



# The Struggle for Equal Voting Rights

## 45 Years of the Voting Rights Act

BY PATTY FERGUSON-BOHNEE

This is a new recurring feature that sheds light on remarkable historical events whose anniversary is upon us. In *Law's Attic*, we will publish occasional short essays on noteworthy cases, laws or legal events whose anniversary is ripe—whether they occurred 10 years ago, or 500. If you have suggestions for legal historical events that we should cover in 2011, contact the editor at [arizona.attorney@azbar.org](mailto:arizona.attorney@azbar.org).

This month our author examines the **Voting Rights Act**—45 years old this year.

The landmark Supreme Court decision in *Brown v. Board of Education*<sup>1</sup> condemning race discrimination set the stage for the Civil Rights Movement. This activism sought to break down the racial barriers that remained from the Post-Civil War Era.

As a child growing up in rural Louisiana, I experienced firsthand the benefits of these changes. For example, when I entered first grade, it was the first year black and white schools integrated—more than 25 years after the Supreme Court decided *Brown*.<sup>2</sup> Change was deliberately slow, but the Civil Rights Movement transformed access to

education, public facilities and the voting box for minorities across the country.

Although the Fifteenth Amendment provides that no citizen shall be denied the right to vote based on race, color or previous servitude,<sup>3</sup> enforcing this right for minority voters took almost a century. Although constitutionally, African Americans were part of the political framework,<sup>4</sup> allowing them to vote would result in a redistribution of political power and resources. To preserve the status quo, states and local governments implemented various procedures to prevent

blacks and other minorities from voting. Tactics such as literacy tests,



**PROFESSOR PATTY FERGUSON-BOHNEE** is the Director of the Indian Legal Clinic at the Sandra Day O'Connor College of Law. She has substantial experience in Indian law, election law and policy matters, voting rights and status clarification of tribes. She has testified before the United States Senate Committee on Indian Affairs and the Louisiana State Legislature regarding tribal recognition. Professor Ferguson-Bohnee serves as the Native Vote Election Protection Coordinator for the State of Arizona and has testified before Congress regarding Indian voting issues.

poll taxes, intimidation and violence were used to dissuade minority voters across the South from registering to vote.

In the early 1960s, places such as Dallas County, Alabama, had low minority voter registration; African American registration in Dallas County was one percent. Active voter registration drives in Dallas County led to arrests, firings, beatings and death threats. The impetus for change happened in 1965, when a march for African American voting rights in Selma (Dallas County), Alabama, turned violent. State and local police attacked 600 marchers with billy-clubs and tear gas. Images from the attack by law enforcement on nonviolent protesters helped to spur a sentiment that change was needed.

In response to the violent attack, Congress passed the Voting Rights Act. This landmark legislation sought to ensure that disenfranchised African Americans in the South had an opportunity to vote and participate in the electoral process. Summarily, the act prohibited voting qualifications that deny the right to vote on the basis of race, and it required certain jurisdictions to obtain preclearance of voting changes to ensure that they did not have a discriminatory purpose.

The activities in the South focused on African American voters. But in the West, states such as Arizona had prohibited Native Americans and Hispanic Americans from voting. As a result of voter discrimination against those groups, Arizona still must request preclearance for proposed voting changes, under Section 5 of the act.

Although the act was passed in 1965, other methods were used to limit the effectiveness of the minority vote, such as gerrymandering, annexations, adoption of at-large voting systems and packing. This led to the renewal of the act in 1970 and 1975. In response to the Supreme Court's decision in *Mobile v. Bolden*,<sup>5</sup> Congress clarified that the act prohibits not only intentional discrimination but also voting practices and procedures that have a discriminatory result. The 1982 amendments also made certain provisions of the act permanent. In 2006, Congress reauthorized the expiring provisions of the act for another 25 years, after multiple hearings and extensive testimony highlighted continued obstacles for minority voters.

The act also paved the way for ballot participation by non-English speakers. These changes positively affected the participation

of Arizona's Hispanic American and Native American voters. Native Americans were not afforded Fifteenth Amendment privileges until the passage of the Indian Civil Rights Act in 1924. However, shortly thereafter, the Arizona Supreme Court held that Native Americans were not allowed to register to vote because the state constitution prohibited individuals under guardianship from voting.<sup>6</sup> It would not be until 1948 that the Arizona Supreme Court would overturn this decision, when two Indian veterans unsuccessfully attempted to register to vote.<sup>7</sup> Although the decision was a victory, at the time, the majority of Native Americans could not meet Arizona's literacy requirement. This obstacle was finally lifted with the ban on literacy tests in 1970.<sup>8</sup> And in 1975, the act was amended to extend protection to language-minority voters, such as Asian Americans, Hispanic Americans and Native Americans. With the language provisions in place, the number of minority voters participating in Arizona elections has dramatically increased. However, this hasn't stopped challenges to the eligibility of Indian voters or candidates.<sup>9</sup>

As the political landscape has changed since 1965, the protections afforded by the act have resulted in a dramatic increase of minority voter registration. This is further illustrated by the fact that more minority voters have become active in the political process, resulting in the successful election of minority candidates at all levels of government. In its support of the 2006 amendments, the Congressional Black Caucus recognized that the act serves "as a significant catalyst for the increase in black congressional" members.<sup>10</sup>

Minorities also have been successful in determining the outcome of key political races. For example, in the 1991 governor's race in Louisiana, African Americans turned out in unprecedented numbers to vote. A former grand wizard of the Ku Klux Klan, David Duke, had defeated the incumbent governor, clearing the way for a runoff with former governor Edwin Edwards.<sup>11</sup> That year, the African American vote made the difference in electing Governor Edwards. This was a highly polarized election that brought racial fears to the forefront again. Native American voters are also credited with the success of U.S. Senator Tim Johnson's South Dakota election in 2002, and U.S. Senator Jon

Tester's Montana election in 2006.

Today, the Voting Rights Act is still relevant. It continues to spur litigation by private parties, governments and the U.S. Department of Justice Civil Rights Division. The framework of the act is still being tested when states refuse to abide by its provisions, resulting in litigation. Furthermore, where measures such as voter intimidation, lack of resources on Election Day, the purging of voter rolls, and voter identification laws attempt to suppress minority voters, the act seeks to ensure equal access to the polls. With redistricting right around the corner, the act will be key to preventing voter disenfranchisement.

It is fair to say, the federal protections and rights afforded by the Voting Rights Act have strengthened minority participation in all aspects of elections. Only the test of time will tell if the framework will succeed in providing equal voting rights to all citizens. 

## endnotes

1. 347 U.S. 483 (1954).
2. This was also 17 years after the Civil Rights Act of 1964 was passed, declaring segregation illegal.
3. U.S. CONST. amend. XV.
4. The Reconstruction Amendments extended citizenship and the right to vote to former slaves. U.S. CONST. amend. XIV; U.S. CONST. amend. XV.
5. 446 U.S. 55 (1980).
6. *Porter v. Hall*, 34 Ariz. 208 (1928).
7. *Harrison v. Laveen*, 67 Ariz. 337 (1948).
8. Arizona and other states challenged the constitutionality of the prohibition of literacy tests and lost. *Oregon v. Mitchell*, 400 U.S. 112 (1970).
9. *Shirley v. Apache County Superior Court*, 109 Ariz. 510, 513 (1973) (unsuccessful candidate sought to enjoin successful Navajo candidate claiming that Indians are ineligible to vote and seek office); *Goodluck v. Apache County*, 417 F. Supp. 13 (D. Ariz. 1975), *aff'd*, 429 U.S. 876 (1976) (county claimed that Indian Citizenship Act was unconstitutional); Att'y General Opinion, No. I03-007 (2003) (questioning whether Navajo tribal members are eligible to serve on the Commission on Appellate Court Appointments).
10. A Voice, African American Voices in Congress webpage, available at [www.voiceonline.org/voting/history.html](http://www.voiceonline.org/voting/history.html).
11. Guy Coates, *Edwards Beats Duke—Ex-Klaner Loses Louisiana Race*, AP, Nov. 17, 1991.