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#MyVoiceMatters:

Civic Engagement & Community Action

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The Right to Vote:

A Short History & Issues for 2020

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Agenda:

1. Introduction & Civic Engagement
2. Voting Rights
   - Constitutional Foundation
   - Federal Law
   - Voter Checklist
3. Current Issues for 2020
   - Election Protection & Consent Decree
   - Electoral College Refresher
4. Resources
5. Questions

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Civic Engagement is Community Action

Community Action has Advocacy and Civic Engagement build into our core mission.



- Economic Opportunity Act of 1964
- Office of Economic Opportunity Instructions
- Community Services Block Grant Act

Voting Rights

The U.S. Constitution

The 1791 Constitution does not explicitly guarantee the right to vote



Article I:

- Voter Qualifications Clause: States decide qualifications for voters in federal and state elections
- Elections Clause: time, place, manner of federal elections decided by states, but Congress may supersede those regulations at any time

Article IV:

- Guarantee Clause: US shall guarantee to each state a republican form of government (SCOTUS has ruled this a "political question")

Constitutional Amendments



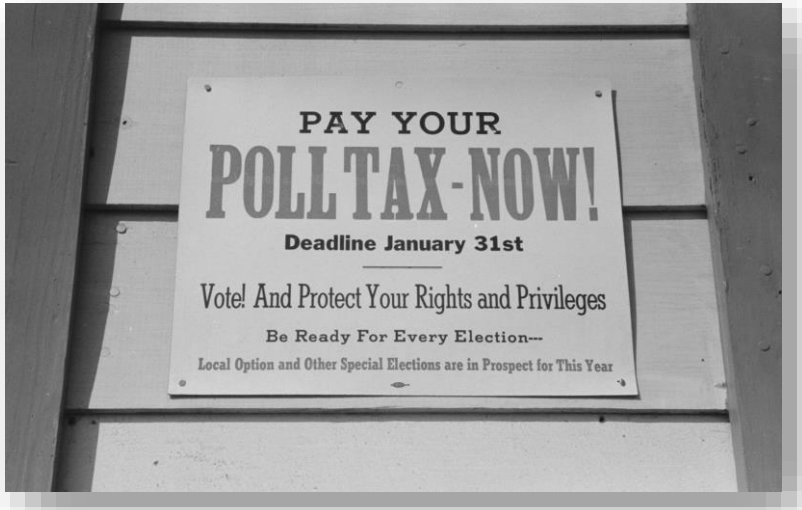
14th Amendment prohibits states and the federal government from "deny[ing] to any person … the equal protection of the laws."

Subsequent amendments recognized protections by prohibiting the government from denying or abridging a citizen's right to vote on the basis of:

- **15th – Race, color, or previous condition of servitude (1870)**
- **19th – Sex (1920)**
- **24th – Taxes owed (1964)**
- **26th – Age (if over 18) (1971)**







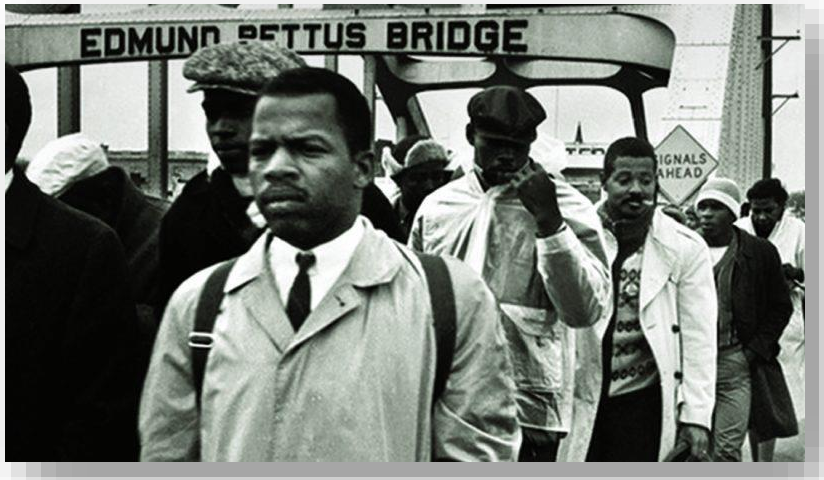
"any test or device"

The Compromise of 1877 brought an end to Reconstruction, allowing Southern states to pass racial segregation, or Jim Crow, laws that effectively erased the rights of Black voters:

- **Literacy tests**
- **Property tests**
- **Grandfather Clauses**
- **All White Primaries**
- **Felon Disenfranchisement**
- **Poll Taxes**
- **Voter Purges**

The Voting Rights Act of 1965

- Prohibited **qualifications, practices, or procedures** to deny the right to vote based on race or color (§ 2)
- **Coverage Formula (§ 4)** – Any jurisdiction where:
  - **Test or device as a condition of voter registration** in effect on November 1, 1964; *and*
  - Less than 50% of persons of voting age registered on that date **OR** less than 50% of persons of voting age voted in the November 1964 election.
- **Preclearance (§ 5)** – new voting laws in covered jurisdictions must be approved by the USAG or US District Court for DC.
- **Prohibited literacy tests for covered jurisdictions** (§ 4).
- Prohibited any person from **intimidating, threatening, or coercing any person for attempting to vote or voting** (§ 11).
- 5-year sunset provision





Effects of the VRA

Table 3. Percentage of Voting Age African Americans Registered to Vote in Southern States, 1947-1966

State	1947	1952	1956	1966
Alabama	1.2%	5%	11%	51.2%
Arkansas	17.3%	27%	36%	59.7%
Florida	15.4%	33%	32%	60.9%
Georgia	18.8%	23%	27%	47.2%
Louisiana	2.6%	25%	31%	47.1%
Mississippi	0.9%	4%	5%	32.9%
North Carolina	15.2%	18%	24%	51%
South Carolina	13%	20%	27%	51.4%
Tennessee	25.8%	25%	27%	71.7%
Texas	18.5%	31%	37%	61.6%
Virginia	13.2%	16%	19%	46.9%

Source: Hanes Walton, Jr., *Black Politics: A Theoretical and Structural Analysis* (New York: J.B. Lippincott Company, 1972), p. 44.

- Almost **1 million Black voters registered** in the first four years.
- Number of **Black elected officials in Southern states doubled** after the 1966 elections.
- Jurisdictions immediately covered by the Coverage Formula in Section 4 were the states of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia, as well as 39 counties in North Carolina and certain counties in Arizona and Hawaii.

“exceptional conditions…”



South Carolina v. Katzenbach (1966)

- South Carolina, as a covered jurisdiction, wanted to keep its literacy test (among other things) and sued to overturn the law, arguing that it undermined its rights under Article I.
- By a vote of 8-1, the Court upheld the law as a permissible use of Congress’s enforcement power under the 15th Amendment.
- Chief Justice Warren wrote that Congress had "full remedial powers" under the enforcement clause to prevent racial discrimination in voting and that the Act was a "legitimate response" to the "insidious and pervasive evil“ that denied Black people their right to vote.
- He noted that although it “may have been an uncommon exercise of congressional power … exceptional conditions can justify legislative measures not otherwise appropriate.”

VRA Amendments & Other Federal Acts

1970: expanded test/device ban to all states, updated coverage formula to 1968 election (CA, ID, NY, OR)

1975: national test/device ban permanent, language minority protections, penalties for voting more than once

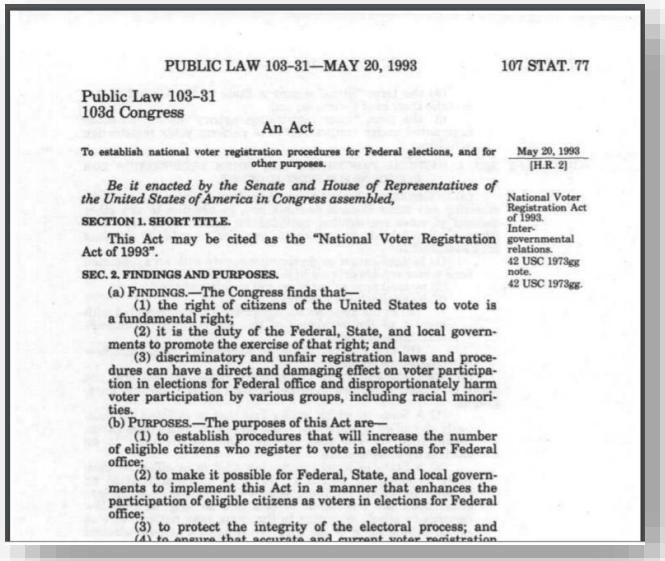
1982: confirmed disparate impact sufficient for a violation, superseding *Mobile v. Bolden* (1980)

1992: expanded scope of coverage for bilingual voting assistance

2006: 25 year extension (2032)

National Voter Registration Act (1993): voter registration for driver's license and public assistance applicants, registration-by-mail

Help America Vote Act (2002): accessible polling places/voting systems, first-time voter ID requirement, Election Assistance Commission, right to provisional and replacement ballots



PUBLIC LAW 103-31—MAY 20, 1993 107 STAT. 77

Public Law 103-31
103d Congress

An Act

To establish national voter registration procedures for Federal elections, and for other purposes.

May 20, 1993
[H.R. 2]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Voter Registration Act of 1993".

National Voter Registration Act of 1993.
Inter-governmental relations.
42 USC 1973gg note.
42 USC 1973gg.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—
(1) the right of citizens of the United States to vote is a fundamental right;
(2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and
(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) PURPOSES.—The purposes of this Act are—
(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
(2) to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
(3) to protect the integrity of the electoral process; and



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“throwing away your umbrella”



Shelby County v. Holder (2013)

- Shelby County, AL sued the USAG seeking a judgment that the VRA coverage formula and preclearance process (§§ 4(b); 5) were unconstitutional.
- In a 5-4 opinion, the Court ruled the coverage formula unconstitutional.
- Chief Justice Roberts conceded that “any racial discrimination in voting is too much,” that no one doubts that voter discrimination still exists, and that the VRA “has proved immensely successful at redressing racial discrimination and integrating the voting process,” but found that “the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions.”
- In her dissent, Justice Ginsburg argued that the VRA was precisely the reason conditions had improved, famously noting that, “[t]hrowing 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.”

John Lewis Voting Rights Advancement Act

- **New Coverage Formula** – 10 years for any jurisdiction where:
  - (1) 15 or more voting rights violations occurred in the state during the previous 25 years; ***OR***
  - (2) 10 or more violations occurred during the previous 25 years, at least one of which was committed by the state

- All jurisdictions must preclear changes to requirements for documentation to vote that make the requirements more stringent than federal registration VBM requirements.
- Restrictions on certain changes affecting minority groups
- States and political subdivisions must notify the public of changes to voting practices
- Passed the House on December 6, 2019 (228 – 187)



Voting 101

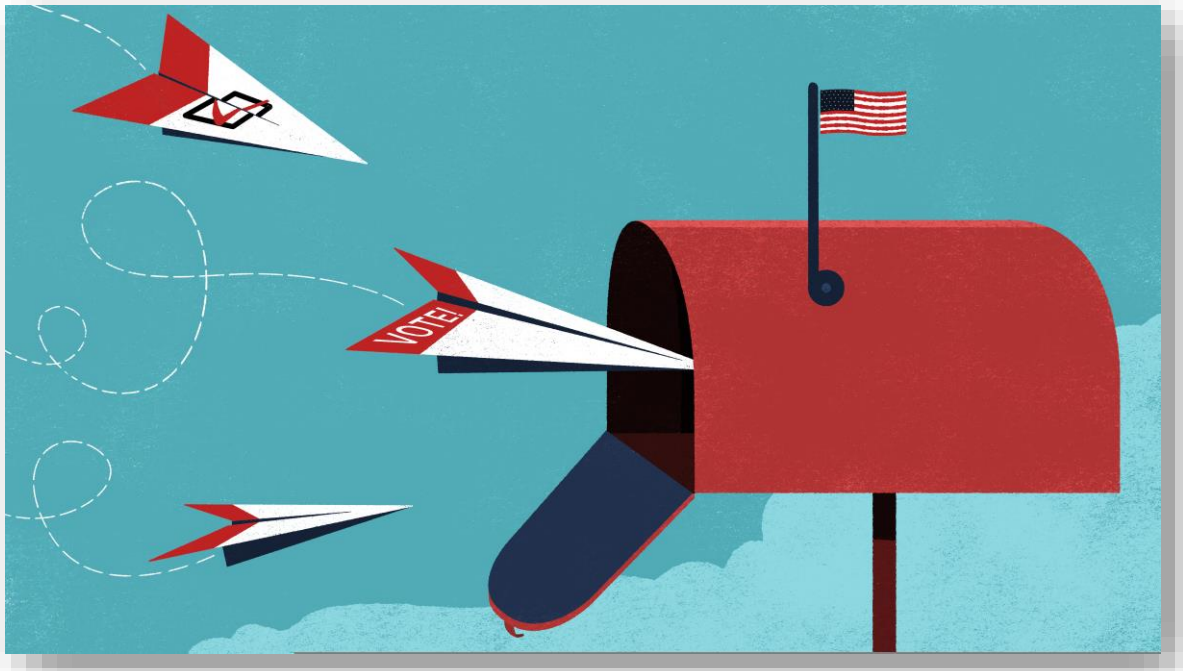
Before You Vote Checklist	Rights at the Polls
✓ Check your registration ✓ Check your polling place ✓ Bring required documents ✓ Preview your ballot	✓ Cast your ballot in private and without interference ✓ Stay in line ✓ Receive assistance if you have a disability or difficulty reading, speaking, or writing in English ✓ An accessible polling place and ADA-compliant voting devices ✓ Request a paper ballot (especially if electronic voting machines break down) ✓ Get a replacement ballot if you made a mistake or wish to change your vote ✓ Cast a regular ballot, instead of a provisional ballot (in most cases) – if you are told you can only cast a provisional ballot, ask what the reason is and where you can check to see if your provisional ballot was counted.

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Current Issues for 2020

VBM & "The Red Mirage"

- According to recent polling, registered Democrats are far more likely to vote early and vote-by-mail (VBM) than registered Republicans.
- Many states, including swing states like GA, IA, MI, PA, and WI, do not start counting mail-in ballots until Election Day.
- This could lead to what some have dubbed a "Red Mirage," where early returns favor Republican candidates, but as more VBM ballots are counted, the Democratic candidate pulls ahead.



For example: On election night 2018, Republican Martha McSally was beating Democrat Kyrsten Sinema by 1% in the race to fill the AZ Senate seat vacated by Jeff Flake – but 600,000 mail-in ballots were outstanding. After the 6 days it took to count the mail-in ballots, Sinema had won the seat by 55,000 votes (just over 2%).

Election Protection & Litigation

Some things to remember about private militias and unauthorized poll watchers:

- ✓ It is a violation of federal law to "intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any [federal] candidate" 52 USC § 10101(b)
- ✓ Every state prohibits private, unauthorized militias and military units from engaging in activities reserved for the state militia, including law enforcement activities.
- ✓ Fact sheets on unlawful militias

1982 Consent Decree Lifted:

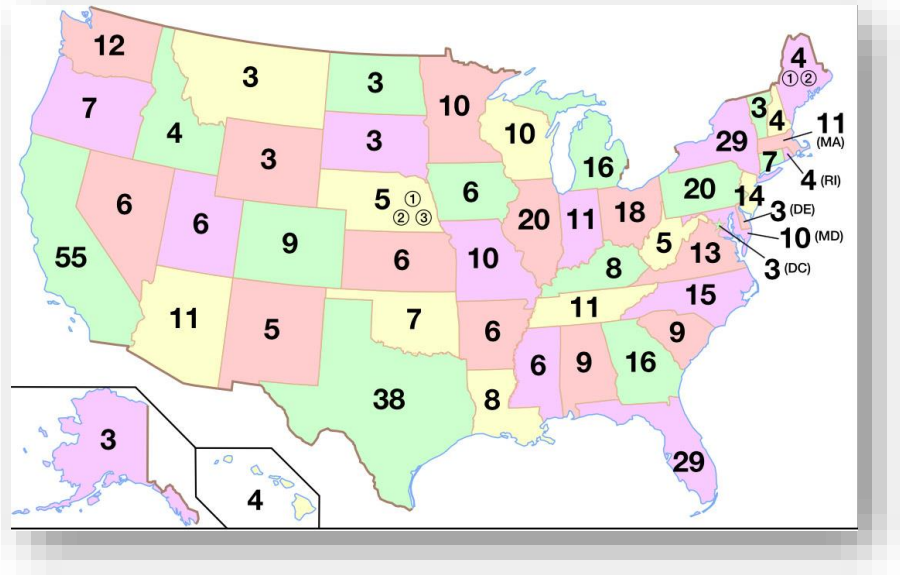
- During the NJ Governor's race in 1981, the Republican party formed a National Ballot Security Task Force to police the polls.
- Democrats sued and the RNC signed an agreement not to police the polls.
- After the 2018 elections, a judge lifted the consent decree.

Election Litigation Resources

- Brennan Center for Justice
- Protect the Vote (RNC)
- Democracy Docket (DNC)

Electoral College Refresher

- **Art. I, § 2, Cl. 1:** "*Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress*"
- 48 states and DC have chosen to award all electors to the candidate who wins a plurality of the vote (Not ME or NE)
- Electors cast votes in capitals first Monday after the second Wednesday in December (December 14, 2020).
- 7 copies of the vote certification signed by Governor and sent to the President of the US Senate (1), the Archivist of the US (2), the state's own Secretary of State (2), and the chief judge of the district court where the state capital sits (1).
- VP presides over a Joint Session of Congress, reads out the votes, and announces results.



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Mismatches, Objections & Contingencies

- **Mismatches:** Occasionally, two of a state's certifications do not match.
- **Objections:** During the Joint Session, any member of Congress may object to a state's certification. If a member of each chamber objects, the session is paused and each chamber debates the objection and votes on that state's (or elector's) ballot. Then the JC continues.
- **Contingencies:** If no candidate receives a majority:
  - The House chooses the President with each state casting one vote (not DC) – No ties
  - The Senate chooses the Vice President with each Senator casting one vote – No ties (VP cannot break)
  - **If House has not chosen by Jan. 20, the VP becomes President.
  - *If neither have been chosen by Jan. 20, the Speaker becomes President (until a majority in H or S)



Resources

Voting Activity Specific Resources

- CAPLAW articles: model policies on political activity
- Bolder Advocacy: The Rules of the Game: A Guide to Election-Related Activities for 501(c)(3) Organizations
- Non-Profit Vote: resources for non-profits on how to help the people they serve participate and vote
- Vote411: a project of the League of Women Voters Education Fund; non-partisan general and state specific information
- Vote.org: check your registration, register, request ballot by mail, get election reminders and more

How You Can Help:

- **Vote!**
  - Register, update your info, and confirm you are registered at vote.gov.
- **Get Involved**
  - Talk to customers about voting. Encourage them to register and exercise their right to vote.
  - Sign up for civic news through the Partnership Civic Engagement google group.
- **Educate yourself about redistricting:**
  - Read up on the redistricting process in your state (state by state one pagers)

Civic Engagement Resources:

- **Do's and Don'ts of Voter Registration** - CAPLAW Guidance
- **Updated Guidance on Voter Registration Activities** OCS IM #81
- **Other Organizations doing civic engagement work**
  - National Conference of State Legislatures
  - Brennan Center for Justice
  - League of Women Voters



CAPLAW
Community Action Program Legal Services, Inc.

BRENNAN CENTER FOR JUSTICE

NCSL

LWV

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Civic Engagement Webinar Series:

Voter Registration and Community Action: Rules, Regulations, and Engagement Strategies
July 16th| **Recording**

Advocating for Your Community: Effective Strategies for Public Policy Engagement
August 13th| **Recording**

Census & Redistricting
September 24th | **Recording**

The Right to Vote: A Short History & Issues for 2020
October 22nd | **Recording Coming Soon!**



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Questions?

