

“THE LAW IS GOOD”

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*The Voting Rights Act, Redistricting,
and Black Regime Politics*

Steven Andrew Light

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Preface

For 45 years the Voting Rights Act of 1965 (VRA) has furthered the legacies of the Civil Rights Movement and helped to realize the promise of equality for all Americans.¹ Originally intended to remove the legal barriers erected in the South to African-American registration and voting and thereby extend the rights of citizenship to all citizens, the VRA's success in embodying the Fourteenth Amendment's guarantee of equal protection under the law and the Fifteenth Amendment's protection against interference in the right to vote is unparalleled. Quite simply, the VRA is the most important civil rights law in U.S. history.²

The alpha and omega of the VRA's significance lies in the intersections of the theoretical and real-world relationships between the right to vote and the promise of democracy. The right to vote is "the most fundamental right in our democratic system of government because its effective exercise is preservative of all others."³ The VRA guaranteed and has delivered on the principle of equal opportunity for all Americans in the voting process. Its key role in furthering the Fifteenth Amendment's assurance of unhindered voting rights and the enfranchisement of minority voters is unquestioned. In 1964, there were only about 300 black elected officials in the U.S. Today there are over 9,000, including President Barack Obama. The VRA's protections extend to other historically disadvantaged racial and ethnic minority groups, as well. The number of Asian Americans in elected office has tripled in recent years, and in large part due to the VRA, more than 6,000 Latinos now serve in elective or appointive office.⁴

In addition to securing the right to vote, removing the barriers preventing people of color from exercising their voting rights, and facilitating minority electoral success, the VRA's achievements include creating broad ideological consensus in favor of equal political opportunity and codifying the premise that such opportunity encompasses the chance to elect one's candidate of choice by casting a meaningful ballot. The VRA paved the way for the incorporation of elected officials of color into governing coalitions in communities throughout the U.S. and, as a result, built the foundation for those regimes to deliver on public policy that improves the quality of life for millions of people.

It is often said that success breeds success. In the arenas of public law and public policy, however—and especially where race is involved—evidence of accomplishment leads some to conclude that a particular law or policy has run its course. Regardless of evidence to the contrary, such arguments, whether rooted in principle or pragmatism, can gain traction. By the 1990s, the VRA's achievements prompted some law- and policymakers, as well as jurists, to question the need or wisdom for government backing of structural mechanisms that seek to remedy racial discrimination by taking into account race or ethnicity. The U.S. Supreme Court fueled the fire when it handed down a series of equal protection decisions that seemed to reverse course on three decades of established voting rights precedent, casting doubt on the constitutionality of drawing legislative districts to comply with the VRA, and even on the constitutionality of the VRA itself.

Voting rights advocates therefore breathed a sigh of relief in 2006 when President George W. Bush signed into law Congress's relatively rapid and uncontested renewal of key provisions of the VRA that were slated to expire the following year. Yet that outcome obscured calls for an expanded VRA based on extensive evidence of ongoing and pervasive race-based voter discrimination identified by voting rights experts who testified at numerous hearings. It also papered over the contentions of some lawmakers that an allegedly "post-racial" America no longer needed a vigorously enforced or enforceable VRA.

Congress failed to deal adequately with either pole of the continuum. The U.S. Supreme Court performed a similar sidestep at the end of its 2009 term, when it again had the VRA's proponents holding their breath and its opponents salivating at the prospect of holding a major provision of the VRA unconstitutional. The Court ducked the central issue in that case and implicitly acknowledged that Congress had "gotten it right" by renewing the VRA, but raised the specter of future challenges to its constitutionality.⁵

In this sense, success breeds not just success, but paradoxically, the chance to stop short of ultimate victory. For despite Barack Obama's historic win in 2008 as the nation's first African-American president, the legacies of race in America have yet to be fully resolved. Obama's election, as well as that of other officials of color across the U.S., almost inevitably have led to further calls for recognizing our "post-racial" society by dismantling legal and political structures that facilitate equal opportunity. With the 2010 Census, the politics of race-based reapportionment and redistricting under the VRA's mandates again will be at the forefront of a vigorous debate over the constitutionality of race-conscious electoral schemes. No matter what the outcome, it is imperative that students of American politics understand what exactly is at stake. Even if the mechanisms to accomplish it are imperfect, the overarching goal of the VRA

to achieve equal opportunity for all Americans in the voting process is integral to the much larger promise of participatory democracy—a promise which today, still remains unfulfilled.

The VRA embodies a transformative vision of American politics. I came to understand and adopt that view soon after graduating from college, at a point when many of us are at our most energetic, enthusiastic, and idealistic about the future—our own, as well as our country's. Often, this stage in life coincides with indecision as to what, precisely, to do next with our lives, let alone how to make the world a better place. Without a firm sense of what I could accomplish with a bachelor's degree in political science, and nurturing interests in law, politics, and their respective intersections with race and ethnicity, I delayed the prospects for law school—a choice that had profound implications for my career path—and accepted a civil service position with the federal government.

In the early 1990s, during what turned out to be the most vigorous federal enforcement of the VRA either before or since—interestingly, during the administration of Republican President George H. W. Bush—I served as a Civil Rights Analyst in the Voting Section of the Civil Rights Division of the U.S. Department of Justice in Washington, D.C. The Section is a relatively small and, until that time, fairly anonymous administrative unit charged with implementing and enforcing the VRA. Most of the Section's line staff—policy analysts, attorneys, and support personnel—are committed career civil servants, rather than political appointees. Most believe strongly in what they do and why they do it. Some have worked in the Section for years and even decades, and have seen firsthand—if from a distance, because most voting rights enforcement takes place in Washington—the tremendous impact that the VRA has had on racial and ethnic minority electoral participation and representation.

As a result of the VRA's requirements, the Justice Department anticipated the tsunami of local, state, and congressional redistricting plans that would flood the Voting Section after reapportionment based on the decennial census. I was hired in a special capacity as part of a small cohort of recent college graduates whose primary job was to enforce Section 5 of the VRA by examining redistricting plans to ensure they did not have a racially discriminatory purpose or effect on minority voters. My training revolved around how best to sift through and analyze the mountain of data that accompanied redistricting plans and other proposed changes in voting practices and procedures when they were submitted to the Department for administrative “preclearance” before they legally could be implemented in the political jurisdictions, mostly in the South, that had adopted them. This bureaucratic detective-work proved alternately mundane and thrilling, depending on whether I was investigating a routine change in the location of a polling place

from a church to the school next door, or the congressional redistricting plan for the state of Mississippi.

Over the years, the Justice Department's role in safeguarding voting rights has been subject to criticism on widely varying grounds. For reasons having less to do with how the Department enforced the VRA—although that was, indeed, questioned—than its role in the prosecution of the “war on terror,” the politicized rather than merit-based hiring of less-qualified applicants for non-political positions, and the firing of U.S. attorneys on ideological grounds, the Department came under attack during the most recent Bush Administration for adopting a political orthodoxy that ran contrary to the spirit of a politically and ideologically independent law enforcement authority.⁶ During my time serving the iteration of the Justice Department reporting to George Bush, Sr., I was neither exposed to any discussions about partisan or racial ideology concerning preclearance, nor were such considerations presented as informing the context of my, or to my knowledge, any of my cohort's, analysis of thousands of changes to voting practices and procedures, including redistricting plans. As I understood it, our job was simply to “get it right” under the Voting Section's mandate to enforce federal law and prevent or remedy pernicious race-based voter discrimination, and to do so while taking into account the data before us, as well as the always diverse voices and opinions of the state and local public officials and community members who provided us with the information on which our investigations centered.

Yet some accused the Voting Section of vigorous Section 5 enforcement to intentionally privilege redistricting plans that enhanced black electoral opportunity as a pretext to facilitate the ongoing rise of the Republican Party in the South. By packing black or Latino voters who would vote Democratic into some districts, these observers argued, Republicans would stand a better overall chance of winning more congressional seats, and both the first Bush Administration and the Republican partisan apparatus knew it. Regardless of the underlying agenda, the creation of majority-minority districts to satisfy the VRA may—or may not—have been a definitive causal factor in subsequent southern Republican successes.⁷ I can report, however, that such a conspiratorial possibility did not occur to those of us who were hired in a temporary capacity to be on the front lines of voting rights enforcement. Perhaps we were naïve, but any larger political machinations likely would not have mattered to us, anyway, for we saw our job as implementing and enforcing the law to preserve and protect the voting rights of people of color, regardless of our party affiliation or political ideology.

When I left Washington, it was to go to graduate school in political science, rather than to attend law school. I had become convinced that the interactions I had witnessed firsthand among the law and legal and political institutions, as

well as individuals and those institutions, raised big and important questions that needed to be answered about the state of racial and ethnic politics and policy in the U.S. I decided that the path for me to pursue the answers to these lofty questions ran through the social sciences, that my ultimate destination was academe, and that my goal was not only to study the impact of the VRA on our political system but to help students to understand the VRA's significance and provide them with the substantive knowledge and critical thinking skills to be informed and make their own decisions about the role of race in America.

Through my experiences in screening dozens of redistricting plans, including what became Mississippi's congressional districting scheme for much of the 1990s, I came to understand the value of detailed and historically rooted analysis of the politics of redistricting in relation to the VRA's enforcement. That method informs the case study of the influence of the VRA on Tallulah, Louisiana, around which this book revolves. I share influential voting rights scholar J. Morgan Kousser's belief that examination of circumstantial as well as direct evidence can explain a great deal about the complex relationship between the actions of local government officials and the particular electoral rules they consider or adopt.⁸ I believe that federal enforcement of the VRA is equally subject to local politics, and therefore, we can learn much from close scrutiny at that level. By examining the interactions of the law with local, state, and federal institutions and actors, we can see the power and the limitations of law and legal institutions to change individual political behavior and shape attitudes and beliefs. In other words, we can explore the ability of government to influence how people act, and even shape their values, when it comes to race and representation. Such a project in turn provides the opportunity to assess the nature of democratic representation historically and today, as well as its future prospects.

In writing this book, I sought to distill key issues and events to delineate the broad outlines of the fascinating story of minority voting rights and also to present a sufficiently detailed yet readable case study of how the VRA actually works in one community. I wanted do so in a way that can advance scholarly discussion, and of equal or greater importance, help students in the classroom to understand how critical the VRA has been to furthering the promise of meaningful democracy in America. I hope I have furthered these important projects.

* * *

One additional personal and professional footnote to my story: I am not the first to be sidetracked from one project by varied interests and a wealth of new opportunities. When I came to the University of North Dakota (UND), I took advantage of the chance to leverage its institutional strength in the area

of American Indian-related programs, as well as its encouragement of interdisciplinary research and scholarly entrepreneurship. As co-founder of the Institute for the Study of Tribal Gaming Law and Policy, I focused on the fascinating intersections among the law, politics, and public policy of Indian gaming as they played out across the U.S. Three books later, I have returned to “the horse that brung me” to the academy: voting rights and minority representation.

To prepare to write a book that first and foremost is intended to be used in the classroom, I taught an advanced undergraduate seminar at UND in Voting Rights and Minority Representation. Assembling the syllabus, I discovered just how disparate the literature is in this area. While guiding discussion about the complicated intersection of election law and policy with race and representation, I quickly realized how impressive my students were in rising to the level of experts in the field. And by the end of the course, I was truly thankful for the opportunity to write this volume and to try to further clarify and synthesize a topic that cries out for basic information presented in an accessible form. In that regard, I very much would appreciate hearing from those who read or teach using this book. Please feel free to contact me at <steven.light@und.edu>.

As always, I am grateful for the support of my colleagues on the faculty of the Department of Political Science and Public Administration in UND’s College of Business and Public Administration. My appreciation goes to Jaelyn Crouch and Jared Rigby for their excellent research assistance and to Karen Bowles and Carissa Green for their administrative help. Special thanks, of course, to the aforementioned undergraduates in my voting rights seminar, who strove to learn while pushing me to understand and explain it all to the best of my ability.

My ongoing relationship with Carolina Academic Press has been terrific. Thanks to publisher Keith Sipe for his continued enthusiasm about my work, acquisitions editor Bob Conrow for his support on this and prior projects, Karen Clayton, Tim Colton, Martha Hopper, and Kelly Miller for their good cheer and production assistance, and everyone else at the Press for their help along the way. At the book’s final stage, I again was privileged to have the opportunity to work with Meg Daniel of Daniel Indexing.

Although I am fortunate to be well into my academic career—how time flies—thanks are due to my mentors from back in the day when I was a graduate student at Northwestern University, including Patricia Conley, whose advice rang true from the moment I set foot on campus and whose support was unflagging, Jerry Goldman, whose inspirational teaching showed me that enthusiasm and comradeship in the classroom prompt undergraduates to rise to the challenges of higher education, and Henry Binford, whose well-reasoned courses on urban history and politics set the tone for the historical groundedness of this study. Most profound thanks to Adolph L. Reed, Jr., my advisor and mentor. I count

myself lucky to have worked with him at a point when his input into my budding understandings of what the discipline of political science is, and more importantly, can be, could have the greatest impact on my own intellectual development.

This study could not have gotten off the ground without those public officials and other folks in Tallulah who took the time to speak or meet with me or otherwise to share their perceptions and knowledge of local political culture. Special thanks to Mayors Theodore Lindsey and Eddie Beckwith, Jr., Bettye Moore, Bill Sumrall, and Martha Wade, who graciously treated me as though I had an important story to tell.

And speaking of important stories, I stand on the shoulders of those who bravely participated in and for some, gave their life to, the struggle for voting rights throughout American history, especially during the Civil Rights Movement, and the many scholars who have researched, written, and testified on voting rights, representation, and race. I cannot possibly do justice to them all.

On the most personal level, my family's diverse scholarly and artistic accomplishments, one and all contextualized by respect for the human spirit, always inspire—and set the bar high. I am particularly grateful for the careful and critical eyes of my parents, Martin and Dorothy Light. Lastly, I would be remiss without crediting the fundamental driving force behind the long transitional journey from a bunch of talk and fretting about this project (on my part, that is), first in graduate school and then at UND, to the publication of this book. Kathryn R.L. Rand is my collaborator on three books and numerous other projects, the co-founder and co-director of our tribal gaming institute, and a truly patient, loving, and remarkable person and partner.

I close with the standard disclaimer. In spite of all of the generous assistance and advice afforded by so many people, undoubtedly I have made errors in the form or content of this study. For those I take full responsibility.

Steven Andrew Light
Grand Forks, North Dakota
July 2010