

## The Breakfast Club

### Constitutional Minute for 11 October 2022

#### A Review of Federal Voting Laws

For nearly 90 years after the Constitution was ratified the federal government stayed out of regulating federal elections in any significant way. Finally, after ratification of the 15<sup>th</sup> Amendment, Congress was forced to act.

The Fifteenth Amendment stated: *“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”* Most people overlook Section 2 of the Amendment which states: *“The Congress shall have the power to enforce this article by appropriate legislation.”* And enforce it they had to.

Democrat-controlled Southern states were none too happy about having to extend the franchise to freed slaves. They came up with all sorts of laws and conditions which restricted or essentially prohibited freed-blacks from voting. Poll taxes, poll tests, gerrymandering, and other restrictions were placed in the way. In 1870, Congress had had enough and passed the **Civil Rights Act of 1870**. Also known as the Enforcement Act or the First Ku Klux Klan Act, the act provided criminal penalties for those attempting to prevent African Americans from voting by using or threatening to use violence or engaging in other tactics, such as making threats to terminate a person’s employment or evict them from their home.

Numerous continued violations of the 15<sup>th</sup> Amendment led to the enactment of the second Enforcement act, which passed in February 1871. The **second Enforcement Act** added more severe punishments for violations of the first act. Two months later, in April 1871, Congress passed the third and final measure, commonly called the **second Ku Klux Klan Act**. This outlawed terrorist conspiracies by all racist vigilantes including but not limited to the Ku Klux Klan. It allowed the President to suspend the writ of Habeas Corpus in areas prone to Klan activities.

In 1876, one section of the Enforcement Act was ruled unconstitutional in *United States v. Reese et al.* The Supreme Court decided that the 15<sup>th</sup> Amendment did not confer a right to vote to freed slaves, it merely prevented denying the vote based on race or previous condition of servitude. This may seem like a distinction without a difference, but in the world of legal terminology the effect was real and served to weaken the 15<sup>th</sup> Amendment and strengthen state voting laws.

An attempt was made to add more voting rights protections for blacks in the **Civil Rights Act of 1957** but these provisions were removed in the Senate version under the direction of Senate Majority Leader Lyndon Johnson.

The **Civil Rights Act of 1960** established federal inspection of local voter registration polls and introduced penalties for anyone who obstructed someone from registering to vote.

The landmark **1964 Civil Rights Act** devoted the entirety of Title I to Voting Rights. It prohibited unequal application of voter registration requirements. It required that voting rules and procedures be applied

equally to all races, but it did not abolish the concept of voter "qualification." This allowed voters continue to have to pass "literacy tests," which were being widely used to disenfranchise both black voters and poor whites in the South. These were finally eliminated in the **Voting Rights Act of 1965**, the first legislation devoted exclusively to voting. This act states it is "an act to enforce the fifteenth amendment to the Constitution," something Congress had ironically been trying to do for 95 years.

The Voting Rights Act of 1965 was the most significant statutory change in the relationship between the federal and state governments in the area of voting since Reconstruction. It was immediately challenged in the courts. For the next five years, the Supreme Court issued several key decisions upholding the constitutionality of the Act. [*South Carolina v. Katzenbach*, 383 U.S. 301, 327-28 (1966) and *Allen v. State Board of Elections*, 393 U.S. 544 (1969)] The Supreme Court struck down the "coverage formula" as unconstitutional in [\*Shelby County v. Holder\*](#) (2013) which affected voting operations in nine states. The Voting Rights Act of 1965 was readopted and strengthened in 1970, 1975, and 1982 and has been amended numerous times since then. Most modern charges of "voter suppression" claim violations of the Voting Rights Act of 1965. Other voting-related acts that have addressed narrow and very specific areas of voting, such as:

The **Voting Accessibility for the Elderly and Handicapped Act of 1984** required polling places be accessible to people with disabilities. Each precinct in VA has a specific voting machine for this purpose.

The **Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)** of 1986 allowed members of the U.S. armed forces and overseas U.S. voters to register and vote by mail, even by email.

The **National Voter Registration Act (NVRA)** of 1993 (the "Motor Voter Act") created new ways to register to vote, particularly DMV offices. It also called for states to keep more accurate voter registration lists.

The **Help America Vote Act (HAVA) of 2002** authorized federal funds for elections. It also created the U.S. Election Assistance Commission (EAC). The EAC helps states comply with HAVA to adopt minimum standards on voter education, registration, and ballots. HAVA required that states implement: Provisional Voting, Voting Information, Updated and Upgraded Voting Equipment, Statewide Voter Registration Databases, Voter Identification Procedures and Administrative Complaint Procedures.

The **Military and Overseas Voting Empowerment (MOVE) Act of 2009** improved access to voting by military and overseas voters.

The **Freedom to Vote Act**, was introduced in the Senate on 14 September 2021. It would enact automatic and same-day registration, establish Election Day as a federal holiday, limit when voters can be removed from voter rolls, require all states have a minimum of two-weeks of early voting, require states to conduct post-election audits of federal elections, prohibit mid-decade redistricting, and clarify that felons can not be denied the vote unless they are serving a conviction for a felony on election day (which seems to imply they would be automatically re-enfranchised upon completing their sentences). On October 20, 2021, Republicans successfully blocked the measure when it failed to win a filibuster-proof vote.

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