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**Magazine**

# A Dream Undone

Disenfranchised

By JIM RUTENBERG    JULY 29, 2015

On the morning of his wedding, in 1956, Henry Frye realized that he had a few hours to spare before the afternoon ceremony. He was staying at his parents' house in Ellerbe, N.C.; the ceremony would take place 75 miles away, in Greensboro, the hometown of his fiancée; and the drive wouldn't take long. Frye, who had always been practical, had a practical thought: Now might be a good time to finally register to vote. He was 24 and had just returned from Korea, where he served as an Air Force officer, but he was also a black man in the American South, so he wasn't entirely surprised when his efforts at the registrar's office were blocked.

Adopting a tactic common in the Jim Crow South, the registrar subjected Frye to what election officials called a literacy test. In 1900, North Carolina voters amended the state's Constitution to require that all new voters "be able to read and write any section of the Constitution in the English language," but for decades some registrars had been applying that already broad mandate even more aggressively, targeting perfectly literate black registrants with arbitrary and obscure queries, like which president served when or who had the ultimate power to adjourn Congress. "I said, 'Well, I don't know why are you asking me all of these questions,' " Frye, now

83, recalled. “We went around and around, and he said, ‘Are you going to answer these questions?’ and I said, ‘No, I’m not going to try.’ And he said, ‘Well, then, you’re not going to register today.’ ”

Sitting with me on the enclosed porch of his red-brick ranch house in Greensboro, drinking his wife’s sweet tea, Frye could joke about the exchange now, but at the time it left him upset and determined. When he met Shirley at the altar, the first thing he said was: “You know they wouldn’t let me register?”

“Can we talk about this later?” she replied.

After a few weeks, Frye drove over to the Board of Elections in Rockingham, the county seat, to complain. An official told him to go back and try again. This time a different registrar, after asking if he was the fellow who had gone over to the election board, handed him a paragraph to copy from the Constitution. He copied it, and with that, he became a voter.

But in the American South in 1956, not every would-be black voter was an Air Force officer with the wherewithal to call on the local election board; for decades, most had found it effectively impossible to attain the most elemental rights of citizenship. Only about one-quarter of eligible black voters in the South were registered that year, according to the limited records available. By 1959, when Frye went on to become one of the first black graduates of the University of North Carolina law school, that number had changed little. When Frye became a legal adviser to the students running the antisegregation sit-ins at the Greensboro Woolworth’s in 1960, the number remained roughly the same. And when Frye became a deputy United States attorney in the Kennedy administration, it had grown only slightly. By law, the franchise extended to black voters; in practice, it often did not.

What changed this state of affairs was the passage, 50 years ago this month, of the Voting Rights Act. Signed on Aug. 6, 1965, it was meant to

correct “a clear and simple wrong,” as Lyndon Johnson said. “Millions of Americans are denied the right to vote because of their color. This law will ensure them the right to vote.” It eliminated literacy tests and other Jim Crow tactics, and — in a key provision called Section 5 — required North Carolina and six other states with histories of black disenfranchisement to submit any future change in statewide voting law, no matter how small, for approval by federal authorities in Washington. No longer would the states be able to invent clever new ways to suppress the vote. Johnson called the legislation “one of the most monumental laws in the entire history of American freedom,” and not without justification. By 1968, just three years after the Voting Rights Act became law, black registration had increased substantially across the South, to 62 percent. Frye himself became a beneficiary of the act that same year when, after a close election, he became the first black state representative to serve in the North Carolina General Assembly since Reconstruction.

In the decades that followed, Frye and hundreds of other new black legislators built on the promise of the Voting Rights Act, not just easing access to the ballot but finding ways to actively encourage voting, with new state laws allowing people to register at the Department of Motor Vehicles and public-assistance offices; to register and vote on the same day; to have ballots count even when filed in the wrong precinct; to vote by mail; and, perhaps most significant, to vote weeks before Election Day. All of those advances were protected by the Voting Rights Act, and they helped black registration increase steadily. In 2008, for the first time, black turnout was nearly equal to white turnout, and Barack Obama was elected the nation’s first black president.

Since then, however, the legal trend has abruptly reversed. In 2010, Republicans flipped control of 11 state legislatures and, raising the specter of voter fraud, began undoing much of the work of Frye and subsequent generations of state legislators. They rolled back early voting, eliminated

same-day registration, disqualified ballots filed outside home precincts and created new demands for photo ID at polling places. In 2013, the Supreme Court, in the case of *Shelby County v. Holder*, directly countermanded the Section 5 authority of the Justice Department to dispute any of these changes in the states Section 5 covered. Chief Justice John Roberts Jr., writing for the majority, declared that the Voting Rights Act had done its job, and it was time to move on. Republican state legislators proceeded with a new round of even more restrictive voting laws.

All of these seemingly sudden changes were a result of a little-known part of the American civil rights story. It involves a largely Republican countermovement of ideologues and partisan operatives who, from the moment the Voting Rights Act became law, methodically set out to undercut or dismantle its most important requirements. The story of that decades-long battle over the iconic law's tenets and effects has rarely been told, but in July many of its veteran warriors met in a North Carolina courthouse to argue the legality of a new state voting law that the Brennan Center for Justice at the New York University Law School has called one of the "most restrictive since the Jim Crow era." The decision, which is expected later this year, could determine whether the civil rights movement's signature achievement is still justified 50 years after its signing, or if the movement itself is finished.

## *I. 1865-1980*

### 1. "States' rights"

The fundamental promise of American democracy is that every citizen gets a vote, but delivering the franchise from on high and in the face of violent local opposition has always been a complicated legal proposition. The 13th Amendment freed the slaves, and the 14th Amendment gave them citizenship. But the key to Reconstruction was the 15th Amendment, ratified

in 1870, which did something far more radical, not just guaranteeing (male) former slaves the right to vote but giving Congress the authority to enforce that right state by state, an authority that to this day many legislators see as a drastic intrusion into local affairs.

The new laws immediately enfranchised more than 700,000 black Southerners. Although blacks made up just 13 percent of the overall United States population, they made up 36 percent of the South's population and a much higher percentage in some states, including a majority in Mississippi and South Carolina. Their enfranchisement was a shock to the political system that almost exclusively benefited Republicans, the party of Lincoln.

Like its former Confederate neighbors, North Carolina sent several black Republicans to Congress. In the state's General Assembly, legislators with the support of black Republicans wrote a new state Constitution in 1868 that created state-supported public schools; apportioned state representation based on population rather than wealth — a setback for the 1 percent of that era, the plantation owners; and, eventually, instituted a property tax.

Democrats throughout the South responded to the growing influence of black legislators with a brutal effort to suppress the black vote, enforced by the Ku Klux Klan and its many paramilitary imitators, who kept blacks from election polls at gunpoint and whipped or lynched many who resisted. The Southern Democrats ran on an open message of white supremacy and quickly retook statehouses, city halls and courthouses throughout the South. Within 15 years of the Civil War's end, Reconstruction was just a memory. What followed was deconstruction: the era of Jim Crow, the poll tax, the literacy test, double primaries and a host of other mechanisms that blocked the black vote. For decades, most black citizens in the South had no practical right to vote.

Beginning in the 1950s, propelled by the Supreme Court's decision in *Brown v. Board of Education* to desegregate schools, by modern media

portrayals of anti-black violence and by the growing nonviolent resistance movement led by the Rev. Dr. Martin Luther King Jr., Congress began to assert its electoral authority with a series of legislative fixes. With the bipartisan Civil Rights Act of 1957, it created a separate Department of Justice civil rights division and the United States Commission on Civil Rights to monitor and investigate civil rights abuses. The fight over the law's passage was bitter. In a party split, Southern Democrats attacked it relentlessly as a violation of "states' rights," a justification their predecessors used to resist abolition. The law survived the longest filibuster in Senate history, by Strom Thurmond of South Carolina, but it was considerably weakened in the process.

Congress tried again with the Civil Rights Act of 1964, a more powerful bill that ended legal segregation. But again, the segregationist Democrats who had for many years controlled the South watered down its voting provisions, leaving the poll tax and the literacy test in place. Thurmond, in a sign of things to come, left the Democratic Party entirely, switching his allegiance to the Republicans.

It took the Voting Rights Act, with its considerably stronger protections, to finally deliver the black franchise, 100 years after it was first promised. Its most extraordinary measure, the one that rankled Southern politicians the most, was Section 5. By naming specific states as bad actors that fell under special federal scrutiny, it was the ultimate affront to states' rights. But under intense pressure, Lyndon Johnson was able to shepherd the bill into law. Its tough approach to knocking down barriers to voting, combined with a phasing in overseen by federal registrars who signed up voters throughout the South, brought about a sudden and significant increase in black voter registration — in Mississippi, black registration increased to 54 percent from 7 percent within three years. This second Reconstruction, with its second surge of Southern black voters, precipitated a second realignment of the parties, and with it an even more complex legal effort to undermine and

ultimately undo the most powerful provisions of the Voting Rights Act.

## 2. “Evidence of natural racial distinctions”

“It all goes back to winning elections,” Carter Wrenn, a longtime North Carolina Republican strategist, told me in June. Wrenn fits the prototype of the Southern Political Strategist: He’s 63, round-faced, round-waisted and always seems to be on the verge of telling another too-good story from the bygone days of American politics. Sitting behind the wide desk in his Raleigh office, wearing sweats and puffing on a cigar, Wrenn explained the existential dilemma that confronted Southern Democrats back in the ’70s, when Wrenn started working in the mighty North Carolina political operation of Senator Jesse Helms.

After Reconstruction, Wrenn explained, the South reverted to complete Democratic control. Elections were decided in the Democratic primaries, which were often fought between the conservative wing and a more moderate wing. The passage of the Voting Rights Act upset that status quo. “What the Voting Rights Act did was brought very quickly a group of African-American voters into those primaries, and it tilted the balance to the progressives,” Wrenn said. “It tilted the playing field so much that by the ’70s, it was very unlikely a conservative was going to win a Democratic primary.”

Helms, a former Raleigh city councilman, had seen it coming. After the Democratic candidate he was supporting for governor lost the primary to a pro-integration opponent in 1960, he moved full-time into a new political realm — television punditry. Owl-eyed, balding and fiery, Helms became a popular on-air commentator for WRAL-TV, where he inveighed against a civil rights movement that was infested with “moral degenerates” and willfully blind to what he called “the purely scientific, statistical evidence of natural racial distinctions in group intellect.” In 1971, he registered as a Republican. Tom Ellis, a lawyer and close political adviser, suggested that he

run for the United States Senate.

The electoral path for Southern Republicans was not at all clear back then. In 1966, 18 percent of North Carolina voters were registered Republicans. In 1972, the number was still just 22 percent. At the same time, Democrat registrations were hanging in at around 75 percent. To win, Helms would need to reach and convert a lot of unhappy Democrats.

Many national Republican politicians, Richard Nixon among them, also saw an opportunity in the racial dislocation of conservative Southern Democrats. A Quaker who helped shepherd Dwight Eisenhower's Civil Rights Act of 1957 through the Senate, Nixon won the White House in 1968 by opposing the perils of court-ordered busing and (though he ultimately signed the Voting Rights Act's reauthorization) the injustice of Section 5. His hard-edge, race-based appeal came to be known as the Southern strategy, an effective way for Republicans to win white voters in the South.

"Sometimes the way in which it was handled was legitimate," Wrenn said. "Sometimes it was over the line." The tactic immediately relinquished whatever good will black voters still had for the party of Lincoln, but this too helped Republicans, as the Nixon tactician Kevin Phillips explained in 1970. "The more Negroes who register as Democrats in the South," he said in an interview in The New York Times, "the sooner the Negrophobe whites will quit the Democrats and become Republicans." Helms echoed some of Nixon's themes in his 1972 race, and — running on the slogan "Jesse Helms: He's One of Us" — easily smashed his Democratic opponent, Nick Galifianakis (uncle to the comedian Zach Galifianakis).

Why didn't the Republicans, whose party was founded on outrage about racial injustice, instead try to rekindle their alliance with black voters? I posed the question to Wrenn. He sat back for a moment, reflective. In fact, he said, they thought about it. They asked their pollsters to identify some Republican positions that could appeal to black voters, and the pollsters



found that some black voters might just be drawn by the party's religiosity and its position on abortion. But the pollsters also found that, Abraham Lincoln and several generations of Jim Crow notwithstanding, black voters simply saw Democrats as more reliable allies after the passage of the Voting Rights Act. "Nothing else mattered," Wrenn said. "Abortion didn't matter. Religion didn't matter. It was experience." He sighed. "I may be dead wrong," he added, almost as an afterthought. "Because one thing I've learned is that I do not understand the mind of the black voter."

As for white voters, the Southern strategy worked. Helms won his next two races and provided a vast Southern support network for Ronald Reagan's 1980 campaign team, which used many of the racial dog-whistle slogans that Helms had made a regular part of his campaign arsenal. In one of Reagan's first campaign events following his nomination, he went to the Neshoba County Fair in Mississippi — near where the Klan killed three civil rights workers 16 years earlier — and declared, "I believe in states' rights."

## *II. 1980-2000*

### 3. "Zest for the colorblind society"

The 1980 election may have put Reagan in office with an ominous nod to "states' rights," but in that same year black voter registration reached 60 percent, black politicians were slowly but steadily winning public office and efforts by ideologues like Helms to undermine the Voting Rights Act had not been able to halt the progress it protected.

But a new threat to the act was just about to arrive in Washington, in the confident person of John Roberts Jr., a superstar young conservative legal scholar who retained the bearing of the prep-school football captain he once was. A Midwesterner from the all-American town of Long Beach, Ind., he graduated early from Harvard summa cum laude and went on to Harvard

Law, where he was editor of The Harvard Law Review, before landing a plum Supreme Court clerkship with Justice William Rehnquist, a Nixon appointee.

Rehnquist's chambers were a haven for aspiring young conservatives, "the closest place to the center of an emerging conservative legal movement," writes Ari Berman in his new book about the voting rights movement, "Give Us the Ballot." For years, Rehnquist had openly opposed the major legislative achievements of the civil rights era. When the justice was a young Supreme Court clerk himself, he wrote a memo agreeing with *Plessy v. Ferguson*'s "separate but equal" doctrine, which formed the bedrock legal justification for decades of segregation. (He later said the memo did not represent his true thinking.)

Shortly before Roberts came aboard as a clerk, Rehnquist helped decide a case that would mark the first major legal blow against the Voting Rights Act. The case, *Mobile v. Bolden*, involved a somewhat complicated argument about minority representation. The city of Mobile, Ala., was majority white, and the way it structured elections for its three-person city commission made it nearly impossible for black voters to gain a single seat. The commissioners were selected by a citywide, or "at-large," election, putting black voters in the minority for every seat. The at-large system was inherently stacked against minorities, the plaintiffs argued, but there was a simple fix. If Mobile carved out three districts, each with a dedicated commissioner, and one of those districts was majority black, then black voters would have a better chance of electing a black commissioner.

Rehnquist and his fellow justices did not dispute the logic. Instead, they argued something new: that the plaintiffs failed to prove that Mobile set up the election system with the intention of shutting out blacks. This subtle distinction about intention created a new, often impossibly high bar for winning Voting Rights Act cases. It wasn't enough to show that a law resulted in black voters being disenfranchised. Now the plaintiff also had to

show “proof of intent.”

As a clerk, Roberts mostly drew dull cases to review — a disputed cattle transaction, the rightful tax status of a corporate hunting lodge — but later that year, when he took a prestigious new job as an assistant to Reagan’s attorney general, William French Smith, he would have much to say about the Mobile decision. Because the Voting Rights Act was coming up for renewal, a bipartisan group of senators and House members had taken the opportunity to work out a fix to undo the Supreme Court’s Mobile decision as part of the renewal package. The new rule would explicitly allow judges to find fault with any election law that resulted in minority disenfranchisement, no matter the intention. As a corrective to “proof of intent,” this “results test,” as it was known, would significantly strengthen the Voting Rights Act.

Many career civil rights attorneys at the Justice Department had no problem with the new rule. But Reagan’s political appointees, Roberts among them, had a new argument with profound implications: Justice should be colorblind. Roger Clegg, a lawyer who worked with Roberts during the Reagan years, described this new ethos in notably idealistic-sounding terms: “It’s a very bad thing for this country to have race-based decision making in any public transaction.”

It was the sort of argument that dismayed career civil rights attorneys. “In their zest for the colorblind society they professed to see, they didn’t recognize that the long couple hundred years of segregation and discrimination continued to have present-day effects,” one of those attorneys, J. Gerald Hebert, told me. “I would say they had a fundamental lack of understanding of the 14th and 15th Amendments, and what Congress could do under those amendments — I still don’t think Roberts understands it.”

In his new position, Roberts was a leading voice against the results test.

In memos to the attorney general, he argued that discrimination cases should be hard to prove, given that they can lead to “the most intrusive interference imaginable by the federal courts into state and local processes.” The results test, he said, would “establish essentially a quota system for electoral politics” — and “just as we oppose quotas in employment and education, so too we oppose them in elections.” (At the time, 19 black representatives were serving in a House class of 435.)

But as Roberts pressed his case, a powerful opponent, Senator Bob Dole of Kansas, was working against him. Dole, who voted for the Voting Rights Act in 1965, thought the Reagan team’s ideological fervor put the party’s efforts to build a broad, winning coalition of voters at risk. His argument prevailed, and Reagan ultimately signed the strengthened version of the Voting Rights Act in 1982, with the new standard for bringing discrimination cases intact. “I tried to make the point to the White House that, as a party, we needed to demonstrate that we cared and were concerned about votes from African-Americans and Hispanics,” Dole, now 92, told me earlier this summer. “I don’t know where we lost track after Abraham Lincoln.”

#### 4. “Sort of an ‘aha’ moment”

In July, Edward Blum, at ease in his newly constructed four-bedroom home on the placid western coast of Maine’s Penobscot Bay, explained why, to his mind, Americans ultimately embraced the Voting Rights Act. “It was the idea that your race should not be something that is used to help you in life or used to harm you in life,” he said. And that was the problem now, Blum told me. That was the very reason he was putting so much energy into trying to unravel those laws. Over the years, he said, “just the opposite evolved; race becomes everything.”

Blum, slightly built and wearing khakis and a Polo fleece, was sitting in his home office, his golden retriever barking outside at a passing kayaker.

The scene was almost as far removed from the voting battlegrounds of the American South as could be imagined. And yet it is from this bucolic Northeastern setting that Blum has mounted some of the fiercest attacks on civil rights legislation to date. In the days before we spoke, the Supreme Court agreed to hear his challenges to race-based college admissions and the inclusion of noncitizens in the population tallies used to determine local districting.

It all started in 1992, when Blum, then working in Houston as a stockbroker, decided to make a novice run for Congress, for the seat once held by the civil rights icon Barbara Jordan. To campaign in such a district as a white conservative marked Blum as “somewhat of a kook,” he conceded, but the incumbent Democratic congressman, Craig Washington, who is black, had considerable political vulnerabilities. While in office, he had filed for personal bankruptcy; admitted to breaking his marriage vows with two separate women; and confessed to having been involved in a domestic altercation with one of them. But whatever chance Blum — who peppers his speech with a “meshuga” here and a “bubbameister” there — had was undercut by his actual platform, which was centered on tax cuts and, as *The Houston Chronicle* described it, “ending welfare for able-bodied adults.” Blum lost.

The thing that bothered Blum most about losing, he said, was that the district adhered to no obvious geographical concept of what a community should look like. The crazy shape was a result of the obscure and often maddeningly complex art of redistricting. The Texas Legislature redraws its congressional districts every 10 years, based on the latest census population figures. In most states, the party in power controls the redistricting process and tends to do it in a way that configures as many of those districts as possible to have majorities of its own loyal voters. That might mean stretching a district line here or there to make a district where a majority of voters is reliably for your party, a process called gerrymandering. After 1965,

though, partisan mapmakers also had to be mindful not to violate the Voting Rights Act. They could only rarely draw lines that reduced minority participation, and they had an affirmative duty under certain conditions to create “minority-majority” districts, where blacks or Latinos made up the majority. “You had these fingers and tributaries reaching out to pick up these little pockets of minority voters,” Blum told me, grimacing.

Not long after his defeat, Blum read an article in *The New York Times*, about a case in which the plaintiffs challenged a similarly complex system of drawing districts, that gave the practice a name: racial gerrymandering.

“That was sort of an ‘aha’ moment,” Blum said.

The case, as it happened, started in North Carolina. Robinson Everett, a Duke law professor, filed a suit, later joined by the wealthy libertarian-leaning former state representative Art Pope, that involved two new black-majority congressional districts. One district spanned 160 miles and, at one point, was no wider than the I-85 expressway. A *Wall Street Journal* editorial labeled this redistricting “political pornography,” but the new shape also led to the election of Melvin Watt, one of the first black congressmen from North Carolina since Reconstruction.

Everett, in the case, ultimately called *Shaw v. Reno*, made an argument that John Roberts Jr. would have cheered: In devising the district, the state had created “a racial quota system” for elections that segregated voters based on race. In his argument, he also proposed a more intriguing — and, for the Voting Rights Act, more threatening — premise: the principle of a “colorblind constitution.”

By that time, Rehnquist had been named chief justice. His court sided with Everett. From then on, considerations of race in redistricting, while required by the Voting Rights Act, could not be used to create districts that bore “an uncomfortable resemblance to political apartheid,” Justice Sandra Day O’Connor wrote in the majority opinion. While the logic of the decision

was somewhat muddled — political geography had never been especially neat — it was the first serious limit on the expansive powers of Section 5. And it drew its authority not from any racist ideology but from the Equal Protection Clause of the 14th Amendment.

With *Shaw v. Reno*, Blum found inspiration. He filed a similar suit in Texas, and his case also went all the way up to the Supreme Court, which nullified the redistricting plan he challenged. Blum had a new career. “All I had to do was take that doctrine, and that legal team, and begin suing other congressional plans,” he said. “So we sued New York, took the team to other states: Virginia, South Carolina.” In short order, he became one of the Voting Rights Act’s most effective opponents. He hunted for plaintiffs the old-fashioned way, paging through a hard copy of the *Almanac of American Politics* and dead-tree phone books to find frustrated former candidates like himself. “The predicate behind all of this,” he said, was: “This can’t be right; this can’t be right.”

## 5. “A vast voter registration machine”

On the 25th anniversary of the Voting Rights Act, in 1990, there were celebrations throughout the South and state-of-the-black-vote reports on television. In Washington, Congress unanimously passed a joint resolution declaring Aug. 6 “Voting Rights Celebration Day.” George Bush signed it three days later, saying, “We must never underestimate the importance of a single vote.”

But the movement against the trend of making voting easier that began with the original act’s signing was entering a new phase. Democrats were pushing for a new law to increase registration, known as the “motor-voter bill,” which would require states to provide registration forms at motor vehicle departments and other government agencies, such as public-assistance offices. Republicans resisted. Senator Mitch McConnell of Kentucky warned that the bill would “turn every agency, bureau and office of

state government into a vast voter registration machine,” resulting in “political couch potatoes” driven to polls on union buses. Bush vetoed the law when it arrived on his desk in the summer of 1992, the middle of the presidential campaign, declaring that it would “expose the election process to an unacceptable risk of fraud and corruption.”

Still, Clinton signed it quickly upon taking office the following year. It was an easy choice. “He stood to gain tremendously,” as the Rev. Jesse Jackson, a longtime advocate for the law, told me. Indeed, following its passage, black registered voters increased 10 percent by 1998, and those new voters would go on to become a boon to Clinton and the Democrats, especially in the South. Nonetheless, a new front had been opened in the battle over voting rights, which combined old-school Jesse Helms attacks on the character of black voters with a new, high-minded concern about fraud.

In-person voter fraud — in which you impersonate someone or try to vote more than once, or at all if you are ineligible — is almost entirely nonexistent in the United States. (An exhaustive Loyola Law School study could find only 31 “credible allegations of fraud” in a one-billion-vote sample.) But election fraud — ballot stuffing, vote buying, machine rigging — is not unheard-of, and in that shade of distinction lay an important new development.

In 1997, the year after Clinton was re-elected, Miami was confronted with a spectacular case of genuine election fraud, when it was revealed that Xavier Suárez had clinched the mayoralty with the help of hundreds of absentee ballots bearing the names of dead people, felons and other ineligible voters. Suárez himself was never charged, but eventually more than 50 people were arrested, and an appellate court threw out the absentee ballots, forcing Suárez to step down from office.

The case set Florida legislators on an aggressive and hasty effort to reform the state’s voting system. One proposed law made it harder to certify



an absentee ballot. (The Justice Department blocked much of the law under the Voting Rights Act, determining that some restrictions would fall more heavily on blacks and Hispanics than whites.) The state also hired a data firm called DBT to scrub the names of any dead people or felons from its voter rolls.

Conservative lawmakers nationwide, sometimes citing the motor-voter bill, were increasingly vocal about fraud, and the distinction between in-person voter fraud and actual election fraud was often lost in the heat. Contributing to that confusion was a group formed in 1996 in Virginia, the Voting Integrity Project, known as V.I.P. One member of the group's advisory board was an obscure elections official out of Georgia named Hans von Spakovsky, who would become a central figure in the campaign against fraud.

Von Spakovsky first became active in politics as a particularly assertive chairman of his local homeowners' association. After a stint as a poll watcher, he became obsessed with the specter of voter fraud and the idea that every voter should have to show photographic identification at polls. He began writing in small conservative journals on the need for states and counties to scrub felons and dead people from their voter rolls, which led to a seat on the board of the Fulton County Board of Registration and Elections in Georgia — and also caught the eye of V.I.P.

V.I.P. ostensibly offered its services to all comers, but it tended to investigate Democrats. Its first big case came in Louisiana. When the Democrat Mary Landrieu defeated the Republican Woody Jenkins by a narrow margin in the 1996 Senate race, Republicans called in V.I.P., which reported that Landrieu's election was a result of a complex fraud scheme. A Senate committee investigated and instead found evidence that a Jenkins operative may have coached the witnesses, four of whom recanted. The Senate inquiry determined that there was "no evidence of an organized, widespread effort to secure fraudulent votes."

Many election fraud scandals involved absentee ballots, and V.I.P. often criticized lax absentee ballot rules, but it was particularly concerned, like Von Spakovsky, with persuading states and counties to purge their voter rolls of dead people and felons. (According to N.Y.U.'s Brennan Center, in the United States, various state voting laws have disenfranchised nearly six million felons.) V.I.P. determined that some municipalities didn't have the resources to remove ineligible voters, so it formed a partnership with DBT — the same company Florida hired following the Miami mayoral debacle — and announced in a news release that the company would come to “small communities to scrub their voter rolls ‘free of charge.’ ”

The urge to clean up voter rolls is understandable, of course, but in practice it can have an undesirable effect, as the world would soon learn. DBT's work for Florida entailed combing through the state rolls for possible felons and then forwarding the results to local election officials throughout the state. However, multiple investigations would later determine that DBT incorrectly flagged thousands of people on the lists, and that a disproportionate number of them were black voters, more than 90 percent of whom voted for Al Gore. Estimates for how many of those voters were wrongly turned away from polls range from roughly 1,000 to many times that.

The mishandled felons purge was only one of many mishaps that plagued the presidential election in Florida that year, when some 180,000 votes were rejected because of either poorly designed ballots or challenges from lawyers during the recount. A New York Times review that year found that of the ballots that were thrown out in the Florida election, three times as many came from black voting precincts as from white voting precincts.

### *III. 2000-13*

## 6. “Right-thinking Americans”

The 2000 election fiasco drew nationwide bipartisan calls for election reform. Congress set out to draft a new law to avoid a repeat, and the Bush Justice Department turned to the conservative expert on elections to help guide its role in the legislative process — Hans von Spakovsky.

Von Spakovsky told me that he applied for the job when he heard that the new attorney general, John Ashcroft, was creating a unit to lead the Justice Department's effort on the bill. "It was basically a blind application," Von Spakovsky said. "When I got hired, there wasn't anybody in Washington who knew who the hell I was."

The final, bipartisan version of the law — the Help America Vote Act, passed in 2002 — mandated voting booth upgrades and provided protection for voters whose names were wrongly removed from registration rolls, as so many were in Florida. (It requires states to allow those who show up at polls and learn they do not appear on the voting rolls to cast provisional ballots.) But the act also raised the criminal penalties for the willful inclusion of false information on registration forms, like filing one on behalf of a nonexistent person, or claiming to live in a voting precinct where one does not, in fact, reside. Another provision required those who registered by mail to later prove their identities at polling stations or state election offices with photo identification, a utility bill or a bank statement.

By then, it was becoming clear that the Bush administration was picking up where the Reagan- and Bush-era Justice Department left off. One of Bush's tactics was to pack the Commission on Civil Rights with a conservative majority. His administration was hardly the first to mold the commission to its ideology, but it did so in a new way: Avoiding rules barring a president from appointing more than four commissioners from his or her party, two Republican appointees re-registered as independents. The move cleared the way for Bush to add two new Republicans, effectively giving the commission a 6-2 split. Bush made Abigail Thernstrom, a respected conservative author who had been questioning the role of Section 5 since the

1980s, its vice chairwoman.

Von Spakovsky quickly moved up in the Justice Department, and by 2002 he was advising on cases and policy at the voting section of the civil rights division. There he found common cause with the Bush-appointed acting head of the division, Bradley Schlozman. What followed, Von Spakovsky said, was “a clash between folks like me who really believe that the Voting Rights Act needs to be applied in a race-neutral manner and the folks who had been there a long time who saw it, frankly, as a way of helping only minority voters, and in particular, helping one political party.”

In 2004, the new leadership assigned a case against the majority-black county of Noxubee, Miss., for “relentless voting-related racial discrimination” against white voters — the first case ever brought by the Justice Department on behalf of white voters. When some division lawyers chafed at the decision, Schlozman decided to try to quell the dissent by conducting an aggressive — and, an inspector general’s report later found, illegal — effort to hire like-minded attorneys and to marginalize or get rid of career attorneys the Bush team saw as too liberal. In emails, Schlozman boasted: “My tentative plan to is to gerrymander all of those crazy libs right out of the section” and to replace them with “right-thinking Americans.”

One of these was J. Christian Adams, who had endeared himself to conservatives by seeking the disbarment of Hillary Clinton’s brother Hugh Rodham for representing felons seeking pardons during his brother-in-law’s presidency. Another was John Tanner, a career Justice Department attorney who joked in an email with Schlozman that he liked his coffee “Mary Frances Berry-style — black and bitter,” referring to the Democrat who headed the United States Commission on Civil Rights under Bill Clinton. Still another was Chris Coates, a former A.C.L.U. lawyer who, Schlozman wrote, had become “a very different man” and was now “a true member of the team.” Not making the cut was a black lawyer who, Schlozman complained in an email, wrote in “ebonics” and, in his opinion, was hired as “an affirmative-

action thing.”

It was in that toxic environment, in 2005, that Georgia submitted for approval a new type of strict voter-ID law. As it happened, the law comported with legislation Von Spakovsky described in a law-journal article he had recently published under a pen name, Publius. But a voting-division review team report — later leaked to *The Washington Post* — suggested that the department block the law. Black voters were considerably less likely to have any of the required IDs than whites were. According to the report, a prime sponsor of the bill, State Representative Sue Burmeister, told the review team that if the law diminished black voting, that was only because it shut down opportunities for fraud; black voters, the report paraphrased her as saying, were less likely to vote if they were not being paid to do so. A state judge ultimately invalidated the law, citing the plain language of the Georgia Constitution — “there is nothing equivocal about the words ‘shall be entitled to vote’ ” — and Georgia was forced to revise it. (The revised version provided free voter identification cards to those who needed them, and the Georgia Supreme Court upheld it.)

Still, when the Voting Rights Act went up for reauthorization in 2006, Von Spakovsky told me, he argued at the Justice Department that “the evidence very clearly showed it was no longer needed.” Blum, Clegg and Thernstrom made the same argument, on the Hill and with Karl Rove at the White House. But Congress reauthorized the Voting Rights Act for another 25 years, after it passed unanimously in the Senate and with only 33 “no” votes in the House. Signing the reauthorization that July, Bush declared, “My administration will vigorously enforce the provisions of this law, and we will defend it in court.”

## 7. “It worked on a whole bunch of levels.”

Eric Holder Jr.’s apartment in downtown Washington is a study in modern minimalism, with floor-to-ceiling windows, low-rise Italian

furniture and zero clutter. Its sense of orderliness is at odds with the chaos of the last six years of his life, as the first black attorney general of the United States.

It was a few weeks after his final day as attorney general, and Holder was dressed down in a Washington-casual outfit of jeans and a perfectly pressed white button-down. Leaning back in his chair, he explained to me how he had come into the Justice Department with a mission to “restore” the civil rights division following the turbulent Bush years. “I knew things had gotten bad at the civil rights division,” he told me. “But I was really surprised,” he said, “at how bad things had become.”

Just two weeks before Obama’s inauguration, Chris Coates, the former A.C.L.U. attorney whom Schlozman had called “a true member of the team,” and J. Christian Adams, an ally, had rushed through a new case that involved an Election Day run-in at a Philadelphia polling station. According to a Department of Justice report, for about an hour, two members of the New Black Panther Party, a diffuse militant black group not affiliated with the original Black Panther Party, stood menacingly outside the station, predominantly used by blacks. Both were dressed in paramilitary apparel, one was carrying a billy club and, one witness said, they were calling whites “crackers” who would soon be “ruled by the black man.” A white poll watcher with a video camera confronted them, and the footage was played repeatedly on Fox News. Coates charged them and the New Black Panther Party under Section 11 of the Voting Rights Act, which prohibits polling place harassment.

Holder had rehired several attorneys and analysts who left the voting section during the Bush years, and the newly rejuvenated civil rights lawyers and other staff members advocated reducing the charges in the case. The reasons were straightforward. No witnesses had come forward to say they were dissuaded from voting; the New Black Panther Party publicly disavowed the men on its website; one of the men was a certified poll

watcher. In addition, the Justice Department had not brought a case in a similar situation in Pima, Ariz., when four white members of an anti-illegal-immigration group, one of them with a holstered gun, showed up at a majority-Hispanic polling station wearing military gear. But dispensing with the case would not be easy.

Looking back on it now, Holder said he viewed the New Black Panther case as a poison pill left behind as a sort of test by the outgoing regime: “It was almost like, ‘We dare you to do something with this.’ ” He said he decided to back the career staff members who wanted to drop the charges. “I also thought in the back of my mind, All right, this is going to create a bit of a firestorm, a political firestorm, but hey, career people made a cogent argument — they were just briefing me — and I said, ‘That’s fine.’ ” The Justice Department moved ahead with reduced charges against only one of the men, the one with the billy club, winning an order that he not return to a polling station with a weapon through 2013.

Conservative media outrage ensued. The United States Commission on Civil Rights, then still overwhelmingly conservative, conducted its own investigation and declared, “There is considerable evidence of a culture of hostility to the race-neutral enforcement of the law.” Its star witnesses were Coates and Adams, who stepped forward on Fox News as a “whistle blower.” Later a Department of Justice inspector general’s report said the New Black Panther Party decision was handled properly. But all of that was lost in the conservative media coverage. The reports mixed with others about how several members of the community organizing group Acorn — which Obama helped to sue Illinois to implement the motor-voter law in the 1990s — were indicted on a charge of filing false voter registrations on behalf of nonexistent voters, in order to pad their work hours. The story line, combined with that of the New Black Panther Party, painted a picture in the conservative news media of a president who owed his election to nefarious black vote fraudsters.

How serious was this misconception? A year after Obama's election, the Democratic polling firm Public Policy Polling released a survey showing that 52 percent of Republicans believed "Acorn stole the presidential election for Barack Obama last year, with only 27 percent granting that he won it legitimately." Republican legislators were increasingly calling for measures to prevent in-person voter fraud, though evidence that any existed in any substantial way remained nil. "It worked on a whole bunch of levels," Holder said. "And I think that's why they decided to do what they did."

## 8. "A drastic departure"

In 2010, Republican legislators — propelled by Tea Party anger, new sources of outside conservative money and a precision plan devised by the strategists Karl Rove and Ed Gillespie — increased the number of statehouses they fully controlled to 25 from 14. In 2011, Alabama, Kansas, Mississippi, Rhode Island, South Carolina, Tennessee, Texas and Wisconsin passed new voter-ID laws. The North Carolina General Assembly passed one that year as well but could not overcome a veto by Gov. Bev Perdue, a Democrat. In 2012, New Hampshire, Pennsylvania and Virginia followed with their own. The laws were strikingly similar. "It's really, really unheard-of, or really rare, to have states move en masse all of the sudden to pass photocopied laws all at once without a national crisis," said Michael Waldman, president of the Brennan Center for Justice at the New York University School of Law, which has kept careful track of the new laws. There had not been this many restrictive voting laws in the states, Waldman said, "since the Jim Crow era."

But by Election Day of 2012, most of the laws had been temporarily suspended, and some were blocked outright. In Texas, a federal court, quoting an earlier case, ruled that the state's harsh voter-ID law was likely to "lead to a 'retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.'" Section 5, once again, had worked, and in 2012, for the first time in American history, the black turnout



rate exceeded the white turnout rate, by two percentage points.

Three days after Obama's re-election, the Supreme Court agreed to hear a challenge to the constitutionality of Section 5, this time on behalf of Shelby County, Ala., one of whose hamlets the Department of Justice had blocked from eliminating the seat of its sole black lawmaker. The suit came from none other than Edward Blum.

Blum had moved on from challenging districts to challenging Section 5 itself. In 2006, he filed his first suit, on behalf of a small utility board in Austin that had no real effect on minority voting rights but, because it had a publicly elected board and was located in Texas, fell under Section 5 provisions. The suit failed to draw the Supreme Court into the question, though John Roberts Jr., now chief justice, had left the door open to doing so: "Whether conditions continue to justify such legislation is a difficult constitutional question we do not answer today," he wrote.

His Shelby decision, rendered on June 25, 2013, answered that difficult constitutional question in the negative, striking down the formula for Section 5 coverage contained in Section 4. Echoing the language of his Reagan Justice Department memos from more than 30 years earlier, Roberts called Section 5 "a drastic departure from basic principles of federalism" that had since served its purpose. "History did not end in 1965," Roberts wrote. "Largely because of the Voting Rights Act, voting tests were abolished, disparities in voter registration and turnout due to race were erased and African-Americans attained political office in record numbers."

When Blum heard about the decision, he was overjoyed. "I wept," he said.

Roberts's decision prompted an unusually fiery response from Justice Ruth Bader Ginsburg. In her dissent, she noted that in studying the law's reauthorization in 2006, "Congress found there were more D.O.J. objections between 1982 and 2004 (626) than there were between 1965 and the 1982

reauthorization (490).” She noted that in a majority of those objections, the Justice Department cited “calculated decisions to keep minority voters from fully participating in the political process.” She pointed to a study that found that covered states and counties accounted for 56 percent of all successful discrimination cases brought under Section 2 of the law — which applies equally in all states — though they contained 25 percent of the nation’s population. And she read from F.B.I. transcripts involving a case in Alabama regarding a possible ballot proposition on gambling that some Republican lawmakers worried would cause a spike in the turnout of blacks, whom they referred to as “aborigines” who would arrive at polls in “HUD-financed buses.”

“These conversations occurred not in the 1870s or even in the 1960s — they took place in 2010,” Ginsburg wrote. “‘Hubris’ is a fit word for today’s demolition of the V.R.A.”

#### *IV. 2013-15*

### 9. “History has a way of repeating itself.”

The effects of the Shelby decision were immediate. Late in the evening of July 22, 2013, the Democrats on the North Carolina General Assembly Rules Committee received their copies of a new version of House Bill 589, which was due for a vote the following day. Three months earlier, the House passed the original H.B. 589. It was a short voter-ID bill, allowing for a wider range of IDs — including state-college IDs — than other laws of its kind, and incorporated provisions that would help those who did not have an appropriate ID to get one free. The bill had been extensively vetted in hearings that took place over weeks but had curiously sat dormant after its passage by the House. Just after the Shelby decision, the senator in charge of the Rules Committee, Tom Apodaca, said, cryptically, “Now we can go with the full bill,” and expressed relief that the “headache” was out of the way.

State Senator Josh Stein was sitting in his kitchen in Raleigh when the email with the new legislation came through. “My jaw hit the table,” he recalled. He quickly understood what Apodaca had meant. The bill had grown to 57 pages from 14, with 48 additional sections that cut the state’s early-voting period nearly in half, taking away one of the two Sundays when black churches run highly effective “souls to the polls” voting drives. It ended same-day registration and invalidated student IDs for voting. In its one act designed to improve voter access, the bill made it easier to vote by absentee ballot. None of this could have been approved under Section 5. The email indicated that the Rules Committee would vote the following morning.

The bill alarmed North Carolina’s black legislators, some of whom had worked for decades to make the state a model for inclusive voting law. They saw in it a reflection of the failed Reconstruction years. “History has a way of repeating itself,” said Representative Henry Michaux Jr., who joined the North Carolina General Assembly in 1972, “and that’s exactly what’s happening here.”

The new bill had many authors, literal and spiritual, among the generations of civil rights antagonists. There was Von Spakovsky, who testified during hearings for the earlier version of the bill that while he was not claiming North Carolina suffered from massive voter fraud, the potential for abuse existed. Tom Farr, a lawyer who spent many years working with the Helms organization, helped drafters of the bill in the House to sort through Department of Motor Vehicles data on distribution of driver’s licenses by race (blacks were more likely than whites not to have one, it showed). The Civitas Institute, which Pope co-founded, had been pushing for the provision ending same-day registration and shortening the early-voting period. (Pope told me he had no hand in the foundation’s work and hadn’t given the new law much thought.) The law’s provision removing student IDs, even those issued by state schools, from the list of acceptable identification had been championed by the newly formed Voter Integrity

Project, a local group unaffiliated with Von Spakovsky's Voting Integrity Project. "We are approaching it from a philosophical position," Jay DeLancy, the group's co-founder, told me. "There is fraud. How do you mitigate it?" Emails that would later emerge in court showed that in lobbying for another bill restricting student registration, DeLancy told lawmakers that, if successful, "it will shift the landscape of college-town voting all across the nation."

Within two days, the law passed both chambers without a single Democratic vote. As he cast his "no" vote on the House floor, Michaux said, "You can take these 57 pages of abomination and confine them to the streets of hell for all eternity."

The Justice Department, the N.A.A.C.P., the A.C.L.U., the League of Women Voters and a group of college students filed lawsuits, which were joined together in this summer's trial, under the name of North Carolina N.A.A.C.P. v. McCrory.

To justify the bill's necessity, supporters pointed to an audit the state conducted last year under a new provision of the law that requires it to crosscheck its voting rolls with those of other states. It had identified 35,000 potential double registrations. The state's division of elections commissioner, Kim Strach — whose husband is on the state team defending the law — told lawmakers, "It could be voter fraud," though she acknowledged the possible duplicates could also be related to common bureaucratic errors. The commentator Dick Morris, speaking on Fox, said it probably meant there were more than one million double votes nationwide in 2012. Von Spakovsky told *The Tampa Bay Times* it seemed as if North Carolina had found at least several hundred people who voted twice.

A few weeks before the case was to go to trial, I stopped into the Statehouse office of State Senator Bob Rucho, a prime supporter of the bill. "When the people start losing confidence in their government, and the

electoral process, then something needs to be done to restore it,” he told me. But when I called the Board of Elections recently, a spokesman told me that the number of suspicious registrations was now 11; none had so far produced a criminal fraud charge.

## 10. “This is our Selma.”

On July 12, the Sunday before North Carolina N.A.A.C.P. v. McCrory was to open, the Rev. William Barber II, president of the statewide N.A.A.C.P. organization, gathered more than 1,200 supporters and allies in the center of Winston-Salem for an evening prayer service beneath the vaulted ceilings of the Union Baptist Church.

Barber, 51, has a striking presence. More than six feet tall, broad-chested and slightly hunched from a congenital spinal condition, he speaks with a booming and practiced moral indignation. For two years, since the Republicans took control of the state, he has been running regular “Moral Monday” protests at the Statehouse. He argues that the nation is in the throes of “a third Reconstruction,” and that new voting laws like the one in North Carolina are an attempt at a third deconstruction. The old-guard members of the state’s civil rights movement view him as their rightful heir. (“He’s doing a great job,” Michaux said.) Republicans view him as a “demagogue,” as Wrenn called him.

As the sun began a hazy descent that Sunday, four generations of civil rights activists filed into the church, led by the grande dame of the trial, Rosanell Eaton, 94, a black N.A.A.C.P. plaintiff who defiantly trumped the system as a young woman by memorizing the preamble of the Constitution and then acing the literacy test in which she was asked to recite it. Wearing a black-and-white church dress, a veiled black hat and full makeup, she told me the new law offended her deeply. “It’s disgusting,” she said, spitting out the word like stale gum.

Barber approached the lectern in a bright fuchsia shirt and red prayer shawl. He ticked through the dramatic, violent history of the 1950s and 1960s that led to the passage of the Voting Rights Act with a religious-political rage. He then led his congregation through the fairly technical business of Capitol Hill lawmaking and Supreme Court law striking.

“After a black president had won two elections, five justices arrogantly said they knew more than the evidence considered by 98 senators,” he said. “Then on June 25 — a day that will go down in political infamy — they voted to gut Section 4 of the Voting Rights Act, and thereby nullified preclearance under Section 5 — which meant, on June 26, 2013, we had less voting rights than they had on August 6, 1965.” The crowd still with him, hooting and clapping, he shouted with the full capacity of his abdomen his catchphrase for the trial: “Like those who answered Dr. King’s call 50 years ago, THIS ... IS ... OUR ... SELMA ... NOW!”

Selma, in this case, was a heavily fortified, wood-paneled federal courtroom in Winston-Salem. The next morning it was filled with the lawyers from the five legal teams, including that of the Justice Department. The plaintiff’s lead attorney was Penda Hair, co-director of the civil rights group Advancement Project. In her opening argument, she said the voting laws established in the many decades since the Voting Rights Act had helped blacks and Latinos to vote. Removing those laws would affect those same people disproportionately. Quoting Barber, she repeated, “This is our Selma.”

After all of the plaintiffs had their say, Tom Farr took the lectern. He is gray-haired and slightly stooped, projecting a courtroom aura of rumpled annoyance. “What is the dastardly thing that North Carolina has done that has been equated to the events in Selma?” he asked the judge.

He argued that the law had no disparate effect; that blacks were no less welcome to vote than whites were during a shortened early-voting period,

were treated no worse for voting at the wrong precinct than whites — the idea being that the past was the past. This, in essence, is what many of the arguments against the Voting Rights Act have always come down to.

The sun was beating down hard when court broke that day. Outside, Barber had gathered a few thousand protesters, including some legends of the old movement, like Joseph McNeil, one of the four students who started the Woolworth's sit-in, and Bob Zellner, the first white field secretary of the Student Nonviolent Coordinating Committee. As the protest made its orderly way down Main Street, with the police directing traffic, I couldn't help thinking about the words of Farr's co-counsel, Butch Bowers. "The history of North Carolina," he said, "is not on trial here." These thousands of people certainly did not agree.

They most likely would have found more to agree with in an observation Henry Frye made to me, sitting on his porch two days before the trial started. "It's not quite what it was a long time ago," he said. Pondering for a minute, he laughed and added, "It's more sophisticated now."

### ***Correction: August 9, 2015***

An article last Sunday about the 50-year fight over the Voting Rights Act referred incompletely to the significance of Georgia's revised voter-ID Law. While it did include a provision allowing those without ID to file provisional ballots, the more relevant feature involved offering free voter-identification cards to those who needed them. The article also misidentified the court that upheld the revised voter-ID law. It is the Georgia Supreme Court, not the Supreme Court of the United States. The article also misidentified the location of the residence of a member of the New Black Panther Party who was accused of intimidating voters at a Philadelphia polling station in 2008. He lived in a house a few blocks away from the polling place, not in the building that housed the polling station. In addition, the article misspelled the surname of a state senator who helped pass North Carolina's sweeping new voting law. He is Tom Apodaca, not Apadoca. And a picture with an accompanying timeline was published in error. It showed President Johnson signing the Civil Rights Act of 1964, on July 2 of that year —

not the Voting Rights Act. A picture of Johnson signing the Voting Rights Act, on Aug. 6, 1965, can be found at [nytimes.com/magazine](http://nytimes.com/magazine).

Jim Rutenberg is the chief political correspondent for the magazine. He last wrote about the G.O.P. candidate Ben Carson.

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