NATIONAL

A Challenge to the Voting Rights Act

1965: President Johnson and Martin Luther King Jr. at the signing of the Voting Rights Act

The Supreme Court is considering whether a key provision of the 1965 law still makes sense in a very different nation

BY ADAM LIPTAK

On Aug. 6, 1965, some of the nation's most important civil rights leaders, including Martin Luther King Jr., gathered in the Capitol Rotunda to watch President Lyndon B. Johnson sign the Voting Rights Act into law.

"Today is a triumph for freedom as huge as any victory that's ever been won on any battlefield," Johnson said.

One of the signature accomplishments of the civil rights era, the Act outlawed poll taxes and literacy tests that had long been used, mainly in the South, to prevent blacks from voting.

Nearly half a century later, the Supreme Court has agreed to consider whether a key provision of the Act is still necessary to protect the rights of blacks and other minorities in a nation that has changed enormously since the 1960s.

The provision's challengers say that the re-election of Barack Obama, the nation's first black president, is proof that the country has moved beyond the racial divisions that necessitated federal efforts to protect the integrity of elections in the South.

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Voting Rights Map
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The voting rights law "is stuck in a Jim Crow-era time warp," says Edward Blum, director of the Project on Fair Representation, a legal foundation that helped organize the lawsuit.

"Stuck in a Jim Crow-era time warp" or "playing a pivotal role"?

But civil rights leaders point to the role the law played in the 2012 presidential election. Courts relied on it to block voter ID requirements and cutbacks on early voting that critics say were intended to curb minority voting.

"In the midst of the recent assault on voter access, the Voting Rights Act is playing a pivotal role beating back discriminatory voting measures," says Debo Adegbile of the NAACP Legal Defense and Educational Fund.

The Voting Rights Act was intended to help enforce the 15th Amendment, which guaranteed the right to vote regardless of a person's race. It was ratified in 1870, five years after the Civil War ended.

But after federal troops left the South at the end of Reconstruction in 1877, white leaders began circumventing the 15th Amendment: They used poll taxes, literacy tests, and intimidation to prevent most blacks from voting. By 1940, only 3 percent of blacks in the South were registered to vote.

At Issue: Section 5

Along with ending segregation, ensuring people's ability to vote was one of the major accomplishments of the civil rights movement. The Voting Rights Act not only outlawed tactics meant to keep blacks from the polls, it also established federal oversight of how elections are carried out, in the South and in other places with a history of discrimination. It's that oversight, known as Section 5,

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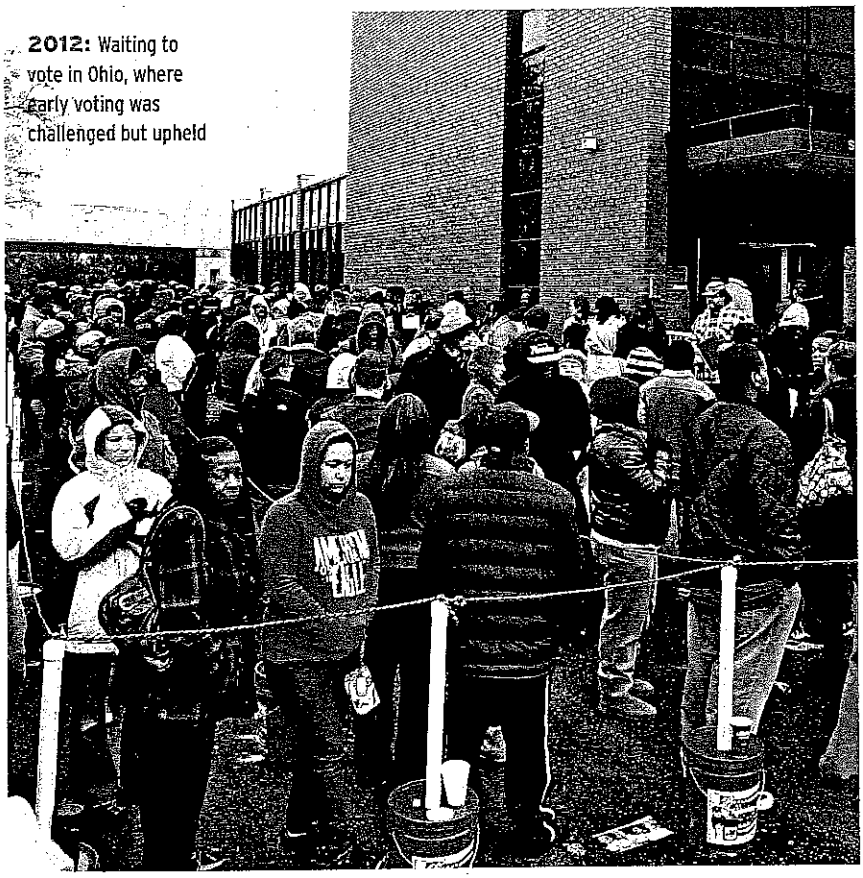

2012: Waiting to vote in Ohio, where early voting was challenged but upheld

PAUL TOPLE/AKRON BEACON JOURNAL/AP PHOTO (WAITING TO VOTE); TIM SLOAN/AFP/GETTY IMAGES (JUSTICES)

that the Supreme Court has agreed to review in *Shelby County* v. *Holder*.

Section 5 requires many state and local governments, mostly in the South, to obtain permission, or "pre-clearance," from the Justice Department or a federal court before making changes that affect voting—anything from voter registration requirements to polling place locations. Critics call the pre-clearance requirement a federal intrusion on state sovereignty and a badge of shame for the affected places that in many cases is no longer justified.

The pre-clearance requirement, originally set to expire in 1970, has long been controversial. It was challenged but upheld by the Supreme Court in 1966. Congress has repeatedly extended the requirement, most recently in 2006 after holding hearings on racial discrimination at the polls.

But Congress made no changes at that time to the list of places covered by Section 5. That means a formula based on historical practices and voting data from the 1970s is still being used. The pre-clearance requirement applies to nine states—Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia—and to scores of counties and municipalities in other states where discrimination was once an issue, including parts of New York City and some towns in Michigan.

The Court could simply rule that Congress must use more current data to decide which jurisdictions should be covered. But given the political realities, a decision striking down the formula to determine who's covered would probably amount to the end of the pre-clearance requirement.

'Things Have Changed'

The Supreme Court has already considered the constitutionality of the 2006 extension of Section 5 in a 2009 case from Texas, *Northwest Austin Municipal Utility District Number One* v. *Holder*. But the Court avoided answering the central question of whether the pre-clearance requirements are still justified. Chief Justice John G. Roberts Jr. did, however, express skepticism.

"The historic accomplishments of the Voting Rights Act are undeniable," he wrote. But "things have changed in the South. Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels."

Ellen Katz, a professor at the University of Michigan's law school, agrees that the country as a whole has come very far from the days of Jim Crow discrimination in the South, but she says the Supreme Court still has a delicate balance to consider.

"It's difficult to assess," she says, "just how far we've come and how much of the improvements continue to depend on the statute being in place." •

Adam Liptak covers the Supreme Court for The Times; additional reporting by Patricia Smith.