

Voter Id- 1965 Voting Rights Act-Enfranchisement or Disenfranchisement

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Abstract

The 1965 Voting Rights Act was implemented to eradicate the issues of voter discrimination in state and federal elections. The Act was designed to ensure that African American citizens and other ethnic minorities were given a fair and just opportunity to exercise their constitutional rights. However, starting in 2012, several states began trying to circumvent this right by avoiding or interposing the 1965 Voting Rights Act requirement of "Pre-Clearance." The proposed rationale for Voter Identification legislation as set forth by numerous states is to reduce the amount of voter fraud. In actuality, states such as Pennsylvania do not have justifiable documentation of voter fraud. The paper looks at the guidelines of the 1965 Voting Rights Act and the Voter Identification laws in various states to assess whether or not the implementation of Voter Identification is, in fact, a disenfranchisement to African American Voters, the poor, and especially senior citizens with a large amount of those being from the African American population. The paper will discuss both the federal and state application of the 1965 Voting Rights Act and how it is being circumvented by the application of Voter Identification laws. The paper will also discuss the racial implication and how Voter ID complies with the rights provided under the 14th Amendment, "Equal Protection Under the Law." The paper will review with a comparative analysis of samples states in the North vs South that have implemented Voter ID; so as to make an assessment of whether or not Voter ID is an infringement upon the constitutional rights of the American voter, especially African Americans. The paper will also include discussion of the recent Supreme Court decision in *Shelby v. Holder* 2013.

Introduction

When Congress passed the 1965 Voting Rights Act, it was designed to aid the enfranchisement of African Americans, who had historically been disenfranchised by various procedures, practices and policies implemented in the southern states.

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The 1965 Voting Rights Act was implemented so that African Americans could receive the full citizenship right of the ability to cast a ballot in the United States of America. However, (recent state practices along with recent Supreme Court decisions), the issue arises as to whether the 1965 Voting Rights Act is being systematically disassembled, and states are now being allowed to circumvent the guidelines of the very Act that was designed to enfranchise African American voters. At question now is whether or not the "Pre-Clearance" requirement for states, as viewed by recent Supreme Court action has opened the door for the implementation of Voter Identification to be allowed by the states and as a result led to the disfranchisement of African American voters, especially the elderly. It has been suggested; with very little documentation that Voter Identification is designed to reduce incidents of voter fraud. Yet, as it shall be discussed, this has not necessarily been factual.

The paper looks at the guidelines of the 1965 Voting Rights Act and the application of Voter Identification in various states to assess whether or not implementation of Voter Identification is in fact disfranchisement to African American voters, the poor, and especially senior citizens with a large amount of those being from the African American population. Is it possible the Voter Identification is another form of the "literacy test," or "poll tax" that was implemented in the South to circumvent the criteria set forth in the 1965 Voting Rights Act? The paper will also discuss the racial implication of Voter Identification and whether or not Voter Identification negates the right to "Equal Protection under the Law" as provided in the 14th Amendment of the United States Constitution. The design of the paper is to provide a comparative analysis of samples from states in the North and South that have implemented Voter Identification laws. The analysis will also include discussion and analysis of whether Voter Identification has in fact disenfranchised African American voters. In view of the recent Supreme Court decision pertaining to Section 4 of the 1965 Voting Rights Act, there will be an overview of how those states that were under the perimeters of the 1965 Voting Rights Act have impacted the enfranchisement of African American voters. Hence, the overall issue, "Voter Identification-the 1965 Voting Rights Act- Enfranchisement or Disenfranchisement."

Historical Overview- The Right to Vote

It can and has been advocated that a citizen without the right to vote lacks true citizenship.

The promise of national citizenship for African Americans made during the era of the Reconstruction Amendments was all but dead at the dawn of the new century and it appeared as if none of the institutions of government appeared interested in rectifying the situation.¹ There were several mechanisms implemented by Southern states to circumvent the legal requirements of the Fifteenth Amendment and to disenfranchise African Americans. The practices implemented by the Southern states that were designed to disfranchise African Americans included: the Grandfather Clause, the White Primary, the literacy test, and the payment of a poll tax (which also included a federal poll tax). It appeared at first that the Supreme Court was the friend of enfranchisement of African American voters; however this point will be debated later in view of the recent Supreme Court decision removing part of the 1965 Voting Rights Act. The practice of the Grandfather Clause was challenged by the National Association for the Advancement of Colored People (NAACP). The NAACP, via amicus curiae brief challenged the practice known as the "Grandfather Clause" in the case of *Guinn v. United States*² challenging the practice that allowed those who had the franchise (right to vote) before a certain date and their descendants the right to register permanently before a certain time lapsed without complying with the educational qualifications required of all voters.³ The Supreme Court in *Guinn v. United States* (1915), for the first time used the Fifteenth Amendment to invalidate a discriminatory practice.

However, there were other mechanisms implemented to circumvent the constitutional enfranchisement of African Americans. After nullification of the "Grandfather's Clause" there was the implementation of "White Primary" and the "poll tax." The white primary was an ingenious device that took advantage of the one-party politics that prevailed in the South and effectively frustrated the desire to vote by African Americans in the primary election.⁴ It is suggested or at least there is conjecture as to whether or not this is the same rationale behind the adoption of "Voter Identification." The primary election an important aspect of the election process, due to the fact that winning the primary election becomes tantamount to winning the general election since only one party, the Democrats, dominated southern politics.

The right to establish state election laws is a privilege granted to the states through the Tenth Amendment. Thus, states are allowed by Constitution to develop the criteria for enfranchising citizens.

Another barrier to enfranchisement of African Americans was that of the "poll tax." The Supreme Court in 1937 ruled that the poll tax did not violate any rights protected by the Constitution in *Breedlove v. Shuttles*.⁵ The Court would however, overrule *Breedlove v. Shuttles* (1937), in *Harper v. Virginia Board of Elections*⁶ and declared that the extent that it required payment as a condition for voting, Virginia's poll tax provision violated the Fourteenth Amendment's Equal Protection Plan. In *Harper v. Virginia Board of Elections*⁷; the Court declared the payment of a state poll tax unconstitutional. It should be noted, that when the U.S. Congress passed the Twenty-Fourth Amendment (1964) that declared the payment of a national poll tax unconstitutional, the state of Virginia in order to circumvent the Twenty-Fourth Amendment, enacted a provision that required citizens to either pay the tax or file a notarized or witnessed certificate of residence six months before the election.

However, in *Harman v. Forssenius*,⁸ the Supreme Court ruled that the Virginia measure requiring a certificate of residency created an obstacle to voting more onerous than the poll tax.⁹ The requirement of proof of citizenship as set forth then by Virginia is a precursor to the now infamous "Voter Identification." It is noted that the Court at that time referred to it as "more onerous" than the poll tax. In the ruling of "*Harper v. Virginia Board of Elections*" 1966, the Court included the rationale that once an individual is enfranchised, the Equal Protection Clause of the Fourteenth Amendment prohibits the states from drawing artificial and discriminatory lines among voters. The question now arises as to whether or not the implementation of Voter Identification is a means of institutional artificial and discriminatory lines being established among current voters; especially African Americans, the poor, and the elderly. Interestingly, the Court went on to state- "a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard" (383 U.S. 666). Is it possible that the Court in 1966 had a "judicial crystal ball" that allowed it to even then discuss the implementation of a voter identification requirement?

The Voting Rights Act Of 1965

It is important to note that the original design of the Voting Rights Act of 1965 was to ensure that African Americans were not hindered in their ability to cast a ballot in the United States.

However, as shall be discussed later, the United States Supreme Court has in a single decision dismantled the effectiveness of the Voting Rights Act of 1965; and it has in its own way opened the door for the vast implementation of Voter Identification requirements in thirty-three states. The action of the Supreme Court is reminiscent of a statement once made by late Supreme Court Justice Thurgood Marshall, "What the Court gives with the right hand; it takes away with the left hand."¹⁰ Discussion will be devoted later in the paper regarding the impact of the Supreme Court decision of *Shelby v. Holder*¹¹ which invalidated §5 of the 1965 Voting Rights Act.

The Voting Rights Act of 1965¹² was both an affirmation of the principles embodied in the Civil Rights Acts of 1975, 1960, and 1964, as well as a statement of objectives regarding the elimination and prohibition of abhorrent practices of racial discrimination in voting in the United States.¹³ It was stated by Ball et, al, "with the passage of the Voting Rights Act of 1965, it became the policy of the United States government to eliminate the use of those devices that had traditionally been employed to prevent African American citizens from registering and voting in the states of the deep South, and to prohibit those states from introducing new processes or devices that would dilute or abridge the voting rights of African American citizens." The Voting Rights Act of 1965 has been viewed as the continuation of a haphazard civil rights policy that was developed by the mid-twentieth-century Congress in response to violent events that were taking place in the South in the 1960s a result of white segregationists' responses to African American boycotts, sit-ins, voter registration drives, litigation, freedom rides, and freedom summers, along with Supreme Court decisions. The Voting Rights Act of 1965 presented what was viewed as the mechanism to end disfranchisement of African American voters in the United States. The Voting Rights Act (42 U.S.C. § 1971) was enacted on August 7, 1965 and has since been amended three times: in 1970, 1975, and 1982. It is important to understand that the Voting Rights Act, as amended, was enacted to ensure that the rights of citizens to vote would not be denied or impaired because of racial or language discrimination. The original Voting Rights Act was intended to be a temporary measure but it had to be extended on more than one occasion because of intransigence on the part of those who would deny the right to vote to African Americans, women, and other protected groups.

The Voting Rights Act of 1965 (42 U.S.C. § 1971 et seq.) is composed of three titles. Title I is referred to as the Voting Rights Provision, and Title II contains the Supplemental Provisions. Title III contains those regulations regarding the right of eighteen years old to vote as a result of the passage of the Twenty-Sixth Amendment. The Voting Rights Act of 1965 contains both general and special provisions. The general provisions, as amended in 1970 and 1975, are applicable to the entire nation; whereas the Special Provisions of the 1970 Amendments were imposed on those jurisdictions that failed to comply with the 1965 Voting Rights Act. The General Provisions of the Voting Rights Act protect the voting rights of Americans by prohibiting voting qualifications or procedures that would deny or abridge a person's right to vote predicated on race, color, or inclusion in a minority group. It was a crime for a public official to refuse to allow a qualified person to vote or for any reason to use threats or intimidation to prevent an individual from voting or assisting another in voting (42 U.S.C. § 1973 I (a) and (b) 1976).

A key provision of the Voting Rights Act of 1965, and pivotal to the discussion of this suggested in Ball¹⁴ that §5 was included in the Voting Rights Act because of the "acknowledged and anticipated inability of the Justice Department to investigate independently all changes with respect to voting enacted by states and subdivisions covered by the Voting Rights Act. The inclusion of §5, shifted the burden from the victim of racially discriminatory voting practices to the perpetrator of these practices and brought adjudication of these issues to Washington, D. C. However, in 2013, it was revealed that Washington, D.C., in the dismantling of §5 is no longer the protector of African Americans from discriminatory practices as will be discussed. Originally, §5 required covered jurisdictions to obtain "pre-clearance" before any changes in voting qualifications or prerequisites for voting, or standards, practices, or procedures with respect to voting that are different from those in effect on November 1, 1964. It should be noted that §5 was included primarily to prevent the substitution of new discriminatory practices for old ones that violated the guidelines of the Voting Rights Act. The question arises as to whether or not Voter Identification is a mechanism that was accounted for in the provisions of §5. This would raise the issue of whether or not Voter Identification leads to voter disfranchisement as a new "discriminatory" practice. Texas (one of the states covered by §5), will immediately, upon dismantling of §5, by the Supreme Court, implement Voter Identification. Analytically speaking, the query comes forth as to whether or not the state of Texas would have been able to pass the Voter Identification requirement had the Court ruled differently.

Again, the question is whether or not there is disenfranchisement of African American voters in a state that was originally under indictment for violating African American right to vote. The provision of §5 was automatic in that all vote changes in the covered jurisdictions must be submitted for review to the federal government. However, with the negation of this requirement by the Supreme Court in 2013; the door has now been open for states to implement various institutional mechanisms with the design of disenfranchising African Americans, the poor, and elderly.

Table 1: States Impacted by § 5 of the 1965 Voting Rights Act

Section 5 Covered Jurisdictions

States Covered as a Whole	Date
Alabama	August 7, 1965
Alaska	October 22, 1975
Arizona	September 23, 1975
Georgia	August 7, 1965
Louisiana	August 7, 1965
Mississippi	August 7, 1965
South Carolina	August 7, 1965
Texas	September 23, 1975
Virginia	August 7, 1965

- Date when 1965 Voting Rights Act was applied

The covered states of Alabama, Mississippi, South Carolina, Texas, and Virginia all had Voter Identification requirements on hold because of the pre-clearance requirement of §5 and as a result had a vested interest in the case of *Shelby v. Holder*.¹⁵ Section 5 also covers parts of Florida, California, New York, North Carolina, South Dakota, Michigan, and New Hampshire (42 U.S.C. §5). The original coverage formula looked at whether states imposed unfair devices (such as literacy tests) in November 1964; whether less than 50 percent of the voting age population were registered to vote as of 1964, or if less than 50 percent of eligible voters voted in the November 1964 presidential election.¹⁶ The single provision of the Voting Rights Act of 1965, §5 has served as the key in elections providing assurance or a check on voter discrimination.

Section 5 has blocked photo voter-ID, prohibited reduced early-voting periods in parts of Florida and prevented new redistricting maps in Texas.¹⁷ Section 5 has increasingly become the target of attack by those who suggest that Section 5 is outdated, discriminatory against Southern states and hence unconstitutional. It has even been suggested that § 5 presents a (n) “disparate impact on the covered jurisdiction state.” In 2009, majority opinion to a §5 challenge from Northwest Austin Municipal Utility District No. 1 in Texas, U.S. Chief Justice John Roberts wrote, “preclearance and the coverage formula raises serious constitutional questions.”¹⁸ Of course, it is not surprising that current African American Supreme Court Justice Clarence Thomas reasons that §5 is unconstitutional. Chief Justice Roberts set forth the legal rationale that “things have changed in the South. Voter turnout and registration rates now approach parity” (Lee, 2012). Chief Justice Roberts stated that “blatantly discriminatory evasions of federal decrees are rare, and minority candidates hold office at unprecedented levels” as reasoning for ending §5 of the 1965 Voting Rights Act.¹⁹ If one continues the rationale of Chief Justice Roberts, it could be suggested that perhaps the amount of African American voters is sufficient and since parity has been reached, it is now permissible to reduce the constraints imposed against states in the South; opening the door for institutional discrimination in the form of voter identification. The Department of Justice, prior to *Shelby v. Holder*²⁰ was opposed to voter-ID laws in South Carolina and Texas, advocating that voter-ID will disenfranchise minorities since that is a group more likely to lack valid photo identification. There was also at this time a pre-clearance law pending for voter-ID in Mississippi.

Critics of §5 say that it is unfair to require covered jurisdictions to undergo pre-clearance while states such as Indiana, Ohio, and Pennsylvania (which will later be overturned) not bound by the provisions despite these states having enacted just as tough or tougher voting laws. According to Brandeisky and Tigas²¹ in non-covered states, challenges like photo voter-ID laws can always be brought under §2 of the Voting Rights Act, but the burden to prove minority voter infringements falls onto the plaintiffs, not the state or local governments as is the case for states and other jurisdictions covered under §5.

Historical Overview of Voter-Id Laws

The history of voting in the United States seems to suggest that we as a nation have a low voter turnout. The question then arises as to whether or not Voter-ID would in fact present a potential for reducing the nation's overall voter turnout even further. The Brennan Center for Justice reported that one in ten persons do not have a proper government issued identification required to vote. This would mean that approximately 11% of American citizens do not have proper ID and would therefore be ineligible to vote. The concern with Voter-ID is that it has the potential for disenfranchising the poor, young adults, and especially African Americans. Yet there is the alternate side of Voter-ID, the prevention of voter fraud. It is interesting that during the historical voter enfranchisement, it was the Democratic solid-South that was working intensively to prevent African Americans from casting a ballot. Yet today, in the argument against Voter-ID, prominent Democrats have compared voter-ID to Jim Crow laws. In November 2011, U.S. Representative Steny Hoyer (D-Md), stated- "We are witnessing a concerted effort to place new obstacles in front of minorities who are seeking to exercise the right to vote."²² It is suggested by Democrats that current voter-ID laws are nothing more than modern day "poll tax" legislation. Today, it is the Republican governors and state legislators that are pushing for the implementation of stiff voter-ID laws, under the preview of "voter fraud." It appears that the matter of disenfranchisement for African Americans has now switched parties.

During the Civil Rights Era, one mechanism utilized in the South to prevent African American males from voting was the implementation of economic sanctions imposed on those who were sharecropping. In implementing Voter-ID laws, the issue of economic sanctions appears as a component of Voter-ID with the proposed objective being the disenfranchisement of African American voters. This is surmised when the fact is revealed that many who would be required to attain Voter-ID, numerous voters as well as potential voters do not have a driver's license and would not be able to obtain the required proof of identification because of the cost factor. Hence, as it was during the Civil Rights Era, the matter is whether one allocates money for the required voter-ID or utilizes the funds for the basic needs that must be met while experiencing financial difficulties. As it may be recalled, the sharecropper had to decide whether to pay the required poll tax or use the little money received to provide the basic necessities for their families.

The matter is now reappearing, do African American voters pay the cost to meet the voter requirement or do they forgo the right to vote so as to take care of basic needs for their families. Even in those states that provide voter-IDs, there are many African American voters, who live either at or below the poverty level. Thus, presenting an issue as to the accessibility to agencies providing the required voter-ID; and thus once again asking the question is there voter enfranchisement or voter disenfranchisement for African American voters. Therein lies the dilemma of voting, for there are both racial minorities and elderly that are found to not have proper funds in order to obtain the identification required thus creating a voter disenfranchisement.

In taking a historical perspective of voter-ID, there is the supposition that the implementation of the Voter-ID is in reality a byproduct of election fraud that has nothing to do with the participation of African American Voters. In the aftermath of the infamous election of 2000, presidential election where the pivotal issue was that of voter fraud, Congress passed the Help America Vote Act of 2002. The dreaded discussion of voter fraud and voting chads left the distasteful issue of whether or not there had in fact been egregious voter fraud in Florida. The Help America Vote Act of 2002 produced an election reform package presented by both Democrats and Republicans with the major focus being that of Republican concern- voter fraud. The Act required that first time voters who register via mail to present photo identification or nonphoto documentary identification in order to cast a valid ballot. As a result of this action, the query comes forth as to whether or not the passage of this law, in order to prevent voter fraud, in essence created a mechanism for disenfranchisement of African Americans when there is still the need to enfranchise African American voters. This principle brings to the forefront the issue of whether or not African Americans were victimized by the very system that was created to protect them.

Does the requirement of Voter-ID create an inequality that was previously removed or reduced by the 1965 Voting Rights Act? Does voter-ID circumvent the criteria of the 1965 Voting Rights Act and thus once again establish inequality in voting? Is there really voter fraud or is there merely voter inequality. It is an interesting discussion and one that will probably be determined by the perspective viewpoint of the individual and the state. It is interesting that those who advocate photo-identification focus more on the possible existence of fraud rather than the magnitude of existing fraud. It would seem that a casual effect needs to exist so as to prevent even the façade of voter inequality, when implementing voter-ID requirements.

There is the postulation that photo-identification, or the so-called voter-ID requirement is not designed to reduce the actual instances of fraud, but to simply present the issue of disenfranchisement of African American voters. For example does voter-ID have any impact on the matters of bloated voter rolls that exist in some voting areas? How much of an impact does voter-ID have on the matter of absentee ballots? There is the potential that the implementation of voter-ID can have a drastic impact on the right to vote as given to African Americans by means of the 15th Amendment and the 1965 Voting Rights Act. There is the supposition that twenty million Americans could lose the constitutional right to vote by the simple implementation of voter-ID laws.

State Implementation of Voter-Id

The Help America Vote Act of 2002 has led to a large number of states adopting some form of identification requirement for voters that goes beyond the federal requirement. There are currently 33 states that have some form of voter identification requirement. It is important to note that some of these states' implementation of voter identification requirement will be impacted by the Supreme Court in 2013. The Help American Vote Act of 2002 has been considered as the beginning of the push for voter identification requirements. The Act, in and of itself, does not however require states to create voter identification requirements.

Voter-ID, the 1965 Voting Rights Act, enfranchisement or disenfranchisement of African American voters; to attempt an analytical answer to this question, the paper will present an overview of the nine states affected by § 5 of the 1965 Voting Rights Act that includes both strict and non-strict photo identification requirements. There will be more attention devoted to the state of Pennsylvania in view of the fact that the author resides in that state and its voter-ID requirement will eventually be impacted by the Courts. There will be some surface attention given to Arkansas, as that is the birth state of the author. The 1965 Voting Rights Act required those states impacted to have a "pre-clearance" based on §5.

Table 2- States impacted by 1965 Voting Rights Act with the type of Voter-ID Requirements

State	Type of ID Law	Year Law was Passed
Alabama	Photo ID	2003, 2011
Alaska	Non-Strict Non-photo ID	2012
Arizona	Strict Non-photo ID	2006
Georgia	Strict Photo ID	2005, 2006
Louisiana	Photo ID	2010
Mississippi	Strict Photo ID	2011
South Carolina	Non-Strict Non Photo ID	2011
Texas	Strict Photo ID	2011
Virginia	Strict Non-photo ID	2012

*Data obtained from a review of States Voting Requirements.

It was in the South under Democratic efforts that the right to vote as extended to African Americans through the passage of the 15th Amendment was thwarted with the implementation of Jim Crow Laws, Black Codes, literacy test, poll tax, and Grandfather's clause. Yet now, it is these same states who have fashioned another process by which it still appears that disenfranchisement of African American voters is taking place. The state of Alabama requires all voters to provide identification; inclusive of photo and non-photo identification. In Alaska, all voters are required to provide identification that includes photo and non-photo identification. The state of Arizona requires all voters to show proof of identity at the polling place before receiving a ballot. A voter must announce his/her name, place of residence and present photo identification. The state of Georgia requires that voters must present photo identification. This requires a valid identification which includes driver's license, state ID card, tribal card, United States passport, employee ID card or military ID card providing it contains a photo of the voter. Whereas in the state of Louisiana voters must present one of the following: a driver's license, a Louisiana special ID, or other generally recognized picture ID that contains the name of the voter and a signature. If a photo ID is not presented, a utility bill, payroll check or other government documented that includes the name and address that must be presented. If this is the case, then the voter is required to sign an affidavit.

The magnolia state of Mississippi requires a government-issued photo identification. If a voter lacks the required photo ID, the voter may obtain one at no cost from the Mississippi Department of Public Safety.

It is interesting to note that even though Mississippi is predominately Republican, there is a large amount of African American voters registered to vote; which might account for the type of voter-ID laws that are passed. South Carolina requires all voters to show photo identification at the polls. The type of identification can include: a state driver's license, identification card, voter registration card that contains a photo, federal military ID or a U.S. passport. Voters can get free photo ID from their county voter registration office by providing their name, date of birth, and the last four digits of their social security number. The state of Texas requires that at the polling places, voters must show government-issued photo identification as well as a voter registration certificate that is obtained after one registers to vote. The voter-ID for the state of Texas also requires that voters who registered to vote must provide a Texas driver's license number, personal identification number issued by the Texas Department of Public Safety or the last four digits of their social security number. And finally, the ninth state covered by § 5 of the 1965 Voting Rights Act, the state of Virginia requires that for a person to cast a ballot who registered via mail, the voter adheres to the federal requirement of being required to show identification when voting for the first time in a federal election if the voter did not send a copy of their ID with their voter registration. The Virginia law requires all other voters to provide identification at the polling site, or sign an Affirmation of Identity under felony penalty, in order to vote at the polls. It is a supposition, that the nine states covered by § 5, have impending regulations that circumvent the design and intent of the statute. It is also noted that these states each have potential legislation pending upon the Courts review of the legality of voter-ID that if a favorable ruling is handed down, are ready to implement stringent forms of voter identification.

It is unique that eight of the nine are located in the once "Democratic South" that implemented such requirements as poll tax, literacy test, grandfathers clause, and the white primary. And now, in a turn of events, it is Republican dominated governments that are implementing more stringent forms of voter-ID. The matter of voter disenfranchisement appears as a factor when consideration is given that all nine of these states had voter-ID requirements in place for the election of 2012, which would decide if President Obama, the first African American president would receive a second term. Thus, there is concern as to whether the eight southern states were in fact collaboratively trying to implement mechanisms designed to defeat the incumbent President Obama by reducing the ability of African Americans to cast their ballot in the presidential election of 2012.

The argument bears some degree of credence when a review of the 2012 electoral college vote for southern states, with the exception of Virginia, was in fact cast for the Republican presidential candidate, Mitt Romney. And further review of the electoral vote reveals that Alaska, though not in the South did cast their three electoral votes for the Republican presidential candidate.

Table 3: Comparative Analysis of Random selected states with Voter-ID

State	Type of ID Law	Year Law was Passed
Missouri	Non-strict Non-photo ID	2011
Wisconsin	Strict photo ID	2011
Indiana	Strict photo ID	2005
Connecticut	Non-strict Non-photo ID	2010
Pennsylvania	Strict photo ID	2012
Ohio	Strict Non-photo ID	2006
Kansas	Strict Photo ID	2011
Arkansas	Non-strict Non-photo ID	2010

*Data obtained from review of States Voting Requirements

The state of Missouri, which has a none strict none photo identification requirement requires that before receiving a ballot, voters are required to establish their identity and eligibility to vote. The acquisition of a valid identification includes: federal or state issued ID's, a copy of a current utility bill or bank statement, or a driver's license or state identification card issued by another state. If a voter does not have the required identification, then the voter may still cast a ballot if two supervising election judges (one from each party) verify that they know the voter. The state of Wisconsin even though it has on the records a "strict photo identification" requirement, the matter is under judicial review. There have been two injunctions filed to prevent the election board from implementing the required voter identification. As a result of judicial review, the requirement for voter identification has been suspended, and thus discussion is yet to be determined as to whether or not the voter identification requirement violates § 5 of the 1965 Voting Rights Act. However, Indiana does have a strict photo identification requirement. The voting requirement for Indiana is that all voters are required to provide government issued photo identification to vote. The name on the ID must conform to the voter registration record, which means the names must match to a reasonable extent.

The voter identification must have an expiration date and either be current or have expired after the date of the last election and must have been issued by the state of Indiana or the U.S. government. The state of Connecticut utilizes a none strict, none photo ID requirement. In order to cast a ballot in Connecticut, first-time voters are required to present identification. Valid identification includes photo ID that features voter's name and address or a copy of a current utility bill, bank statement, paycheck or other government document that shows voter's name and address.

Pennsylvania operates under the guise of strict photo identification. Governor Tom Corbett signed a law requiring all Pennsylvanian voters to show photo identification in order to vote in March 2012. However on July 25, 2012, the Pennsylvania Commonwealth Court heard a challenge of the law from the ACLU and other voting rights groups.²² On August 16, 2012, Judge Robert Simpson threw out the ACLU challenge. The supporters and opponents argued the validity of the voter ID law before the Pennsylvania Supreme Court on September 13, 2012. On September 18, 2012 the Pennsylvania Supreme Court issued an unsigned 4-2 per curiam decision that sent the case back to the trial court for more fact finding. The state's high court then asked the trial court to "ensure there is liberal access to new voting only ID's and there will be no disenfranchisement of voter for the November 6 election".²³ Upon receiving results from a fact-finding mission, a judge ruled that for the most part the Pennsylvania voter ID law could remain intact for the November 6, 2012 elections.²⁴ A narrowly won injunction held that those without voter identification be allowed to cast their ballots. On January 17, 2014, Judge Bernard McGinley of the Pennsylvania Commonwealth Court struck down the requirement that all voters must show photo ID to vote, claiming that part of the law was unconstitutional because it lacked a way to give voters liberal access to voter photo IDs. The required photo IDs had to be obtained through the Department of Transportation licensing centers, of which there are only 71 across the state, many with limited hours. Thus, Judge McGinley reasoned this was an inconvenience to voters and could easily disenfranchise voters.²⁵

According to *The New York Times*, Judge McGinley asserted in his ruling that the proposed voter ID law for Pennsylvania presented a hardship with the burden falling most heavily on elderly, disabled, and low-income residents and that the state's reason for the law, that it was needed to combat voter fraud was not supported by the facts.²⁶

Judge McGinley went on to state "Voting laws are designed to assure a free and fair election." The voter ID requirement of Pennsylvania, according to Judge McGinley does not further this goal. In his ruling, Judge McGinley also reasoned that, "the state's \$5 million campaign to explain the law had been full of misinformation that had never been corrected".²⁷ He further stated that the "free IDs that were supposed to be made available to those without driver's licenses or other approved photo identification were difficult and sometimes impossible to obtain.

A review of the Pennsylvania voter-ID along with other states shows there is a common consensus that states implementing and passing voter identification requirements are being spearheaded by Republican legislators and signed by a Republican governor as was the case in Pennsylvania without any Democratic legislative support. The opponents of the Pennsylvania law reported that there was not one documented case in the state of voter fraud, and that the proposed law was intended to suppress Democratic voter turnout. It was the supposition of ACLU legal director for the state of Pennsylvania that the rationale for states implementing voter identification laws is it provides a voter suppression tool.²⁸

Of the randomly selected states, Ohio does not have a stringent voter identification requirement. The state has a strict none photo identification requirement, on Election Day at the polling place, the Ohio law requires that every voter must announce their full name and current address. The voter might be asked additionally to provide proof of their identity. It is interesting to note that Ohio's voter identification requirement was implemented in 2006, can it be surmised that it was not implemented as an attempt to disenfranchise African American voters but to provide for valid voter registration list. On the other hand, Kansas, which has a strict photo identification requirement state, had their voter-ID law implement between 2008 and 2012. The Kansas Secure and Fair Elections Act (S.A.F.E.) was signed into law on April 11, 2011 by Governor Sam Brownback. As a result, starting in 2012 Kansas voters are required to show photo ID when voting in person. When voting via mail, voters are required to have their signature verified and include a copy of a valid photo ID. The Kansas voting requirement beginning in 2013 requires first time voters to prove U.S. citizenship.

In Arkansas, the land of opportunity, there exist, a non-strict, non-photo ID requirement. It is noted that Arkansas is not one of the compliance states as set forth under § 5 of the 1965 Voting Rights Act.

Another point of interest is that Arkansas is formerly a part of the Democratic solid South that instituted policies designed to disenfranchise African American voters. The state now has a Republican stronghold but the effort still remains the same, even though there has been a change in party politics. In Arkansas, all voters will be required to provide state or federal photo identification, such as a driver's license, U.S. passport, state or federal employee badge, military ID, college ID or concealed carry permit.²⁹ With the advent of a change in party politics in Arkansas, there has been a movement to institute a stricter voter ID policy. During the legislative session of March 2013, the Arkansas Senate sent a voter ID bill (SB2) to Governor Mike Beebe for final approval. The Senate and House had both approved their version of the bill; however Governor Beebe decided to wait for a legal opinion from Arkansas Attorney General Dustin McDaniel to respond to the issue of the constitutionality of the proposed legislation.³⁰ There was also discussion in the Senate as to whether or not the change in voter requirement would yield a change in the state constitution. On March 25, 2013, Governor Beebe, a Democrat rejected the bill, and explained that the bill "unnecessarily restricts and impairs our citizens' right to vote".³¹ Governor Beebe further noted that implementation of the voter identification would cost \$300,000. However, the Senate and the House of Representative overrode the veto of Governor Beebe and the voter identification is scheduled to begin in 2014.³²

The Fourteenth Amendment and Voter-ID

The Fourteenth Amendment contains a provision known as the "Equal Protection Clause, wherein all citizens are promised the guarantee of equal protection under the law. The matter of voter-ID as a mandate for casting an election ballot presents the query as to whether or not such practice violates the constitutional mandate of equal protection under the law. Is this practice in accordance with the guidelines of the 14th Amendment when it in actuality has the potential for limiting the ability of certain groups of citizens in casting their election ballot? Many issues of discrimination have been brought forth under the umbrella of the 14th Amendment. Such issues as Affirmative Action, racial and gender discrimination, religious discrimination, along with sexual preference, and even the matter of equality in public school, have sought judicial attention under the protections of the 14th Amendment. Thus, now comes forth the matter of whether or not the implementation of voter-ID is bringing about means to prevent registered voters from the actual practice of casting a ballot.

When the requirement works as a hardship against an ethnic group, an economic group, or just American citizens in general, should there not be some assessment of whether or not- "Equal Protection Under the Law" is being provided? The Voting Rights Act is very important in that it brought forth the promises of the 14th Amendment and requires states to be accountable for acts of voter suppression by requiring federal approval of any measures that could limit and restrict voting rights.

The matter of whether or not voter-ID violates the tenets of the Equal Protection Clause continues to resonate across the country as states continue to institute voter-ID requirements. The issue has drawn the attention of both the judicial system and the Department of Justice. For instance, the Department of Justice denied preclearance approval under §5 of the 1965 Voting Rights Act. At the same time, the Courts have denied preclearance to states like Texas and South Carolina. The question must be adjudicated as to whether or not voter-ID constitutes a violation of the Equal Protection Clause of the 14th Amendment. The constitutionality of voter photo identification laws and whether they violate the protections given under the Equal Protection Clause has been an issue that is being confronted in the courts. It appears that for those states considering instituting voter-ID requirements, that Pennsylvania has set the bench mark. The Pennsylvania ruling on voter-ID took into account the potential violation of the Equal Protection Clause as well as whether or not this requirement violated its own state constitution.

The issue in the Pennsylvania case of *Applewhite v. Pennsylvania*³³ was whether or not the proposed voter-ID created a burden on the right to vote in violation of equal protection and imposed unequal burdens on the right to vote. There appears to be concern on the part of the judiciary to prevent violation of the Equal Protection Clause of the 14th Amendment. The Court in the Pennsylvania voter-ID did not directly address the issue of Equal protection; however, there are some inferences that can be drawn. The Court would reason that the acquisition of the necessary required voter-ID would in fact place a hardship on the voters. In order to obtain a valid ID, a qualified elector must appear in person at one of the 71 Pennsylvania Department of Transportation (PennDOT) locations. There are five located in Philadelphia, while nine counties that offer no such service. In nine counties the PennDOT locations are only open one day a week; whereas in 13 counties the PennDOT locations are only open two days a week. This in turn creates a hardship on qualified voters and makes it difficult for qualified voters to have the means by which a ballot can be cast.

In view of the fact that not all are impacted by these limitations leads to the argument of violation of the Equal Protection Clause of the 14th Amendment. There is also the factor that not all state ID laws were created equal.

In review of the Pennsylvania required voter-ID, eligible voters in Pennsylvania would be unable to vote under this electoral format. This gives rise once again to whether or not this voter-ID, along with that of other states presents a violation of the Equal Protection Clause as provided in the 14th Amendment. It was noted during the trial of *Crawford v. Marion County Election Board*⁸⁴, that there were no recorded reports of investigations into or prosecutions for voter impersonation on record anywhere in the state of Pennsylvania. The rationale for the implementation of the voter-ID requirement in Pennsylvania was unfounded. However, there was in fact a greater issue, did the law meet the “standard of scrutiny” thus satisfying the constitutional requirement of not imposing a burden on the right to vote. The constitutional concept is that if the right to vote is fundamental, then the standard should be “strict scrutiny.” Therefore, the government must show a very important reason before it is allowed to burden the right to vote. Judge McGinley reasoned that the voter-ID law “does not pass constitutional muster” because it does not provide a non-burdensome means of obtaining compliant photo ID.

The “political” element infers the imposition of a violation of the 14th Amendment as well. It should be kept in mind that Pennsylvania is an eternal swing state and is considered a must-win for Democratic candidates for president. As a result of the constitutionality of the voter-ID being questioned, it now creates a potential for Democratic success. It was even implied by the state House Majority Leader that enforcement of the voter-ID would deliver the state to Mitt Romney. The question yet remains, was there a violation of the 14th Amendment- “Equal Protection Clause” in the potential implementation of the voter-ID?

State Voter-Id Laws Strengthened by the U.S. Supreme Court

The issue of whether or not the voter-ID constitutes a violation of the 1965 Voting Rights Act as well as the Equal Protection Clause of the 14th Amendment was given a definitive answer in the case of *Shelby v. Holder*.³⁵ The case was brought by Shelby County, Alabama alleging that the Voting Rights Act violates the Constitution by imposing unfair burdens on some states to protect the voting rights of minorities.

Shelby County along with a group in Kinston, North Carolina argued that the Voting Rights Act of 1965 was a relic of the past. The key issues in *Shelby* was § 5 of the 1965 Voting Rights Act, which bars certain jurisdictions with a history of discrimination from making any changes to voting laws without approval from the attorney general or the U.S. District Court in Washington, D.C. The original Act was set to expire within five years of its implementation, in 2006; however, Congress reauthorized § 5 for another 25 years. It was suggested by Congress that, “without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens would be deprived of the opportunity to exercise the right to vote, or have their votes diluted.”³⁶ However, the Shelby County case argued that it should no longer be considered under § 5, and that Congress’ 2006 renewal of the Act was unconstitutional because it relied on outdated voting data to determine which jurisdictions should be covered by the § 5.

The landmark case of *Shelby v. Holder*³⁷ in a 5-4 ruling settled the issue of whether the provisions of §5 of the 1965 Voting Rights Act was constitutional and thus giving life or death to imposition of state voter-id requirements. The Supreme Court led in the majority opinion by Chief Justice Roberts ruled “that §4(b) of the 1965 Voting Rights Act is unconstitutional; because the coverage formula is based on data over forty years old, making it no longer responsive to current needs and therefore an impermissible burden on the constitutional principle of federalism and equal sovereignty of the states.”³⁸ The Supreme Court did not strike down §5, but without §4(b), no jurisdiction will be subject to §5 preclearance unless Congress enacts a new coverage formula. The criteria in §4(b) contain the formula that determines which states and local governments are subject to preclearance under §5.

As a result of the Supreme Court decision in *Shelby* (2013), states are now at liberty to implement voter-ID requirements in view of the fact that there is no longer a “preclearance” requirement. Within 24 hours, in reaction to the *Shelby* decision, Texas moved forward with its voter ID law, which is now considered the strictest in the nation. The Texas law requires Texans to prove their citizenship and their residency in the state. In order to qualify as a registered voter, one must present forms of ID that are expensive and difficult to obtain for some low-income Americans. The Texas law requires a passport, the cheapest one is \$55, and if the passport is not available, then a copy of the voter’s birth certificate may be presented.³⁹ Previously, Alabama had attempted to institute a voter-ID law that was subject to preclearance. However, after the decision of *Shelby* (2013) the plan was implemented in 2014.⁴⁰

Virginia legislature passed a photo ID law last year, which had been approved by the Justice Department. The state passed an additional measure that would require limited kinds of voter identification. With the ruling of *Shelby* (2014), Virginia voters can no longer present utility bills, bank statements, government checks or paychecks before they vote. Mississippi in view of the preclearance requirement being removed will also implement a law requiring the voters to show a photo ID.⁴¹

The Supreme Court as a result of the ruling in *Shelby* (2013) left it up to Congress to write new preclearance criteria. As a practical matter, §5 of the Voting Rights Act has been suspended indefinitely because there is no formula by which it can be founded until Congress approves §4, which is unlikely to happen in the near future. One of the primary reasons that a new formula will not be approved is because of the political perspective of the Tea Party in the House of Representatives. The bottom line is that southern states can now institute voter restrictions without any need for preclearance from the Department of Justice. It is interesting that the Supreme Court left the matter of finding a new coverage formula in the hands of Congress, the same Congress which has vowed to basically do nothing except bring defeat to any policies implement by President Obama. It is interesting that the southern states most them implemented voter restrictions prior to the second term election of President Obama.

Conclusion

The 1965 Voting Rights Act was passed to remove efforts of disenfranchisement of African American voters. The incorporation of §5 in the Voting Rights Act, the preclearance requirement was designed to prevent states that had previously imposed voter restrictions disenfranchising African American voters have now been removed by the Supreme Court. Many of the southern states implemented immediately voter restrictions after hearing the Supreme Court ruling in *Shelby v. Holder* (2013). It appears that the same judicial system that provided *Brown v. Board of Education of Topeka, Kansas*⁴² has now reversed its stance on what "Equal Protection Under the Law" now provides. The same judicial institution that adjudicated decisions to remove such practices as the poll tax, has now in the decision of *Shelby v. Holder* (2013) in essence provided means for a "modern day poll tax" implementation without any preclearance from the Justice Department.

The inference can justly be asserted that now, in the very area of citizenship that is so important, the right to vote, that this right has been diminished by the Supreme Court declaration that the Voting Right Act of 1965 is outdated. Hence, the postulation that voter-ID has been implemented to disenfranchise African Americans from exercising their constitutional right to cast their ballot in a fair and just manner. The uniqueness of this judicial action and state institution of voter-ID could lead one to postulate as to whether or not, there is an “institutional” ploy to prevent the future election of an African American President of the United States of America.

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