The Voting Rights Act in Historical Perspective

By David J. Garrow

Just over twenty-five years ago, on August 6, 1965, President Lyndon B. Johnson signed the Voting Rights Act of 1965 into law. "The vote," Johnson said then, "is the most powerful instrument ever devised by man for breaking down injustice and destroying the terrible walls which imprison men because they are different from other men."[1]

Johnson's faith in and celebration of the ballot fully typified the attitudes and presuppositions that most American political figures, and most African-American civil rights activists, had manifested throughout the many years of the black freedom struggle leading up to 1965. Black America's most well-known spokesman of the civil rights era, the Reverend Martin Luther King, Jr., memorably exemplified that consensus in his May 17, 1957, address at the Prayer Pilgrimage for Freedom, the initial civil rights rally at Washington's Lincoln Memorial. "So long as I do not firmly and irrevocably possess the right to vote, I do not possess myself," King told his audience of thousands. Black southerners' "most urgent request to the President of the United States and every member of Congress is to give us the right to vote. Give us the ballot and we will no longer have to worry the Federal Government about our basic rights. Give us the ballot and we will no longer plead to the Federal Government for passage of an anti-lynching law . . . Give us the ballot and we will transform the salient misdeeds of blood thirsty mobs into the abiding good deeds of orderly citizens. Give us the ballot and we will fill our legislative halls with men of goodwill."[2]

[1]*Public Papers of the Presidents, Lyndon B. Johnson, 1965* (Washington: GPO, 1966), 840-43.

[2]Martin Luther King, Jr., "Address at the Prayer Pilgrimage for Freedom," May 17, 1957, p. 1, Author's Files.

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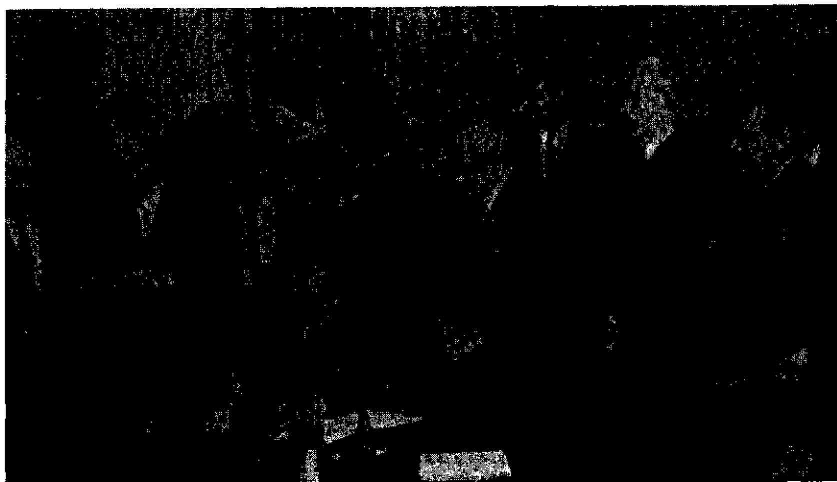


President Lyndon B. Johnson, with Martin Luther King, Jr., standing behind him, signed the Voting Rights Act into law on August 6, 1965. *Photograph from the Lyndon Baines Johnson Library.*

Perhaps the Congress of 1990 has more men—and women—of goodwill toward basic human rights than in 1957, but hundreds of citizens annually, vote or no vote, still petition the federal government for protection of their civil rights. King, however, was far from alone among movement activists in manifesting a remarkable and even exaggerated faith in the importance and power of the ballot. Even eight years later, with the added perspective provided by all the events of the early 1960s, Mississippi's Aaron Henry declared early in 1965 that "My feeling is that all of the problems can be resolved once the right to vote is gained."[3]

Beliefs and attitudes such as these underlay the years of struggle that led up to the drafting and passage of the 1965 Voting Rights Act. That act represented not only a milestone in Americans' widely-shared faith in the ballot, but also an explicit admission of the extent to which that fundamental right had been repeatedly denied all across the American South for

[3]U.S. Commission on Civil Rights, *Hearings on Voting in Jackson, Miss., February 16-20, 1965* (Washington: GPO, 1965), 159. Also see Pat Watters and Reese Cleghorn, *Climbing Jacob's Ladder: The Arrival of Negroes in Southern Politics* (New York, 1967), 181.

decade after decade prior to 1965. The duration and extensiveness of that denial of the franchise, however, was only one part of the pre-1965 story, for that deprivation had persisted only because of the relative national disinterest and relative federal passivity which also marked most of that pre-1965 era.

Although the clear beginnings of that disfranchisement occurred between 1877 and 1890, it was the period from 1890 through 1910 that witnessed the all-but-total exclusion of African-Americans from meaningful electoral participation across the South.[4] Although two notable Supreme Court challenges to "grandfather clause" discriminatory registration schemes in the state of Oklahoma both proved successful, in 1915 and 1939,[5] in most southern states prior to the late 1940s the most favored and the most effective mechanism for excluding black citizens from meaningful use of the vote was the white primary: whites-only party primaries conducted by each state's Democratic party.

The most prominent litigation challenges to the white primary schemes emerged from the state of Texas, but more than fifteen years of legal struggle, including four trips to the Supreme Court, were required before the white primary was finally eliminated. From the outset in the first of those cases, *Nixon* v. *Herndon*, the essence of the black struggle was targeted against the political fiction, supported both by the state of Texas and the Texas Democratic party, that a political party was a purely private association and that any enterprise it sponsored, including a whites-only primary that almost always determined the nominee who would later win the "public" but little-contested general election, was wholly distinct and separable from discriminatory *state* action that was prohibited by the Fourteenth Amendment.

In 1927, in its decision in *Herndon*, a unanimous Supreme Court easily concluded that where a state statute—as in Texas—expressly barred African-Americans from voting in any Democratic party primary, the notion that the Democratic primary

[4]See Steven F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969* (New York, 1976), 1-22; and J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One Party South, 1880-1910* (New Haven, 1974).

[5]*Guinn* v. *United States*, 238 U.S. 347 (1915), and *Lane* v. *Wilson*, 307 U.S. 268 (1939).

was somehow "private" and not publicly state sponsored was a wholly implausible and unpersuasive fiction.[6] White Democrats in Texas, however, refused to accept the conclusion that black citizens ought to be able to participate in electoral decision making, and the state legislature quickly passed a successor statute decreeing that any political party's State Executive Committee could wholly determine who could and who could not vote in a party primary. Once again lawyers representing the National Association for the Advancement of Colored People challenged the statutory scheme as state encouragement of racial discrimination and exclusion, but this time they prevailed in the Supreme Court only by the slim majority of five to four, and only with a majority opinion that all but explicitly volunteered that party membership limitations mandated by a party state *convention*, and not a committee, would not be vulnerable to successful constitutional challenge as "state action" violative of the Fourteenth Amendment.[7]

Within weeks of that 1932 Supreme Court ruling in *Nixon* v. *Condon* the Texas Democratic party convention adopted whites-only primary voting rules. Although a local 1933 challenge produced limited, pro-forma success, national NAACP leaders found no support when they approached the Roosevelt administration Justice Department seeking assistance in a challenge to the widespread black Democratic disfranchisement that still prevailed all across Texas and other southern states. Local black activists in Houston, however, refused to tolerate their ongoing exclusion and initiated another federal court challenge. When it reached the Supreme Court, however, the outcome—a unanimous defeat—seemingly enshrined the political fiction that citizens should not connect or confuse the "privilege of membership in a party with the right to vote for one who is to hold public office."[8]

Throughout the ensuing eight years NAACP lawyers and activists sought a way to erase this erroneous but controlling precedent. In 1941 a Supreme Court decision in a ballot fraud

[6]*Nixon* v. *Herndon*, 273 U.S. 536 (1927).
[7]*Nixon* v. *Condon*, 286 U.S. 73 (1932); Lawson, *Black Ballots*, 28-31.
[8]*Grovey* v. *Townsend*, 295 U.S. 45 (1935).

case originating in a Louisiana Democratic primary opened wide the door, as six justices, in seeming contradiction of the 1935 holding, ruled that the Fifteenth Amendment's guarantee of the right to vote covered party primaries "where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice."[9]

That last phrase effectively sounded the death knell for the whites-only, Democratic party primaries across the South, and within less than three years' time, in yet again an NAACP-initiated case out of Texas, the Supreme Court made it official and effective, ruling clearly and explicitly that "state delegation to a party of 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."[10] That decision in *Smith* v. *Allwright*, even in the face of continuing Justice Department disinterest in any enforcement actions that might offend white southern Democrats, quickly led to lower federal court rulings in additional states such as Georgia[11] and South Carolina[12] that implemented the final demise of the white primary all across the region.[13]

Just as with *Brown* v. *Board of Education of Topeka*[14] ten years later, which similarly represented the judicial culmination of several earlier, precursor cases,[15] *Smith* too can be viewed in

[9]*U.S.* v. *Classic*, 313 U.S. 299 (1941).
[10]*Smith* v. *Allwright*, 321 U.S. 649, 660-61 (1944). Also see Thurgood Marshall, "The Rise and Collapse of the 'White Democratic Primary,'" *Journal of Negro Education* 26 (Summer 1957):249-54; and Darlene Clark Hine, "Blacks and the Destruction of the Democratic White Primary 1935-1944," *Journal of Negro History* 62 (January 1977):43-59.
[11]*King* v. *Chapman*, 62 F. Supp. 639 (1945), and *Chapman* v. *King*, 154 F.2d 460 (1946).
[12]*Elmore* v. *Rice*, 72 F. Supp. 516 (1947), *Rice* v. *Elmore*, 165 F.2d 387 (1947), *Brown* v. *Baskin*, 78 F. Supp. 933 (1948), and *Baskin* v. *Brown*, 174 F.2d 391 (1949).
[13]See O. Douglas Weeks, "The White Primary: 1944-1948," *American Political Science Review* 42 (June 1948):500-10; and Robert L. Gill, "*Smith* v. *Allwright* and Reactions in Some of the Southern States," *Quarterly Review of Higher Education Among Negroes* 35 (July 1967):154-69; also see *Terry* v. *Adams*, 345 U.S. 461 (1953), and Clay P. Malick, "*Terry* v. *Adams*: Governmental Responsibility for the Protection of Civil Rights," *Western Political Quarterly* 7 (March 1954):51-64.
[14]347 U.S. 483 (1954).
[15]Particularly *Sweatt* v. *Painter*, 339 U.S. 629 (1950), and *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637 (1950); see generally Richard Kluger's magnificent *Simple Justice* (New York, 1976); and Mark V. Tushnet, *The NAACP's Legal Strategy Against Segregated Education, 1925-1950* (Chapel Hill, 1987).

historical retrospect as a significant, landmark victory in the litigative effort to win black equality and freedom. But just as *Brown*, by any tangible, quantitative measure, did little in its first years of life to bring about desegregated public schooling in the face of widespread white resistance,[16] *Smith* also represented only one successful and modestly-sized battle because the demise of the white primary marked not an end to white efforts to disfranchise blacks, but only a change in the predominant disfranchisement strategy that whites employed.

The years after 1944, and even more so after 1954, witnessed energetic white attempts in literally hundreds of southern counties to block black enfranchisement at an even *earlier* stage in the electoral process, namely at the initial level of a citizen's registering to vote. In locale after locale, white efforts to limit, and in some instances to prohibit entirely, black voter registration capitalized upon two distinct but compatible forms of action: racially discriminatory application of registration tests and requirements by voter registrars themselves, and extra-legal—but similarly illegal—efforts at economic and physical intimidation of prospective black registrants by white private citizens and/or public officials.[17]

Particularly in the rural counties and parishes of Deep South states such as Mississippi, Alabama, Georgia, and Louisiana, these white efforts were as persistent as they were effective. In Mississippi the state legislature took a significant step toward aiding local registrars' easily-abusable discretion by adding a literacy requirement to the already-existing provision that allowed registrars to require an applicant to interpret, to the registrar's idiosyncratic satisfaction, any section of the state constitution which the registrar might happen to choose. Just as registrars often seemed to have sharper eyes for spelling errors or omitted items when the applicant was black rather than white, so too did black applicants always seem to be con-

[16]See particularly J. Harvie Wilkinson III, *From Brown to Bakke: The Supreme Court and School Integration, 1954-1978* (New York, 1979), 11-127; also see J. W. Peltason, *Fifty-Eight Lonely Men: Southern Federal Judges and School Desegregation* (New York, 1961); Numan V. Bartley, *The Rise of Massive Resistance* (Baton Rouge, 1969); and Neil R. McMillen, *The Citizens' Council* (Urbana, 1971).

[17]See David J. Garrow, *Protest at Selma: Martin Luther King, Jr., and the Voting Rights Act of 1965* (New Haven, 1978), 9-12.

fronted with particularly obscure and convoluted sections of the state constitution when it came to the interpretation test.[18]

For black applicants who were already on the voting rolls, for those local activists who encouraged others to register, and for those who managed to overcome discriminatory registration standards, whites in many Mississippi counties and Louisiana parishes had other tactics to apply. Especially in rural areas where black registrants were more likely to be sharecroppers than independent farmers, whites could make—and easily follow through on—threats of eviction if a voter did not remove his or her name from the rolls. Even with black landowners or small businessmen, economic harassment and intimidation—refusal to furnish services or supplies or to extend credit—could take a quick and heavy toll, forcing many people to draw back. In Mississippi's Sunflower County, for example, black registration went from 114 to 0 within several months after local whites began applying such economic intimidation tactics. For some indigenous black activists in Mississippi who nonetheless persisted, like the Reverend George Lee of Belzoni and Lamar Smith of Brookhaven, the end result was death at the hands of white gunmen.[19]

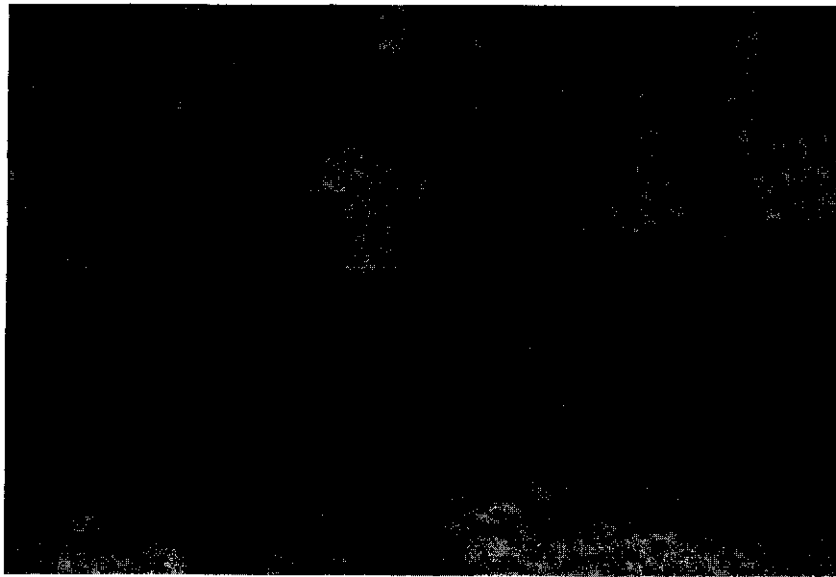
The first notable federal interest in aiding prospective southern black voters was reflected in the Civil Rights Act of 1957, which, in addition to creating an independent Civil Rights Commission as well as a new Civil Rights Division within the Department of Justice, authorized the attorney general to file federal civil suits against both public officials and private citizens who for racially discriminatory reasons sought to hinder either registration and/or voting.[20] Although many commentators realized even at the time of its enactment what a modest initiative the 1957 act was,[21] it nonetheless heralded a

[18]*Ibid.*, 9; Earl M. Lewis, "The Negro Voter in Mississippi," *Journal of Negro Education* 26 (Summer 1957):343-46.

[19]Garrow, *Protest*, 10; Margaret Price, *The Negro Voter in the South* (Atlanta, 1957); Margaret Price, *The Negro and the Ballot in the South* (Atlanta, 1959); and Sara Bullard, ed., *Free At Last* (Montgomery, 1989), 36-39.

[20]See Garrow, *Protest*, 12; and Lawson, *Black Ballots*, 149-202. Also see J. W. Anderson, *Eisenhower, Brownell, and the Congress: The Tangled Origins of the Civil Rights Bill of 1956-1957* (Tuscaloosa, Ala., 1964).

[21]See Howard E. Shuman, "Senate Rules and the Civil Rights Bill: A Case Study," *American Political Science Review* 51 (December 1957):955-75; and Carl A. Auerbach, "Is It Strong Enough to Do the Job?" *Reporter* 17, (September 5, 1957):13-15.



In the aftermath of the Civil Rights Act of 1957, black men line up to vote in Milledgeville, Georgia. *Photograph from Civil Rights Series, Richard B. Russell Papers, Russell Library, University of Georgia.*

significant stage in the voting rights struggle, for it committed the federal government to at least *some* enforcement of the guarantees of the Fourteenth and Fifteenth Amendments. However, the essence of its importance was that the enforcement for which it provided was through the *judicial*, and only the judicial, process. Such a course would require specific suits—and specific, documented evidence—against registrar after registrar on a county-by-county basis: a potentially immense if not supra-human task given the extent of discriminatory registration and the multiplicity of counties—82 in Mississippi, 67 in Alabama, and 159 in Georgia—all across the South.

The judicial enforcement route might well have proved inadequate in any event, but throughout the late 1950s the Eisenhower Justice Department made almost minimal use of the act, filing only a small handful of suits, none of which succeeded in adding any black registrants to voting rolls.[22] In the

[22]See Garrow, *Protest*, 12-14; and Allan Lichtman, "The Federal Assault Against Voting Discrimination in the Deep South, 1957-1967," *Journal of Negro History* 54 (October 1969):346-67.

spring of 1960 the United States Congress, largely at the behest of Senate Majority Leader—and Democratic presidential contender—Lyndon B. Johnson, passed a supplemental statute, the Civil Rights Act of 1960, which, among a number of modest provisions, mandated that local registration records be available for Justice Department review and allowed for the appointment of a voting "referee" to review rejected registration applicants if a local federal district judge held that county registrars were discriminating and that a referee was desirable. Many observers correctly realized that the 1960 act did little to improve federal enforcement options, but once the Kennedy Administration took office in January of 1961, its Justice Department officials moved quickly to make much more use of those modest judicial options than had their Republican predecessors.[23]

Increased commitment did not result in any detectable impact on southern voter registration, for delays in winning access to registrars' records, difficulties in proving that economic harms inflicted upon black activists were retaliation for registration efforts, and white creativity in applying registration standards all put a damper on Justice Department efforts to enfranchise southern blacks.[24] By mid-1962, as more and more suits against specific county registrars were prepared and filed, the Justice Department was also forced to confront another equally if not more serious obstacle to judicial enforcement: the all-but-open hesitance and resistance of many southern federal district court judges, including several new Kennedy appointees, to handle voting rights suits either expeditiously or fair-mindedly. Too often, it seemed, openly or quasi-segregationist district judges allowed Justice Department voting rights actions to sit forlornly on their dockets without action for months at a time. The excesses of the worst such offender, Judge William Harold Cox of the Southern District of Missis-

[23]See Charles W. Havens III, "Federal Legislation to Safeguard Voting Rights: The Civil Rights Act of 1960," *Virginia Law Review* 46 (June 1960):945-75; Daniel M. Berman, *A Bill Becomes A Law: The Civil Rights Act of 1960* (New York, 1962); and Lawson, *Black Ballots*, 232-48.

[24]See Garrow, *Protest*, 13-18.

sippi, became so pronounced as to draw critical commentary in both the national press and in prominent legal publications.[25]

The only saving grace to emerge from the judicial approach to voting rights enforcement came in the form of the Fifth Circuit Court of Appeals, which had appellate jurisdiction over all of the Deep South states reaching from Texas to Georgia. Under the leadership of Chief Judge Elbert P. Tuttle, the Fifth Circuit, or at least a clear plurality of its judges, often were able to rule firmly and expeditiously that voting rights guarantees must be enforced by the federal district courts. The efforts of the four most outspoken Fifth Circuit judges—Tuttle, John Minor Wisdom, Richard T. Rives, and John R. Brown—were not always sufficient to remedy or eliminate the delays generated by some of the least cooperative district court judges, but they nonetheless manifested a clear and distinct record of support for civil rights enforcement.[26]

Perhaps most notably, those Fifth Circuit judges championed a doctrine of voting rights review that was termed "freezing relief" and which initially had been articulated by perhaps the most energetic of the Deep South's federal district judges, Frank M. Johnson, Jr., of the Middle District of Alabama. Johnson had not only dealt firmly with local registrars who had sought to delay Justice Department action against their discriminatory practices, but also, in the Montgomery County case of *U.S.* v. *Penton,* mandated that local registrars, who previously had applied only the most lax standards to white applicants at the same time that they were energetically scrutinizing black applicants, now had to apply to prospective black registrants those *real* standards that had been used to enroll thousands of whites, and not merely apply fairly the still-strict requirements of state law which would subject blacks to far more demanding review than what actually had been applied to whites.[27]

[25] *Ibid.*, 22-24; *The New Republic*, October 26, 1963, 5; and Note, "Judicial Performance in the Fifth Circuit," *Yale Law Journal* 73 (November 1963):90-133.

[26] See generally Frank T. Read and Lucy S. McGough, *Let Them Be Judged: The Judicial Integration of the Deep South* (Metuchen, N.J., 1978); and Jack Bass, *Unlikely Heroes* (New York, 1981).

[27] *U.S.* v. *Penton*, 212 F. Supp. 913 (1962). Also see Armand Derfner, "Racial Discrimination and the Right to Vote," *Vanderbilt Law Review* 26 (April 1973):546-47; and

The efforts of Judge Frank M. Johnson, Jr., along with other federal district judges of the South's Fifth Circuit, were significant in breaking down voting barriers for blacks before the congressional legislation of the mid-sixties. *Photograph in possession of Judge Johnson.*

The Fifth Circuit adopted that doctrine of "freezing" registration standards and applied it in several significant cases that came out of Mississippi, perhaps most notably *U.S.* v. *Duke.*[28]

Note, "The Federal Voting Referee Plan and the Alteration of State Voting Standards," *Yale Law Journal* 72 (March 1963):770-87.

[28] *U.S.* v. *Duke*, 332 F.2d 759. Also see Michael Dowling, "The Freezing Concept and Voter Qualifications," *Hastings Law Journal* 16 (February 1965):440-45; Note, "Freezing Voter Qualifications to Aid Negro Registration," *Michigan Law Review* 63 (March 1965):932-38; and Owen M. Fiss, "*Gaston County* v. *United States*: Fruition of the Freezing Principle," *Supreme Court Review*, 1969 (Chicago, 1970), 379-445.

Notwithstanding that energetic judicial defense of electoral fairness, however, the efforts of the Fifth Circuit, and even the efforts of a dedicated district judge such as Frank Johnson, counted for relatively little in terms of any quantifiably measurable increases in black voter registration in the most hard-core southern counties that had drawn Justice Department attention. Three Alabama counties involved in suits overseen by Johnson—Montgomery, Macon, and Bullock—experienced significant improvement, and two or three elsewhere, in places where registration "purges" were overturned, showed numerical jumps, but at a cumulative level the overall record of judicial impact was extremely meager. Indeed, "in the forty-six counties or parishes against which a total of seventy voting suits were brought, between 1957 and 1965 only 37,146 new black voters were registered out of a black voting-age population of 548,358. That represents a total gain resulting from all possible influences, and not simply the judicial process, or fewer than 850 new black voters per county."[29]

Even though the Justice Department made several efforts to challenge at a statewide level those statutory provisions that opened the door to widespread discriminatory behavior by local registrars, and even though in two particular cases Justice eventually succeeded in obtaining appellate rulings voiding those statutes, state legislatures could easily stay one step ahead by passing new statutes which would then have to be challenged all over again.[30] Although the legislation which the Kennedy administration introduced in 1963, and which, in amended form, emerged from the Congress as the Civil Rights Act of 1964, did include one title mandating several provisions aimed at expediting voting suits and ensuring that local literacy tests be applied fairly, the voting parts of that landmark bill[31] did

[29]Garrow, *Protest,* 29 and 261. Also see Barry E. Hawk and John J. Kirby, Jr., "Federal Protection of Negro Voting Rights," *Virginia Law Review* 51 (October 1965):1195-96; and Comment, "Voting Rights: A Case Study of Madison Parish, Louisiana," *University of Chicago Law Review* 38 (Summer 1971): 749.

[30]See *Louisiana* v. *United States,* 380 U.S. 145 (1965), and *U.S.* v. *Mississippi,* 380 U.S. 154 (1965). Also see Garrow, *Protest,* 27-28.

[31]See Garrow, *Protest,* 24-25; Donald P. Kommers, "The Right to Vote and Its Implementation," *Notre Dame Lawyer* 39 (June 1964):404-10; and *Congressional Quarterly Weekly Report,* April 9, 1965, 617. The best overview of the 1964 act's passage is Charles and Barbara Whalen, *The Longest Debate* (Cabin John, Md., 1985).

very little to alter or fundamentally improve the judicial enforcement approach that the federal government had followed ever since the initial Civil Rights Act of 1957.

Those years from 1957 through 1964 reflected a far greater active federal interest in enforcing southern blacks' right to vote than had ever been the case in the seven decades preceding 1957, but the fundamental ineffectiveness of those early 1960s efforts has been agreed upon by almost every legal or scholarly commentator who has reviewed that historical record. As one law journal author correctly observed, "Eight years of litigation provided the most persuasive argument that adjudication and court-ordered enforcement tools could not ensure extensive registration."[32] Indeed, by March of 1965 even the attorney general, Nicholas deB. Katzenbach, was explicitly acknowledging "the inadequacy of the judicial process" and willingly admitted that the "three present statutes have had only minimal effect."[33] Of course that willingness on the part of the attorney general had been undeniably influenced by events in the state of Alabama over the preceding several weeks, but even before "the patience of the nation with the judicial process ran out in Selma, Alabama,"[34] on March 7, 1965, some people in the Justice Department and some people in the White House, just like others in the Congress and many in the movement, had resolved that a new approach to voting rights protection and enforcement would have to be enacted into law in calendar 1965.

It bears some emphasis and acknowledgment that Johnson administration efforts to draft and introduce into Congress the legislation that in August of 1965 formally became the Voting Rights Act were well under way prior to March 7, when Selma became a national and even international name that forever thereafter would always be associated with law enforcement violence against defenseless, peaceful marchers. Furthermore, the historical record is also clear that even before the end of

[32]Comment, "Voting Rights: A Case Study of Madison Parish," 748.

[33]U.S. Congress, House Committee on the Judiciary, *Voting Rights—Hearings Before Subcommittee No. 5,* 89th Cong., 1st sess., 1965, 1-5.

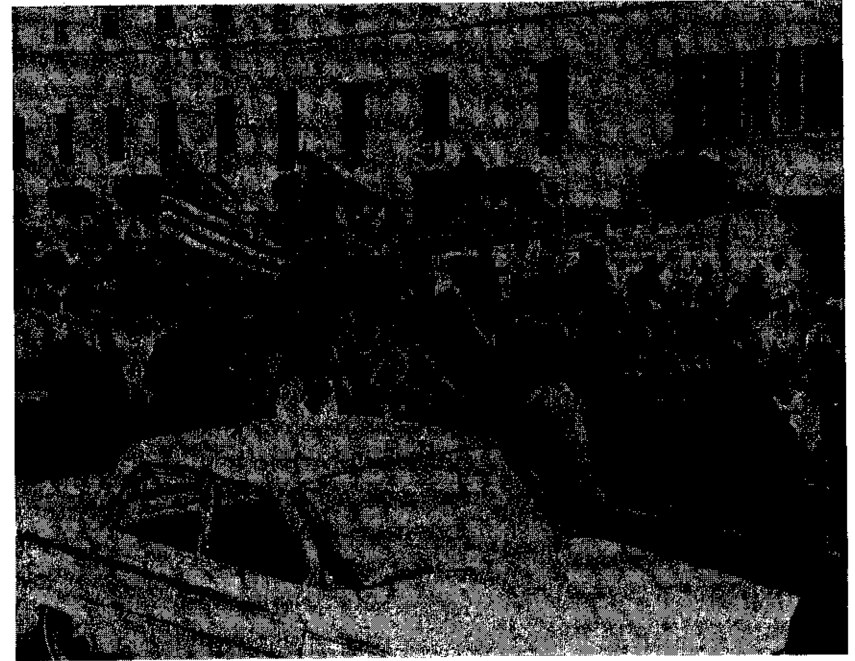
[34]Hawk and Kirby, "Federal Protection of Negro Voting Rights," 1196.

1964, Johnson administration officials had resolved to offer a voting bill and that initial drafting efforts were under way. Such an acknowledgment in no way undercuts or reduces the tremendous importance of the February and March events in Selma, and the significant impact they had on mobilizing support for and speeding work on that nascent voting rights legislation, but it does underline how the futility of relying solely on the federal courts for voting rights protection had come to be appreciated, even within the White House and the Justice Department, prior to the courageous initiatives made by local and national activists in those early months of 1965 in Selma and its surrounding counties. Additionally, it also assists in understanding and explaining why the central provisions of the Johnson voting rights bill diverged so radically and so extensively from everything that had gone before with regard to federal enforcement.[35]

In its essence, the bill that was drafted within the Justice Department in early 1965 and then modestly amended by the Congress before its final passage contained three principal provisions and initiatives, all of which represented a dramatic change from the efforts of the preceding years. First and foremost, it presented a "trigger formula" whereby any state or county which had had less than 50 percent of its voting age population registered to vote *or* actually turn out to vote in the 1964 presidential election would be required to suspend the use of any and all literacy tests and other, similarly abusable registration devices. Second, the attorney general, at his discretion, could assign federal personnel as "examiners" or registrars to enroll unregistered citizens in any county or parish covered by the 50 percent trigger requirement. Third, any jurisdiction subject to the trigger formula would not be able to implement any changes in its electoral practices without submitting each change for "pre-clearance" by either the Justice Department or the federal district court in the District of Columbia.

What bears emphasis here is neither the specific details nor the technical application of these or other provisions contained

[35]See Garrow, *Protest*, 36-39.



Though the Voting Rights Act was already moving through legislative channels before the historic march from Selma to Montgomery in March 1965, its final form and ultimate passage were very much shaped by that mass action, pictured above entering Montgomery. *Photograph courtesy of the Alabama Department of Archives and History.*

in the final language of the act, but the simple and inescapable fact that none of these major enforcement mechanisms relied in any way upon either locale-by-locale requirements of proving discriminatory practices in potentially time-consuming court suits or on *judicial* enforcement of the right to register and vote. Instead, the Congress in a direct and extremely efficient declaration simply mandated, pursuant to its constitutionally-granted power to enforce the guarantees of the Fifteenth Amendment by "appropriate legislation," that no registration test obstacles could be placed in front of voter applicants in locales that had unusually low levels of electoral participation by voting-age citizens. If that was not enough to open a county's rolls to meaningful access by unregistered citizens, then the federal executive branch, acting unilaterally and directly, could assign its own personnel to do the job, and, if need be, also

monitor elections to be sure that those and other registrants were allowed to cast free and secret ballots. Lastly, should state or local officials attempt to come up with new tactics or provisions that could be used for racially discriminatory ends, the mandatory "pre-clearance" requirement for such changes could be used to block and void them.[36]

Although any detailed analysis of the implementation and impact of those provisions lies outside the ambit of this paper, the importance—indeed, almost revolutionary importance—of those statutory reforms has been appreciated ever since their initial introduction in the Congress. House Judiciary Committee Chairman Emanuel Celler termed the Johnson administration measure "a bill that would have been inconceivable a year ago,"[37] and President Johnson himself, when signing the bill in August, termed it "one of the most monumental laws in the entire history of American freedom."[38] By many standards of measurement, with southern black registration gains being only the first and most immediate yardstick, a characterization such as Johnson's is indubitably correct. Although initial implementation of the act was slightly marred by disputes over the limited number of federal examiners immediately assigned to hard-core southern counties by the Justice Department,[39] more than three hundred thousand new black voters were added to registration rolls in areas covered by the act in the first six months of its existence.[40]

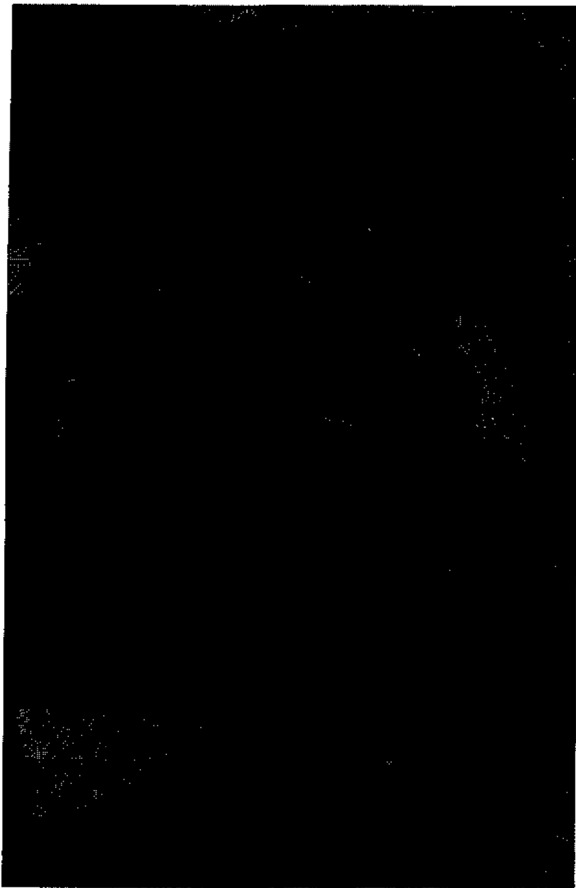
Perhaps more tangibly and significantly, the act also led to a gradual and in time phenomenal increase in the number of black elected officials in the thirteen states of the traditional South. At the time of the act's passage that figure stood at 72, region-wide; by 1970 it had climbed to 711, and at the latest count, in 1989, it had increased to 4,265—59 percent of *all* black elected officials all across the United States and an almost sixty-fold rise from the 1965 figure.[41]

[36] *Ibid.*, 64, 70-71, 94, 98, 106, 113, 116, 121, 128-29.
[37] U.S. Congress, House Committee on the Judiciary, *Voting Rights—Hearings*, 1-5.
[38] *Public Papers of the Presidents, Lyndon B. Johnson, 1965*, 840-43.
[39] See Garrow, *Protest*, 181-85.
[40] *Ibid.*, 185-86.
[41] *Ibid.*, 199; *Focus* [Joint Center for Political Studies], October 1989, TL 2-3.

The last several years have witnessed the publication of various excellent scholarly analyses of the impact and importance of southern black elected officials, especially those at the county and municipal level.[42] Offering a reprise of that literature is not my task here, but although the conclusions of those studies recognize the limits that exist upon the instrumental value and impact of the ballot, and thereby qualify such far-reaching expectations as those that King articulated in 1957 with "Give us the ballot," those analyses and conclusions do not undercut or conflict with positive evaluations of the act's import, such as former Attorney General Katzenbach's mid-1970s characterization of it as "the most successful piece of civil rights legislation ever enacted."[43]

But if surveying and evaluating that literature concerning the tangible impacts of the Voting Rights Act is not part of my purview here, it nonetheless must be emphasized that that *instrumental* value of the ballot, the usefulness of the franchise and its exercise as a means to the achievement of finite ends and tangible policy changes, is not the only crucial quality that must be recognized as a central aspect of the right to vote. There is an additional, quite separate and distinct value of the franchise, a value that very often is overlooked and hardly mentioned in most academic discussions of the right to vote. But that second value, which has been termed the "consummative" value and might just as well be called the experiential, deserves at least equal billing with the instrumental, for at one level or another it was this second value that played a major role in determining the amount of emphasis and attention that grass-roots, indigenous civil rights activists and organizers devoted to registration efforts, particularly in the rural South, in the early 1960s.

[42] See especially James W. Button, *Blacks and Social Change: Impact of the Civil Rights Movement in Southern Communities* (Princeton, 1989). Also see Lawrence J. Hanks, *The Struggle for Black Political Empowerment in Three Georgia Counties* (Knoxville, Tenn., 1987); and Minion K. C. Morrison, *Black Political Mobilization* (Albany, N.Y., 1987). Also informative are several contributions in "Assessing the Effects of the U.S. Voting Rights Act," *Publius* (special issue), 16 (Fall 1986).
[43] U.S. Congress, Senate Committee on the Judiciary, *Extension of the Voting Rights Act of 1965—Hearings Before the Subcommittee on Constitutional Rights*, 94th Cong., 1st sess., 1975, 121.



A Canton, Mississippi woman registers to vote five days after the passage of the Voting Rights Act was signed into law in August 1965. *Photograph from the Library of Congress.*

The significance of the ballot, especially in the pre-1965 years, lay just as much in the self-assertion and self-confidence that were involved in registering and in casting a vote as in the value it would have when it was counted and tallied. Far and away the best description of this experiential importance of the ballot, indeed a description that ought to be more of a frequently-cited classic than it is, was one offered in 1967 in *Black Power* by Stokely Carmichael and Charles V. Hamilton. The act of registering to vote, they wrote,

> gives one a sense of being. The black man who goes to register is saying to the white man, "No." He is saying: "You have said that I cannot vote. You have said that this is my place. This is where I should remain. You have contained me and I am saying 'No' to you and thereby I am creating a better life for myself. I am resisting someone who has contained me." That is what the first act does. The black person begins to live. He begins to create his *own* experience when he says "No" to someone who contains him.[44]

While balanced if not mixed evaluations can now, twenty-five years later, be offered regarding the instrumental value of the ballot for black voters in towns and counties across the rural South, an evaluation and appreciation of that experiential, self-esteem value of the act of registering and voting need not be at all mixed or qualified. For thousands and thousands of people, the act of registering and voting was a statement of self-affirmation just as active participation in movement rallies and protests was for thousands more. Although this aspect of the movement's achievements is oftentimes little studied and little discussed, any full appreciation of the movement's impact on the South must give serious attention to this self-affirming and potentially self-transforming importance of the vote for thousands of people who long had been denied it.

Two final points, each of considerable significance, must be made before concluding this overview of the Voting Rights Act in historical perspective. First, 1990 witnesses not only the twenty-fifth anniversary of the act itself, but also the twenty-fifth anniversary of what is perhaps the best known essay on political strategy to come out of the African-American freedom movement of the early 1960s, Bayard Rustin's "From Protest to Politics: The Future of the Civil Rights Movement." Although this is not the place for a full historical appreciation and critique of Rustin's landmark statement, recent African-American electoral achievements, especially those such as U.S. Representative Michael Espy in Mississippi and Virginia Governor Douglas Wilder, ought to draw renewed attention to Rus-

[44]Stokely Carmichael and Charles V. Hamilton, *Black Power—The Politics of Liberation in America* (New York, 1967), 103-105. Also see Frederick M. Wirt, *Politics of Southern Equality* (Chicago, 1970), 78; and Anthony Lewis, *Portrait of A Decade* (New York, 1965), 152.

This cartoon illustrated a handbill passed out in Selma in January 1965 by the Southern Christian Leadership Conference. The headline on the back "Alabama Negroes are Sick and Tired of Being Sick and Tired." *Handbill in possession of the author.*

tin's analysis. "What began as a protest movement," he wrote in early 1965, "is being challenged to translate itself into a political movement."[45] Especially as more and more African-American politicians appeal to, and win majority support from, constituencies which are biracial or multiracial rather than predominantly black, Rustin's articulation of the inescapably *coalitional* character of electoral politics bears repeated appreciation. Perhaps even more importantly, the fact that much of

[45]Bayard Rustin, "From Protest to Politics: The Future of the Civil Rights Movement," *Commentary* 39 (February 1965): 26.

the progressive political agenda of 1965 remains—unfortunately if not unsurprisingly—as part of the unattained progressive political agenda for the 1990s also should refocus strategic attention on the need for inclusive electoral coalition-building, especially if meaningful headway is to be made on issues of urban poverty that trouble America's cities even more seriously today than was the case in 1965.[46]

Lastly, at the same time that we rightly celebrate the achievements of what former Civil Rights Commission Chairman Father Theodore Hesburgh has accurately called "one of the most important legislative enactments of all time,"[47] the extent or completeness of those achievements should not be overstated or exaggerated. Questions of implementation and enforcement of the Voting Rights Act's provisions have generated both an extensive literature and a careful expansion of the act's coverage by the Congress in 1982,[48] but in the end even the success of the Voting Rights Act with regard to ballot access and electoral representation is not the full and entire story. Issues of poverty, whether in the rural South or the urban North, have not and will not be substantially addressed simply because of the presence and success of the Voting Rights Act. Two of the leading students of the act's effects, one a scholar,

[46]See especially William J. Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (Chicago, 1987); also see Garrow, "Trapped on the Treadmill of Poverty," *Washington Post Book World*, November 15, 1987, 1, 9; Jim Sleeper, "The Resegregation of America," *Commonweal*, November 6, 1987, 619-23; Andrew Hacker, "American Apartheid," *New York Review of Books*, December 3, 1987, 26-33; Jerry Watts, "Class, Race, and Poverty USA," *Christianity and Crisis*, May 16, 1988, 183-86; Christopher Jencks, "Deadly Neighborhoods," *The New Republic*, June 13, 1988, 23-32; Norman Hill, "The Loss of Jobs and the Rise of the Underclass," *American Educator*, Summer 1988, 16-19, 45; and Philip Kasinitz, "Facing Up to the Underclass," *Telos* 76 (Summer 1988):170-80.

[47]U.S. Congress, House Committee on the Judiciary, *Extension of the Voting Rights Act—Hearings Before the Subcommittee on Civil and Constitutional Rights*, 94th Cong., 1st sess., 1975, 319.

[48]See Howard Ball, Dale Krane, and Thomas P. Lauth, *Compromised Compliance: Implementation of the 1965 Voting Rights Act* (Westport, Conn., 1982); Steven F. Lawson, "Preserving the Second Reconstruction: Enforcement of the Voting Rights Act, 1965-1975," *Southern Studies*, Spring 1983, 55-75; Chandler Davidson, ed., *Minority Vote Dilution* (Washington, 1984); and Norman C. Amaker, *Civil Rights and the Reagan Administration* (Washington, 1988), 139-56. Also see Abigail M. Thernstrom, *Whose Votes Count?* (Cambridge, Mass., 1987); *but see* Pamela S. Karlan and Peyton McCrary, "Without Fear and Without Research: Abigail Thernstrom on the Voting Rights Act," *Journal of Law & Politics* 4 (Spring 1988):751-77; and Bill Montague, "The Voting Rights Act Today," *ABA Journal*, August 1, 1988, 52-58.

the other a journalist, have in recent years reached virtually identical conclusions on how we should appreciate the inescapable limits of the act's reach. Historian Steven Lawson emphasizes how "the franchise has been a marginal instrument for black economic advancement,"[49] and Virginia reporter Margaret Edds observes "how ineffective politics had been at removing economic shackles."[50]

That truth of these last twenty-five years is just as central and inescapable as the landmark biracial victories of black elected officials such as Mike Espy and Doug Wilder. As Lowndes County, Alabama, Sheriff John Hulett, a key central Alabama activist in 1965, observed to Ms. Edds, "Until people become economically strong, political power alone won't do. For most people" of color in counties like Lowndes, the economic limitations and obstacles they face in their daily lives are little different from what they were in the years before Lowndes had any black elected officials, Hulett noted.[51] Only when American society is politically ready and able to address those fundamental questions of economic privation will the full promise of the Voting Rights Act, and the full expectations of those who articulated "Give us the ballot," be totally and finally realized.

[49]Steven F. Lawson, *In Pursuit of Power: Southern Blacks and Electoral Politics, 1965-1982* (New York, 1985), 301.
[50]Margaret Edds, *Free At Last* (Bethesda, Md., 1987), 237.
[51]*Ibid.*, 97.