. 285**

Summary of Facts and Issues: Gaston County, North Carolina was subject to the pre-clearance requirements of the Voting Rights Act of 1965 due to its history of using a test or other means of restricting voter registration.¹⁰⁷ The County’s status resulted in the suspension of a literacy test that it imposed as a qualification for voting.¹⁰⁸ The County filed suit seeking to reinstate its literacy test.

Impact of Ruling: The U.S. Supreme Court denied the request to reinstate the literacy test. In order to reinstate the test, the County would have had to show that the test did not discriminatorily disenfranchise African Americans.¹⁰⁹ The Court observed that the County’s schools were racially segregated and that the County deprived African American students of equal educational opportunities.¹¹⁰ For example, 98 percent of white teachers, but only 5 percent of African American teachers, held regular state teaching certificates, and a much higher proportion of African American students “attended one-room, one-teacher, wooden schoolhouses which contained no desks.”¹¹¹ The Court thus concluded that because African American children were “compelled to endure a segregated and inferior education, fewer will achieve any given degree of literacy than will their better-educated white contemporaries.”¹¹²

Subsequent History: *Shelby County v. Holder* (2013) 570 U.S. 529 struck down the pre-clearance requirements of the Voting Rights Act that prevented the use of Gaston County’s literacy test.

1971**Boyle v. Landry 401 U.S. 77**

Summary of Facts and Issues: African American individuals and civil rights groups in Chicago filed a class action against several government officials and agencies, asserting that the officials sought to intimidate them and prevent them from exercising their First Amendment rights.¹¹³ The groups were specifically focused on working to end racial segregation and discrimination.¹¹⁴ They argued that several criminal statutes were being used to prosecute African Americans disproportionately, and that African Americans were being arrested without probable cause and were being held on exorbitant bail.¹¹⁵

Impact of the ruling: The lower court upheld all of the challenged statutes except one, which prohibited intimidating someone with a threat to commit a criminal offense.¹¹⁶ But the Supreme Court denied relief as to the intimidation statute as well, finding that the plaintiffs had failed to show any irreparable injury from actual or potential prosecutions under that statute.¹¹⁷ The *Boyle* ruling undercut the ability of plaintiffs to challenge the use of discriminatory criminal prosecutions, including those that are used disproportionately and purposefully against African Americans.

***Whitcomb v. Chavis* 403 U.S. 124**

Summary of Facts and Issues: The State of Indiana passed various redistricting statutes, including provisions related to Marion County.¹¹⁸ After redistricting, Marion County was represented by eight senators and 15 members of the legislative house.¹¹⁹ The plaintiffs alleged that the redistricting in Marion County diluted the vote of African Americans, many of whom lived in a “ghetto area,” and that the new laws left them with “almost no political force.”¹²⁰

Impact of the ruling: The United States Supreme Court upheld the Marion County redistricting scheme.¹²¹ It held that the plaintiffs had failed to show that their voting power had been sufficiently impacted and that there was no evidence of intentional racial discrimination.¹²²

1973

***White v. Regester* 412 U.S. 755**

Summary of Facts and Issues: In 1970, the Texas House of Representatives passed redistricting measures for both the House and the Senate.¹²³ The plaintiffs argued that aspects of the plan violated the equal protection clause because of the variation in population per representative across districts.¹²⁴ Specifically, certain districts had considerably more residents than others, yet were apportioned the same number of representatives.¹²⁵ The plaintiffs also argued that two particular multimember districts were being used invidiously to dilute the voting strength of African Americans and other groups.¹²⁶

Impact of Ruling: The United States Supreme Court first held that the population-per-representative disparities were insufficient to establish an equal protection violation.¹²⁷ As to the vote dilution claims associated with the two multi-member districts, the Court affirmed the lower court’s finding that the redistricting scheme violated the plaintiffs’ equal protection rights.¹²⁸ The Court specifically focused on Texas’s long history of official racial discrimination, including its efforts to suppress the African American vote, and the very few African Americans

elected to the Texas legislature.¹²⁹ It also stressed the persistence of racial discrimination in the two specific counties at issue.¹³⁰

1975

***City of Richmond, Virginia v. United States* 422 U.S. 358**

Summary of Facts and Issues: The City of Richmond, Virginia was subject to the pre-clearance requirements of section 5 of the Voting Rights Act of 1965, which required that Richmond obtain a judgment decreeing that any change it made in voting qualifications or prerequisites to voting did not have the purpose or effect of denying or abridging the right to vote on account of a voter’s race or color.¹³¹ Accordingly, Richmond sought federal court approval for a plan to annex approximately 23 square miles of adjacent land.¹³² The primary question was whether the annexation had the purpose or effect of abridging the African American vote in Richmond; plaintiffs argued that the expansion of the city limits substantially increased the proportion of white voters and decreased the proportion of African American voters, diluting their voting power.¹³³

Impact of Ruling: The Court ruled that the annexation’s impact on the African American vote was insufficient to render it unlawful.¹³⁴ The Court conceded that the African American population would decline considerably post-annexation, and that the African American community would (assuming racial bloc voting) have fewer seats on the city council; however, because the African American population would still be proportionately represented after new council districts were drawn, the Court ruled that the plan was not unlawful.¹³⁵ The Court then accepted the lower court’s finding that the annexation had the purpose of diluting the African American vote, yet the Court let the annexation stand subject to further proceedings to determine whether there were objectively legitimate reasons for the annexation.¹³⁶

Subsequent History: The Court in *Shelby County v. Holder* (2013) 570 U.S. 529 struck down the pre-clearance requirements of section 5 of the Voting Rights Act that applied to Richmond’s annexation.¹³⁷

1976

***Beer v. United States* 425 U.S. 130**

Summary of Facts and Issues: The City of New Orleans was subject to the pre-clearance requirements of section 5 of the Voting Rights Act of 1965, and it sought authorization to implement a reapportionment of its city council districts.¹³⁸

Under its proposed plan, African Americans would become a majority in two of the new districts when they had previously been the majority in only one district.¹³⁹ However, the new plan would not (assuming bloc voting) result in African Americans being able to elect council members in proportion to their population, because they were a majority of registered voters in only one district.¹⁴⁰

Impact of Ruling: The Court held that the scheme was permissible since it arguably increased the voting power of African Americans, even though the African American vote was diluted relative to white voters.¹⁴¹

Subsequent History: *Shelby County v. Holder* (2013) 570 U.S. 529, struck down the pre-clearance requirements of section 5 of the Voting Rights Act that applied to the New Orleans scheme.¹⁴²

1977

Connor v. Finch 431 U.S. 407

Summary of Facts and Issues: Mississippi was subject to the pre-clearance requirements of section 5 of the Voting Rights Act of 1965.¹⁴³ In 1975, the Attorney General objected to the state's proposed reapportionment plan, and the federal district court then devised a new plan.¹⁴⁴ The plaintiffs argued that the new plan violated the equal protection clause's guarantee that legislative districts be of nearly equal population, so that each person's vote be given equal weight in the election of representatives.¹⁴⁵

Impact of Ruling: The United States Supreme Court struck down the reapportionment plan, finding that the variation in population among districts was "substantial" and "cannot be tolerated . . . in the absence of some compelling justification."¹⁴⁶ The Court rejected the proffered justification of the need to maintain historical county lines, and the new plan was struck down.¹⁴⁷ Finally, the Court concluded that the reapportionment plan improperly diluted the voting power of African Americans.¹⁴⁸

Subsequent History: *Shelby County v. Holder* (2013) 570 U.S. 529 struck down the pre-clearance requirements of the Voting Rights Act that applied to the Mississippi scheme.

1980

City of Mobile v. Bolden 446 U.S. 55

Summary of Facts and Issues: African American voters sued the City of Mobile, Alabama, which was governed by a city commission, arguing that the at-large system of municipal elections violated the Fourteenth and Fifteenth Amendments to the United States Constitution.¹⁴⁹ Under Mobile's system, three city commissioners were elected

at-large, and shared legislative, executive, and administrative power in the municipality.¹⁵⁰ The result was that African Americans, who constituted 35 percent of the population, could never elect their preferred candidate.¹⁵¹

Impact of Ruling: The United States Supreme Court upheld the constitutionality of the at-large voting system.¹⁵² It rejected both the Fourteenth and Fifteenth Amendment claims because there had been no showing of purposeful discrimination against African Americans in maintaining the scheme.¹⁵³ In so ruling, the Court found that evidence demonstrating that (1) no African American had ever been elected to the commission; (2) the commissioners had discriminated against African Americans in municipal employment and services; (3) the state had historically and persistently discriminated against African Americans; and (4) African Americans' minority status necessarily resulted in dilution of power under the at-large system, was irrelevant.¹⁵⁴

Subsequent History: In response to *City of Mobile v. Bolden*, Congress amended the Voting Rights Act to make clear that a voting scheme could be deemed unlawful if shown to have a discriminatory impact, even without a showing of discriminatory intent.¹⁵⁵

2009

Northwest Austin Municipal Utility District No. 1 v. Holder 557 U.S. 193

Summary of Facts and Issues: A small utility district in Texas sought to be released from the pre-clearance requirements associated with the Voting Rights Act of 1965, and argued that section 5 was unconstitutional.¹⁵⁶ There was no evidence that the district itself had previously discriminated in its voting systems, but it was subject to section 5 because it was a political subdivision in Texas, which was subject to section 5.¹⁵⁷

Impact of Ruling: The United States Supreme Court ruled that the district could qualify to "bail out" of the pre-clearance requirements, even though it is not a state.¹⁵⁸ In so ruling, the Court avoided addressing the larger question of section 5's constitutionality.¹⁵⁹

2013

Shelby County v. Holder 570 U.S. 529

Summary of Facts and Issues: Shelby County, Alabama was subject to the pre-clearance requirements of sections 4 and 5 of the Voting Rights Act of 1965.¹⁶⁰ Sections 4 and 5 of the Act applied to "covered" jurisdictions with histories of imposing discriminatory voting procedures.¹⁶¹ Such covered jurisdictions were barred from

implementing various forms of voter qualification procedures absent approval by federal authorities.¹⁶² Sections 4 and 5 were initially set to be temporary, but were repeatedly extended by Congress.¹⁶³ After the Attorney General objected to certain proposed voting changes, the county filed suit and challenged the constitutionality of the pre-clearance requirements.¹⁶⁴

Impact of Ruling: The United States Supreme Court struck down section 5 of the Act, essentially holding that

the preclearance formula was no longer needed given what the Court found to have been national progress made to limit voting discrimination.¹⁶⁵ The Court stressed the “substantial” federalism concerns associated with section 5, particularly that different criteria apply to different states under the Act.¹⁶⁶ The *Shelby* ruling “opened the floodgates to laws restricting voting throughout the United States,” including, for example, subsequently-enacted strict voter identification laws in Texas, Mississippi, and Alabama.¹⁶⁷

II. State Statutes and Case Law

1849

California Constitution of 1849, Article 2, Section 1

Summary of Facts and Issues: The first California Constitution severely limited the right to vote: “Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the 30th day of May, 1848 of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law: Provided, that nothing herein contained shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage, Indians or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper.”¹⁶⁸

Subsequent History: The section was amended in 1879, and then again from 1970-1974.¹⁶⁹ The 1879 version removed “white” but also included that “no native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this State.”¹⁷⁰ The current Constitution reads: “A United States citizen 18 years of age and resident in this State may vote. [] An elector disqualified from voting while serving a state or federal prison term . . . shall have their right to vote restored upon completion of their prison term.”¹⁷¹

1971

Calderon v. City of Los Angeles 4 Cal.3d 251

Summary of Facts and Issues: Residents of the City of Los Angeles sued based on the city charter’s requirement

to redistrict its council districts based on the number of registered voters.¹⁷²

Impact of Ruling: The Court ruled that apportionment on a “one voter, one vote” basis rather than on “one person, one vote” basis denied equal protection where apportionment on such basis resulted in the largest district having nearly 70 percent more people than the smallest.¹⁷³

2001

Elections Code Section 14025 et seq., The California Voting Rights Act of 2001

Summary of Provisions: The California Voting Rights Act addresses vote dilution and voter discrimination by providing a private right of action and other remedies for the use of any at-large voting systems, and any other voting systems in which racially polarized voting occurs.¹⁷⁴

Subsequent History: In *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385, the California Court of Appeal found that the applicability of the Act did not unlawfully impinge on a city’s plenary authority to control the manner and method of electing its officers.¹⁷⁵ In 2019, the California Legislature enacted Assembly Bill No. 849, the Fair And Inclusive Redistricting for Municipalities And Political Subdivisions (FAIR MAPS) Act, that requires each local jurisdiction to adopt new district boundaries after each federal decennial census, specifies redistricting criteria and deadlines for the adoption of new boundaries by the governing body, specifies hearing procedures that would allow the public to provide input on the placement of boundaries and on proposed boundary maps, and requires the governing body to take specified steps to encourage the residents of the local jurisdiction to participate in the redistricting process.¹⁷⁶

Endnotes

¹ *Strauder v. West Virginia* (1879) 100 U.S. 303, 305.

² *Id.* at p. 310.

³ *Ex Parte Yarbrough* (1884) 110 U.S. 651, 654–655.

⁴ *Id.* at p. 658.

⁵ *Id.* at p. 665.

⁶ *Giles v. Harris* (1903) 189 U.S. 475, 483–484.

⁷ *Id.* at pp. 482–483.

⁸ *Id.* at p. 487.

⁹ *Id.* at pp. 487–488.

¹⁰ See, e.g., *Myers v. Anderson* (1915) 238 U.S. 368; *Nixon v. Herndon* (1927) 273 U.S. 536.

¹¹ *Myers, supra*, 238 U.S. at p. 377.

¹² Greenblatt, *The Racial History of the “Grandfather Clause”* Code Switch, Nat. Public Radio (Oct. 22, 2013) (as of May 22, 2023).

¹³ *Myers, supra*, 238 U.S. at p. 380.

¹⁴ *Id.* at pp. 381–382.

¹⁵ *Nixon, supra*, 273 U.S. at p. 540.

¹⁶ *Ibid.*

¹⁷ *Id.* at pp. 540–541.

¹⁸ *Nixon v. Condon* (1932) 286 U.S. 73, 82.

¹⁹ *Ibid.*

²⁰ *Id.* at pp. 84–85.

²¹ *Id.* at p. 89.

²² *Ibid.*

²³ *Grove v. Townsend* (1935) 295 U.S. 45, 47.

²⁴ *Id.* at pp. 46–47.

²⁵ *Id.* at p. 48.

²⁶ *Id.* at p. 55.

²⁷ *Smith v. Allwright* (1944) 321 U.S. 649, 659–262.

²⁸ *Lane v. Wilson* (1939) 307 U.S. 268, 270–271.

²⁹ *Id.* at p. 269.

³⁰ *Id.* at p. 275.

³¹ *Id.* at p. 276.

³² *Hill v. Texas* (1942) 316 U.S. 400, 401.

³³ *Id.* at pp. 400–401.

³⁴ *Id.* at p. 404.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Smith v. Allwright* (1944) 321 U.S. 649, 650–651.

³⁸ *Id.* at p. 660.

³⁹ *Id.* at p. 663.

⁴⁰ *United States v. Raines* (1960) 362 U.S. 17, 19–20.

⁴¹ *Id.* at p. 19.

⁴² *Id.* at p. 20.

⁴³ *Id.* at pp. 24–25.

⁴⁴ *Gomillion v. Lightfoot* (1960) 364 U.S. 339, 341.

⁴⁵ *Id.* at p. 342.

⁴⁶ *Id.* at p. 347.

⁴⁷ Mendenhall, *Gomillion v. Lightfoot* (May 2, 2011) Encyclopedia of Ala. (as of May 23, 2023).

⁴⁸ *Gremillion v. Nat. Ass’n for the Advancement of Colored People* (1961) 366 U.S. 293, 294–295.

⁴⁹ *Ibid.*

⁵⁰ *Id.* at p. 296.

⁵¹ *Id.* at p. 295, internal citation omitted.

⁵² *Id.* at p. 297.

⁵³ *Wood v. Georgia* (1962) 370 U.S. 375, 376.

⁵⁴ *Id.* at p. 379.

⁵⁵ *Id.* at p. 383.

⁵⁶ *Id.* at p. 389.

⁵⁷ *Henry v. City of Rock Hill* (1964) 376 U.S. 776, 777.

⁵⁸ *Id.* at p. 776.

⁵⁹ *City of Rock Hill v. Henry* (S.C. 1962) 128 S.E.2d 775, 776.

⁶⁰ *Henry, supra*, 376 U.S. at p. 777, internal quotation marks omitted.

⁶¹ *Id.* at p. 778, internal quotation marks omitted.

⁶² *Civil Rights Act of 1964*, § 101 et seq.; 52 U.S.C. § 10101 et seq.

⁶³ *Civil Rights Act of 1964*, § 201 et seq.; 42 U.S.C. § 2000a et seq.

⁶⁴ *Civil Rights Act of 1964*, § 301 et seq.; 42 U.S.C. § 2000b et seq.

⁶⁵ *Civil Rights Act of 1964*, § 401 et seq.; 42 U.S.C. § 2000c et seq.

⁶⁶ *Civil Rights Act of 1964*, § 701 et seq.; 42 U.S.C. § 2000e et seq.

⁶⁷ *Civil Rights Act of 1964*, § 705 et seq.; 42 U.S.C. § 2000e–4 et seq.

⁶⁸ Goldstein, *Constitutional Dialogue and the Civil Rights Act of 1964* (2005) 49 Saint Louis Univ. Law J. 1095, 1095 (as of May 23, 2023).

⁶⁹ *Ibid.*

⁷⁰ *Id.* at p. 1096.

⁷¹ Days, *“Feedback Loop”: The Civil Rights Act of 1964 and Its Progeny* (2005) 49 Saint Louis Univ. Law J. 981, 981 (as of May 23, 2023).

⁷² *Voting Rights Act of 1965*, § 2; 52 U.S.C. § 10301.

⁷³ *Voting Rights Act of 1965*, §§ 4, 5; 52 U.S.C. §§ 10303–04.

⁷⁴ Pérez & Agraharkar, *If Section 5 Falls: New Voting Implications* (2013) Brennan Center for J., p. 1 (as of May 23, 2023).

⁷⁵ *Id.* at p. 2.

⁷⁶ *Ibid.*

⁷⁷ *Shelby County v. Holder* (2013) 570 U.S. 529, 549–551.

⁷⁸ *The Effects of Shelby County v. Holder* (Aug. 6, 2018) Brennan Center for J. (as of May 23, 2023).

⁷⁹ *Cox v. Louisiana* (1965) 379 U.S. 559, 560.

⁸⁰ *Cox v. Louisiana* (1965) 379 U.S. 536, 538–539 (companion case involving same facts where minister and others were charged under separate state statutes for disturbing the peace and

obstructing public passages, and the court overturned the convictions).

⁸¹*Cox v. Louisiana, supra*, 379 U.S. at pp. 572-573.

⁸²*Brown v. Louisiana* (1966) 383 U.S. 131, 136.

⁸³*Id.* at pp. 136-137.

⁸⁴*Ibid.*

⁸⁵*Id.* at p. 140.

⁸⁶*Id.* at pp. 141-142.

⁸⁷*Id.* at p. 143.

⁸⁸*Kilgarlin v. Hill* (1967) 386 U.S. 120, 120.

⁸⁹*Id.* at pp. 121-122.

⁹⁰*Kilgarlin v. Martin* (S.D. Tex. 1966) 252 F.Supp. 404, 434-435.

⁹¹*Kilgarlin v. Hill* (1967) 386 U.S. 120, 121-122.

⁹²*Ibid.*

⁹³*Walker v. City of Birmingham* (1967) 388 U.S. 307, 308-309.

⁹⁴*Id.* at p. 311.

⁹⁵*Id.* at pp. 311-312.

⁹⁶*Id.* at pp. 320-321.

⁹⁷*Ibid.*

⁹⁸*Shuttlesworth v. City of Birmingham* (1969) 394 U.S. 147, 148-50.

⁹⁹*Id.* at pp. 157-58.

¹⁰⁰*Id.* at pp. 158-59.

¹⁰¹*Cameron v. Johnson* (1968) 390 U.S. 611, 612-613.

¹⁰²*Id.* at pp. 614-617.

¹⁰³*Ibid.*

¹⁰⁴*Ibid.*

¹⁰⁵*Id.* at pp. 615-617.

¹⁰⁶*Id.* at pp. 620-622.

¹⁰⁷*Gaston County v. United States* (1969) 395 U.S. 285, 286-287.

¹⁰⁸*Id.*

¹⁰⁹*Id.* at p. 293.

¹¹⁰*Id.* at pp. 293-294.

¹¹¹*Id.* at p. 294.

¹¹²*Id.* at p. 295.

¹¹³*Boyle v. Landry* (1971) 401 U.S. 77, 78-79.

¹¹⁴See *Landry v. Daley* (N.D.Ill. 1968) 280 F.Supp. 938, 944.

¹¹⁵*Boyle v. Landry, supra*, 401 U.S. at pp. 78-79.

¹¹⁶*Id.* at p. 80.

¹¹⁷*Id.* at pp. 80-81.

¹¹⁸*Whitcomb v. Chavis* (1971) 403 U.S. 124, 127.

¹¹⁹*Id.* at pp. 127-128.

¹²⁰*Id.* at pp. 128-129.

¹²¹*Id.* at pp. 159-160

¹²²*Id.* at pp. 145-146, 153-155.

¹²³*White v. Regester* (1973) 412 U.S. 755, 757-758.

¹²⁴*Id.* at pp. 758-759.

¹²⁵*Id.* at p. 761.

¹²⁶*Id.* at p. 765.

¹²⁷*Id.* at pp. 763-764.

¹²⁸*Id.* at pp. 765-767.

¹²⁹*Ibid.*

¹³⁰*Ibid.*

¹³¹*City of Richmond, Virginia v. United States* (1975) 422 U.S. 358, 361-362.

¹³²*Id.* at pp. 362-363.

¹³³*Id.* at pp. 362-364.

¹³⁴*Id.* at pp. 370-371.

¹³⁵*Id.* at p. 371.

¹³⁶*Id.* at pp. 374-375.

¹³⁷*Shelby County v. Holder* (2013) 570 U.S. 529, 557.

¹³⁸*Beer v. United States* (1976) 425 U.S. 130, 132-133.

¹³⁹*Id.* at pp. 135-137.

¹⁴⁰*Ibid.*

¹⁴¹*Id.* at pp. 141-142.

¹⁴²*Shelby County v. Holder, supra*, 570 U.S. at p. 557.

¹⁴³*Connor v. Finch* (1977) 431 U.S. 407, 410-412.

¹⁴⁴*Id.* at pp. 412-413.

¹⁴⁵*Id.* at p. 416.

¹⁴⁶*Id.* at p. 417.

¹⁴⁷*Id.* at pp. 418-419.

¹⁴⁸*Id.* at pp. 424-426.

¹⁴⁹*City of Mobile v. Bolden* (1980) 446 U.S. 55, 58-59.

¹⁵⁰*Id.* at pp. 59-60.

¹⁵¹*Id.* at pp. 58-59.

¹⁵²*Id.* at pp. 65, 74.

¹⁵³*Id.* at pp. 61-65, 70-75.

¹⁵⁴*Id.* at pp. 73-75.

¹⁵⁵See generally *Thornburg v. Gingles* (1986) 478 U.S. 30, 35.

¹⁵⁶*Northwest Austin Municipal Utility District No. 1 v. Holder* (2009) 557 U.S. 193, 196-197.

¹⁵⁷*Id.* at pp. 200-201.

¹⁵⁸*Id.* at pp. 210-211.

¹⁵⁹*Id.* at pp. 204-206.

¹⁶⁰*Shelby County v. Holder* (2013) 570 U.S. 529, 540.

¹⁶¹*Id.* at pp. 534-536.

¹⁶²*Ibid.*

¹⁶³*Id.* at p. 538.

¹⁶⁴*Id.* at pp. 540-541.

¹⁶⁵*Id.* at pp. 549-551.

¹⁶⁶*Id.* at pp. 543-544.

¹⁶⁷Brennan Center for Justice, [The Effects of Shelby County v. Holder](#) (Aug. 2018) (as of May 26, 2023).

¹⁶⁸Cal. Const. of 1849, art. II, § 1.

¹⁶⁹See Cal. Const. of 1879, art. II, § 1; Cal. Const., art. II, § 2.

¹⁷⁰Cal. Const. of 1879, art. II, § 1.

¹⁷¹Cal. Const., art. II, § 2.

¹⁷²*Calderon v. City of Los Angeles* (1971) 4 Cal.3d 251, 254-255.

¹⁷³*Id.* at pp. 263-265.

¹⁷⁴Elec. Code, § 14025 et seq.

¹⁷⁵*Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385, 431.

¹⁷⁶Assem. Bill No. No. 849 (2019-2020 Reg. Sess.), codified at Elec. Code, § 21500 et seq.