

SISTER DISTRICT ACTION NETWORK

GIVE US THE BALLOT - BOOK CLUB READER'S GUIDE
Prepared by Gaby Goldstein, SDAN Director of Research

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Hello Friends!

Sister District Action Network ('Sister District', more info at the end of this document) hosts a quarterly book club. **If you haven't joined, please [sign up here](#) to vote on future books and keep in the loop with regard to book club events and information!**

Our current book selection is Give Us the Ballot by Ari Berman. This reader's guide provides: A) main themes & discussion questions; and B) facilitator's guide for folks who will be leading book discussions in person (highly recommended!).

We hosted a Fireside Chat with author Ari Berman on 11/29. [Watch it here!](#)

A. Main Themes/Questions

1. Voting Rights Act

- a. What were some of the ways in which (especially Southern) states kept black¹ people from registering to vote and voting prior to the VRA?
- b. What led to the passage of the law? Was it a surprise that LBJ was interested in civil rights? What role did Bloody Sunday play in building public consensus for a voting bill?

2. Effects of VRA & Main Mechanisms

- a. In the decades after passage, was the VRA successful in providing access to the ballot to black folks in the South?
- b. How did the VRA expand through Congressional reauthorizations? Which new folks did it come to cover?
- c. What does Section 4 of the VRA do? What about Section 5?
- d. How did the Supreme Court's 2013 decision in *Shelby v Holder* limit the reach of the VRA?

¹ Note: I understand that [some feel strongly that 'black'](#) should be capitalized. We use the lower case in this guide, as it appears in *Give Us the Ballot*, which follows the [NYT and other journalistic](#) style guides.

3. **Shifts in VRA's Meaning**

- a. At first, VRA was meant to provide access to register and vote. Over time, courts and activists argued it was meant to provide more **broad access to representation** and ultimately **proportional power**.
 - i. Why did this shift happen? Was it a logical progression?
 - ii. What is the role of the Supreme Court in interpreting the meaning of the VRA?

4. **Shifts in Enforcement.** Presidents have used the Department of Justice in different ways over time.

- a. How did Nixon, Reagan, Bush 1 & 2 use DoJ as a tool to let the VRA languish?
- b. Did Clinton and/or Obama use their DoJs as a tool to enforce and expand VRA? Did they encounter opposition in the courts? Why?

5. **Shifts in GOP Tactics** -- Voter Fraud - GOP uses as shield to **pass restrictions**.

- a. How has the GOP used "Voter Fraud" as a strategy to rationalize voting rights restrictions? When did this start?
- b. Under Supreme Court jurisprudence, do states need to show evidence of actual voter fraud in order to pass laws that restrict voting rights?
- c. What are some recent examples of GOP state legislatures passing voting rights restrictions?
- d. Is this GOP strategy limited to Southern states, and/or limited to restricting the rights of black voters?
- e. This GOP strategy accelerated after 2010. How can we account for that?
 - i. This coincides with the Republican REDMAP strategy to take over state legislatures, and the expansion of ALEC as a GOP policy transfer tool. Do these factors help account for the spread and reach of GOP voter suppression tactics?
- f. The Right has a coordinated strategy for voter suppression. Does the Democratic Party have a strategy for combating voter suppression in the states? Has the Party ever had a strategy?

4. **Where Do We Go From Here?**

- a. **Courts.** With Section 5 dead after *Shelby*, what is left of the VRA for courts to enforce?
- b. **State-Based Strategies.** States have increasing authority over voting rights.
 - i. **Electoral** - state legislatures and Secretaries of State set the lion's share of voting laws and rules. Does this make the work of Sister District and other grassroots groups even more important?
 - ii. **Ballot Initiatives & Constitutional Amendments.** Some states, like Michigan, have launched successful ballot initiatives to establish voting

rights. This process isn't available in all states, but where it is available, should this be a central strategy for pursuing voting rights?

- c. **Congress.** The new Democratic majority in the House has announced plans to push for voting rights in Congress. How likely is this to succeed, given the composition of the Senate and the President?
- d. **Redistricting.** 2021 will be first maps drawn since VRA's Section 5 was gutted. How will this impact redistricting? Can this be a rallying cry for Democrats, because the importance of the next DoJ?

B. Facilitator's Guide.

Prologue (If you read nothing else, read the notes for this section!)

- Bloody Sunday - 1965. MLK called for march from Selma to Montgomery to protest death of Jimmie Lee Jackson (died protecting his mother in a civil rights demonstration). "Jackson had tried unsuccessfully to register to vote 5 times in Perry county, where only 265 of 5,202 eligible black voters were on the voting roles." (4)
- Selma was central front in civil rights movement's campaign to win the right to vote across the segregated South.
- Student Nonviolent Coordinating Committee (SNCC) had tried unsuccessfully to register voters since 1963. Then, 156 of Perry County's 15,000 eligible black citizens were registered; after 2 years of work, only 335 were registered (5).
- John Lewis was 25 year old chair of SNCC. Lewis and 600 marchers faced Alabama cops at the bridge in Selma. Officers charged and clubbed marchers.
- That night, ABC showed 15 mins of Selma footage - huge public outrage.
- 8 days later, LBJ introduced the Voting Rights Act before joint session of Congress (5).
 - **100 years after the end of the Civil War, the VRA guaranteed franchise for blacks.** VRA became the most important piece of civil rights legislation that century and one of the transformational laws in history (6).
 - **VRA suspended literacy tests, authorized US AG to file lawsuits to challenge poll taxes, replaced local registrars w/ federal examiners, dispatched federal observers to monitor elections, and (Section 5) forced states w/ the worst history of discrimination to clear electoral changes with the federal government.** (This last piece was invalidated by Supreme Ct in 2013's *Shelby* decision).
 - Results were transformational. In following decades, # of black registered voters in south climbed from 31% to 73%. Black electeds increased <500 to >10,000.
 - Four congressional reauthorizations lowered voting age to 18, eliminated literacy tests nationwide, expanded protections to language-minority groups (e.g. Hispanics in TX, Asian-Americans in NY, Native Americans in AZ) (6).
- Section 5 was VRA's primary enforcement tool.
 - Since 1965, Justice Dept and fed courts had stopped more than 3,000 discriminatory voting laws/rules from taking effect under Section 5. It gave fed govt the power to preemptively block "second generation" voting restrictions



“frequently employed by white southern legislators to subvert the power of the growing minority vote.” (7)

- Over time, the question was whether VRA should simply provide access to the ballot, or “police a much broader scope of the election system, which included encouraging greater representation” for blacks and other minority groups.
- As the Court shifted far right, it took the conservative view. 2013’s *Shelby* decision invalidated Section 4, the formula that determined which states would have to submit their changes to the feds under Section 5. The most important section of the law was seen by the Court as, in Berman’s words, “an antiquated infringement on state sovereignty.” (8)
- As a result, no states were subject to Section 5. Roberts: “In 1965, the States could be divided” into those with a recent history of voting discrimination, but today “the Nation is no longer divided along those lines.” (9).
- The March to Selma and VRA are considered the climax of the civil rights movement.
- But the VRA didn’t end the debate over voting rights, it started a new one. It took decades of grassroots organizing and court battles to realize the VRA’s goals.
- **As *Shelby* shows, the civil rights movement spawned an equally committed group of counterrevolutionaries. They have waged decades-long campaign to restrict voting rights. They’re in state legislatures and other official positions and the Supreme Ct.**
- The fight over voting rights intensified after Obama’s election.
 - After Obama won, 395 new voting restrictions were introduced in 49 states from 2011-2015.
 - After Tea Party triumph in 2010, half the states (nearly all under R control) passed laws restricting right to vote.
 - **The sudden escalation of efforts to curb voting rights resembled the Redemption period that ended Reconstruction, when every southern state adopted voter restrictions to disenfranchise black voters** (11).
 - These new restrictions were subtler -- introduced w/ “equal fervor in the North and South alike.” Proof of citizenship to register to vote; shutting down voter registration drives; curtailing early voting; disenfranchising ex-felons; purging voter rolls; voter ID requirements.
 - Disproportionately targeted the people that propelled Obama to victory in 2008 - blacks, youths, women, Hispanics (11).
- After *Shelby* (8 months after Obama’s reelection), voting rights remain contested.
- There is a pattern. During Reconstruction (1865-1877), there were 22 black members of Congress from the South and 600 black state legislators. This was followed by 90 years of Jim Crow. The civil rights movement and VRA were followed by decades of backlash and counterrevolutionaries. Obama’s election was followed by huge push to restrict voting rights including *Shelby* [and, of course, Trump].

- LBJ beat Goldwater by 23 pts in 1964. He'd just signed Civil Rights Act (desegregating schools, restaurants, hotels, parks).
- It was a surprise LBJ cared about Civil Rights. He was first southern president since Civil War. He'd voted against every civil rights bill in congress from 1937-1956. JFK put him on the ticket to win the southern segregationist vote (13).
- Passing the Civil Rights Act was "exhausting." The idea of doing another bill (Voting Rights Act) seemed daunting, but Johnson insisted on keeping his options open. He really wanted to do it, but it seemed politically impossible.
- Then Selma happened, which provided Johnson with the window of opportunity necessary to get VRA introduced and passed.
- During Civil War, Selma manufactured weapons for the Confederacy, commanded by Gen. Nathan Bedford Forrest, the first Grand Dragon of the KKK. **Occupied during Reconstruction, when fed troops registered 700,000 emancipated slaves in the South from 1867-1868 (one year!).** Selma elected 2 black congressmen and 13 black state legislators after the Civil War (16).
- **Reconstruction prompted vicious white backlash.** Gained traction after disputed election of 1876, when Republican Rutherford Hayes pulled fed troops from the South in return for electoral votes in FL, SC, and LA.
- Segregationist whites, "Redeemers" gained power and targeted black voters - first through violence and fraud, and then literacy/good character tests, poll taxes, residency requirements.
- **MS first state to change its constitution to disenfranchise black voters in 1890.** Every other southern state followed. After AL adopted 1901 constitution, black registered voters fell from 182k to 4k (17).
- After *Brown v. Board* (1954), Selma was HQ of White Citizens' Council - white collar KKK (17). Literacy test required black people to name all 67 county judges in the state. Registrar was only open 2 days a month. MLK and others were organizing.
- Precursor to Bloody Sunday was the murder of Jimmie Lee Jackson by state troopers in Marion on 2/18/65. He'd been defending his mother during a civil rights march.
- John Lewis and others participated in the Selma march 3/7/65. While calm at first, it descended into chaos and police violence.
- In 48 hrs after Bloody Sunday, there were sympathy marches in 80 US cities, sit-ins at DoJ, 24 hour pickets outside White House. 15k marched in Harlem; in WI people walked 54 miles in solidarity. Huge public outcry (22). The next day, a white man was killed by white supremacists in Selma after protesting for civil rights (25). Pressure was on LBJ. He decided to introduce the Voting Rights Act on Monday. When he addressed Joint Session, he quoted MLK (28).
- Gallup Poll showed % Americans, including majority of white southerners, supported the voting rights bill (29). A second march from Selma to Montgomery went off without incident. It was the "last great march of the 1960s civil rights movement." (32)
- **The VRA then underwent debate and passage. Its most important parts were to eliminate literacy tests and other disenfranchising devices in places where <50% of eligible voters had cast ballots in 1964 Presidential election (32). Previous civil**

rights acts had failed to secure the ballot for black people because they relied on “obstructionist southern courts to adjudicate voting rights cases on a lengthy case-by-case basis” (33).

- The VRA’s passage resulted from converging factors:
 - clear denial of black voting rights in the South under Jim Crow; public outrage about violence in Selma; disciplined and compelling civil rights movement; most liberal Congress since New Deal; Republican Party filled w/ northern moderates; and President w/ experience steering complex legislation (36).
- At the White House before signing VRA, LBJ told John Lewis, “you’ve got to go back and get all those folks registered.” (37)

The Second Reconstruction

- In the week after VRA’s signing, John Lewis and his team registered 1,230 black voters in Americus, GA - tripling the number on the rolls (39). Justice Dept wasted no time implementing the new law. Katzenbach picked 9 counties to send federal examiners to register black voters - 4 in AL, 3 in LA, 2 in MS. Only 2-10% of blacks were registered compared to 65-100% of whites (40). 17,864 blacks had been registered in those counties; by August, it was 20,000 (43).
- Local press: “In some counties, federal agents, lineal descendents of the Reconstruction corrupters, will be at work showing illiterates where to make their marks.” (41)
- **After failing legislatively, southern segregationists turned to the courts to block VRA.** South Carolina alleged the law unconstitutionally restricted the state’s right to “exercise her sovereign power” over voter registration and elections. S.Ct. decided to hear the case without appeal (46).
 - SC had proud history of segregation. Gov. Strom Thurmond was first Dem to leave the party over civil rights when he ran for president on States’ Rights Democratic Party ticket after Truman desegregated the Army in 1948 (46).
- AL, GA, LA, MS, and VA joined SC’s challenge. 18 northern states joined Feds (46).
- Opponents had 3 arguments: 1) literacy tests were not discriminatory. 2) Selma had forced Congress to rush to judgment. 3) States, not the fed govt, had the right to set voting qualifications (47).
- On March 7, 1966, the one year anniversary of Bloody Sunday, S.Ct. upheld constitutionality of VRA by 8-1 vote (47). Three weeks later, S.Ct. struck down poll tax in VA. VRA off to a good start, but lots of opposition ahead.
- Next milestone -- 1966 elections -- black candidates had a chance to run for office and win for the first time since Reconstruction. In AL, nearly half of eligible blacks were registered, 16% of the electorate (49).
 - George Wallace’s wife Lurleen ran for Governor because her husband couldn’t run for a third term, against moderate AG. Racist Selma sheriff Jim Clark faced moderate public safety director. “The whole world was paying attention to the Alabama elections.” (49)



- SNCC, now under militant leadership, urged blacks to only vote for blacks. “To ask Negroes to get in the Democratic Party is like asking Jews to join the Nazi Party.” (50). But MLK and SCLC supported moderate white candidates.
- Massive turnout across state - 80% of registered blacks voted; 50% hadn’t even been registered the year before (51)
- Jim Clark staged a “ballot box coup” where he tried to get boxes of black votes tossed for “irregularities.” The Fed Ct sided with the Justice Dept.
- Elsewhere, mixed results. 23/52 black candidates advanced to runoff; only 5 won in that runoff. Modest black achievements overshadowed by Lurleen Wallace’s landslide victory. Wallace had engineered a countermobilization to register whites too - ended up registering nearly as many new whites as the VRA’s efforts had registered new blacks (54).
- **White backlash against VRA** -- “It was at Selma a year ago that Wallace really won Tuesday’s election” a pollster said (54).
- MS remained dangerous. Shooting of James Meredith, lynching of Emmett Till, assassination of Medger Evers, murders of Goodman, Chaney and Schwerner.
- White segregationists resisted VRA worse in MS than anywhere else. In Jan 1966, 14 Klansmen firebombed Hattiesburg home of NAACP leader Dahmer (55).
- 1966 MS Congressional primaries, 5 black candidates ran under MS Freedom Democratic Party (MFDP), established to challenge segregated Dem Party (55). They lost badly, but the white establishment wasn’t taking chances.
- **All-white MS state legislature changed the way counties could be consolidated**, which would be desirable “if voter registration percentages get out of balance.” This would consolidate black counties with white counties, to dilute black vote.
 - This was **one of 13 voting changes passed by MS legislature** in 1966 special session to “nullify the emerging black vote.” (56)
 - “In 1966, the state legislature gerrymandered the congressional district lines to prevent the election of a black member of Congress; denied black voters representation in the state legislature by creating large, multi-member state legislative districts in which black voting strength was diluted; authorized counties to switch to at-large elections...to prevent the election of black candidates...and increased the qualifying requirements for independent candidates to prevent black independents from qualifying to run.” (56-57).
 - It worked. Counties that changed to at-large voting elected no black supervisors. All 7 blacks running for leg in multimember districts also lost (60).
- This wasn’t unique to MS. “All across the South, once blacks began registering in large numbers, white politicians changed the rules of the game to protect their own power.” The shift was “from preventing blacks from voting to preventing blacks from winning or deciding elections.” (57)
- **Support for the VRA among white southerners eroded quickly.** Massive black rioting in Watts 5 days after VRA contributed to white countermobilization in the North and South, which helped elect “archconservative governors” like Reagan in CA and Maddox

in GA, whose surprise victory the NY Times called the “most dramatic example of the white backlash against racial change.” (58)

- When LBJ sent another civil rights bill to Congress in ‘66, calling for fair housing etc, it failed. A year after VRA, mood had changed dramatically. Policy window closed (58).
- But VRA lived on - in part because of willing Supreme Ct. Heard challenge to MS election laws in 1968 and sided with DoJ. Section 5 gave fed govt authority to regulate all voting changes, even small. Warren wrote: “The right to vote can be affected by a dilution of voting power, as well as by an absolute prohibition on casting a ballot.” (63)

The Southern Strategy

- 5 days after LBJ signed VRA, in Aug ‘65, Watts Riots in LA left 34 people dead, 1k injured, 4k arrested, \$40m damages.
- It got a ton of national press, sensationalizing the ‘race riot’ narrative. This was the start of white backlash against the civil rights movement, especially in the South.
- “Watts signaled the end of the “We Shall Overcome” phase” of civil rights (66).
- John Lewis was ousted as chair of SNCC by Stokely Carmichael, who advocated militant tactics and narrative. White civil rights activists were expelled by year end. “Black power” became the rallying cry.
- When LBJ announced he would not seek reelection because of the unpopularity of the Vietnam War, Lewis joined RFK’s campaign. MLK killed 4/4/68. RFK killed 6/68. DNC convention violence 8/68.
- 1960 – Nixon lost to JFK. 1964 – Goldwater won Republican nomination thanks to conservative insurgency led by white southerners. Goldwater had been one of only 6 Republican senators to vote against the Civil Rights Act of ‘64. “His nomination, for the first time, publicly defined the Republican Party as anti-civil rights.” (69)
- In ‘64, Strom Thurmond switched from Dem to Repub when he endorsed Goldwater. “The party of our fathers is dead. Those who took its name are engaged in another Reconstruction.” (69) This profoundly changed politics particularly in the South.
- In 1956, Thurmond organized “Southern Manifesto” signed by 100+ members of Congress, called for “massive resistance” to *Brown v. Board*.
- Following the election, Goldwater conservatives “**took control of GOP state parties across the south**” (71). [These conservatives had been Dixiecrat Dems before]
- Nixon hadn’t been an obvious choice for Goldwater/Thurmond wing. He’d supported civil rights. But he changed his tune when he saw he could attract white conservatives as the country turned against the civil rights movement and newly registered black voters joined the Dem party (72).
- In exchange for Thurmond’s support in ‘68, Nixon agreed to appoint “strict constructionists” to the Supreme Court and “no longer treat the South as ‘whipping boy’ on civil rights” – in other words, to dismantle LBJ’s civil rights programs at any cost (which he had prior supported) (72).
- “Nixon premised his campaign almost entirely on winning the white backlash vote” (75). He used the term “law and order” instead of “States Rights” and used veiled racist dog-whistles rather than Goldwater-style outright racism.

- '68 was “The Great White Switch” (Earl & Merle Black) – whites defected from the Dem party to the Republican party. 900k black voters had registered since the VRA, but 1m whites had too. Offset the impact of black vote in the South. Nixon won huge.
- In 1970, key provisions of the VRA were set to expire if not renewed. Nixon knew he'd have to try really hard to ruin the VRA, a promise that white southerners had elected him on. He had a bill introduced that would make VRA nationwide (thus gutting enforcement capacity) and eliminating Section 5 (thus kicking challenges back into case-by-case by the courts).
- But the VRA survived, with the final bill even stronger than the '65 bill, including by enfranchising 11 million 18-21 year olds (85). Nixon ultimately did not veto.
- Nixon's southern strategy was dealt a blow by VRA's reauthorization, but not dead.
 - “The countermobilization of white voters in response to black political advances was essential for the GOP.” (87)
 - Nixon made sure his DoJ did nothing for voting rights. Tons of lawyers left the Dept in protest (88). His Dept failed to block MS's racist open primary law (so blatantly racist that MS fed court couldn't uphold it), and failed to block MS's new rules requiring re-registration for tons of black voters (90-91).
 - They tried to establish new rules interpreting Section 5 that would have been unworkable. This faced Congressional backlash and was withdrawn.
- In '71, Medger Evers' brother Charles ran for governor of MS. John Lewis did a blitz to register and mobilize black voters. It didn't work. Evers got 22% of the vote. The strategy to mount a “highly publicized assault on white power to mobilize black voters backfired seriously” (Lester Salamon). Instead, the strategy's “main effect was to mobilize white anxieties.” (94)
- In 1972, GA legislature drew new congressional and statehouse maps, and hacked Atlanta into three separate congressional districts with white majorities, thus diluting the black vote. It was a clear case of racial gerrymandering. The Justice Dept blocked the map under VRA Section 5 because it discriminated against minority voters (95).
 - The leg redrew the line, a little better. It gave black candidate Andrew Young a chance at the congressional seat. The VRA saved Young's campaign again – 60 of 62 predominantly black neighborhoods had new polling places because of redistricting, confusing voters. Young's campaign challenged the polling relocations and a Fed Ct agreed they violated Section 5 (97). Young won – 98% of black vote and 26% of white vote. “I lost Old South voters and picked up New South voters” he said (98).
- In TX, 36-year old state senator Barbara Jordan from Houston joined Young as second black member of Congress since Reconstruction, 1st black congresswoman from South (99).
- The same year that Nixon carried every state but MA turned out to be a historic moment for black politics in the south. Black officeholders in South rose from 72 in '65 to 1,114 in '72.

Hands that Pick Cotton

- Civil rights struggle in LA received less coverage than AL or MS, even though segregation there had been just as ironclad. (101)
- In '62, 150k blacks (31 eligible voters) were registered in LA. By '71, that had doubled but there were still 200k eligible black folks who were not registered (102).
- In August '75, the VRA was up again for renewal.
 - Since '65, black elected officials in South had increased 2,000%, from 72 to 1,588. Black voter reg had grown from 2.2 million to 3.4 million. Gap between white and black registration had shrunk from 44% to 11% (104).
 - 95 black state legislators in South, compared to 0 when VRA passed.
- But black politicians still only held 2% of the regions 80k elected positions and 2.5 million blacks remained unregistered (104).
- Once black citizens registered in large numbers, states “shifted to diluting the minority vote.” Every state covered under Section 5 submitted a redistricting plan for its state legislature after the '70 census.
 - In literally every state, either a court or DoJ found the maps discriminatory. “Drawing new district lines or changing the electoral system to prevent blacks from winning office had become the most common means by which southern states tried to limit minority representation.” (104).
- Unlike '70 when Nixon tried to gut VRA, Gerald Ford supported it. Debate in '75 wasn't over whether it would be renewed, “but for whom.” (105).
 - Chicano citizens wanted Congress to amend VRA to cover Texas and Spanish-speaking citizens across Southwest, who had become America's “forgotten minority.” (105).
- In Texas, as a result of economic and political intimidation, <50% Chicanos were registered to vote, compared to 66% of Anglos (107). Gerrymandering also kept Chicano power at bay. Chicanos made up 75% of Frio County's population but held only ¼ county commission seats, because the all-white commission redrew its lines to put 97% of Mexican-Americans in one districts (107).
- Nationally in '72, only 44% of Spanish-surnamed citizens were registered, compared to 68% blacks and 73% whites. Only 38% voted in '72, compared to 54% blacks and 65% whites (108).
 - Mexican-Americans in TX made up 16% of registered voters but held only 2.5% elected positions. In CA, Latinos were 12% of registered voters but 0.7% of elected offices (108).
- Barbara Jordan became public face of expanding VRA. She arrived Congress in 1972 as first black woman from South. There was concern among black congresspeople that Chicanos were newcomers, and concern that it would mess with the VRA's role in building black opportunities to include Chicanos. But Jordan fought hard and won.
- Carter also won after promoting idea of “the New South.” Mantra of civil rights activists in '76 -- “Hands that pick cotton..now can pick our public officials” (118)
 - Carter won because of black votes across the South. Nationally lost the white vote but won 92% of black votes (120).

The Counterrevolution

- Reagan's campaign in '80 - "I believe in states rights" -- long the rallying cry of southern segregationists. These were **code words** (124)
- Reagan "broadened and nationalized the southern strategy pioneered by Goldwater in '64 and refined by Nixon in '68. He skillfully combined the small-government conservatism of Goldwater with the anti-government populism of Wallace" (125).
- Reagan coopted the idea of "color-blindness" for conservatism and anti-civil rights. Color blindness had been organizing principle of the 50s-60s civil rights movement.
 - But it could be adopted by critics to block efforts to dismantle the legacy of discrimination by opposing any consideration of race in policy.
 - Civil rights had moved from a goal of "equality as a fact" to "equality as a **result**". This allowed color-blindness to shift from a liberal ideal to a conservative ideal (127).
 - Thernstrom and others opposed the idea that "the right to vote" had come to mean "the right to equal electoral result."
 - But civil rights advocates thought it natural and appropriate for the VRA to move from protecting against first generation barriers to "second generation" barriers of representation (130). [see: susan strum]
- In the courts, there was a fight to eliminate at-large elections and require district elections. This would increase minority representation. 1973 *White v. Regester* had struck down at-large elections for TX state leg. After, "vote dilution" lawsuits multiplied.
 - But when the issue came back to the S.Ct in 1980, the court refused to strike at-large elections because "The [15th] Amendment does not entail the right to have Negro candidates elected. (134)
 - The court required proof of intentional discrimination under Section 2.
 - Vote dilution suits halted (135).
- Reagan's DoJ Civil Rights division became ground zero for Reagan's "counterrevolution in civil rights." (142)
 - Jan '81 Heritage Foundation's "Mandate for Leadership: Policy Management in a Conservative Administration" became blueprint for new admin.
- The big issue now was whether VRA's Sections 2 and 5 should require proof of intentional discrimination or only show that a law had the effect of being discriminatory.
 - Reagan's DoJ wanted proof of intentional discrimination.
 - In '81, a young John Roberts was given civil rights policy, including voting rights, as his charge at DoJ (149). He'd clerked w/ Rehnquist. He fought vehemently against VRA requiring proportional representation and opposed an effects standard (151).
- Nonetheless, rather incredibly the VRA was further reauthorized for 25 years, under the most conservative Congress and White House since '50s (157).

Challenging the Consensus

- 18 yrs after VRA's passage, MS remained center of massive white resistance. White neighborhoods were annexed to dilute black representation; county supervisor districts were gerrymandered to fragment black voters; white plantation and factory bosses forced black employees to work overtime on Election Day; voters had to **register twice** for county and municipal elections; polling places were moved from black to white neighborhoods (160).
- Louisiana was also troubled. Dec '81, LA submitted redistricting plan to DoJ for approval. It was clearly racially gerrymandered to favor Republicans. DoJ staff attorneys felt the Dept should object to the plan, but DoJ brass refused (164).
 - NAACP sued and the federal court agreed w/ plaintiffs. It was first time since '65 that congressional redistricting plan approved by DoJ was struck down by a court. (165) It showed how little Reagan's DoJ cared about promoting VRA.
- Reagan's civil rights policies were abysmal: tax exemptions for segregated schools, fighting against VRA authorization, firing civil rights commissioners who objected to reagan's "color blind" policies, prosecuting black civil rights activists for voter fraud, siding w/ NC over black plaintiffs in first S.Ct challenge to Section 2, and opposing consent decrees in 50 cities for minority and women hiring in government jobs (165).
- Under Reagan's DoJ, the Dept routinely ignored recommendations of its career attorneys in Civil Rights Division and refused to object to discriminatory voting changes. 5 such changes were cleared by Dept and overturned by courts (167).
- During Reagan, private lawyers filed 10x voting cases as did DoJ (only 4%, 168).
- But there was still **bipartisan consensus** in Congress for civil & voting rights (170).
 - When DoJ sided w/ NC over black plaintiffs in first S.Ct challenge to Section 2, (*Thornburg v. Gingles*) the 10 major cosponsors of the 1982 VRA reauthorization -- 5 dems and 5 repubs -- filed an amicus rebuking the gov't position (173).
 - S.Ct. sided w/ plaintiffs - but O'Connor especially made it clear she was uneasy
- After *Gingles*, Section 2 became "the sword of the VRA, the offensive weapon used to strike down discriminatory electoral schemes, while Section 5 became the shield, the defensive mechanism preemptively protecting minority voters from discriminatory voting changes." (175)
- In the 80's, courts and Congress, with prodding from activists and lawyers, kept Reagan admin from enacting most extreme civil rights policies.
 - But they had a long term plan - **changing the composition of the courts** (176). This was a broader strategy of the right during that time.
- Reagan's 4 S.Ct appointees - O'Connor, Rehnquist, Scalia, and Kennedy - were all more conservative than their predecessors (180).
 - S.Ct swung right. "The originalist philosophy advocated a passive approach to the problem of racial discrimination" (178)
- Beyond S.Ct, Reagan took aim at all federal courts. During office, he appointed **half of all federal judges in the country. 94% white, 95% male, 95% Republican** (180). Most enduring legacy of his civil rights counterrevolution.

The Realignment

- John Lewis elected in GA in '86, along with Joe Kennedy and Mike Espy, 32 year old attorney - first black congressman from MS since Reconstruction (186).
- But still, **there were more southern black state legislators in 1870 (~300) than in 1990 (~200)** (187).
- Bush I elected '88. Mellower than Reagan re: civil rights. His RNC took a different aim - "do something about redistricting": RNC chair's first words to counsel Ginsberg (187).
 - Atwater wanted Ginsberg to "**form an improbable partnership with black Democrats in the south** to overthrow white Dems who had controlled the region" since Reconstruction. The creation of new majority-black districts would siphon black voters away from adjoining white Dem districts, giving Republicans a chance to win those seats. (187).
 - John Lewis endorsed the "unholy alliance" (188).
- To succeed, they'd need black Dems to persuade white Dems in state legislatures to adopt maps w/ majority-minority districts, or for courts or DoJ to step in. Bush's DoJ was willing to do so (189)
- 17 black members of Congress elected in '92, 13 from the south, all from newly created majority-minority black districts (194).
 - DoJ's objections to statewide redistricting plans in AL, GA, LA, MS, NC, TX, and VA led to the creation of these new majority-minority districts (194).
- But not everyone was happy. Some black Dems thought it would lead to black voters being confined to 'political reservations' (191), and some Republicans challenged the districts as unconstitutional racial gerrymanders (in favor of blacks) (195).
- When Clinton elected, he chose Guinier to head DoJ's civil rights division. Long history as civil rights attorney. But she was attacked for some academic articles.
 - She argued first generation of voting rights cases post '65, VRA outlawed literacy tests and poll taxes preventing voter registration. Second generation cases (70s-80s) dismantled gerrymandered districts and at-large electoral systems. Third generation cases focused on securing not just representation but a fair share of political power (198). This was too radical and she withdrew.
- In '93, challenge to NC's majority-minority district as violating the rights of white voters to "participate in a color-blind' electoral process" (201). The newly more conservative court agreed in *Shaw v Reno*.
 - This decision turned history on its head. Court's majority invoked equal protection clause of 14th amendment (adopted to protect blacks) to dismantle districts benefiting black candidates (203).
 - This was turning point of S.Ct -- before, it took expansive view of VRA. Especially after Marshall replaced with Thomas. S.Ct -- and lower courts, filled with Reagan appointees -- were now hostile to VRA. (203)
- R's picked up 54 House seats in '94, retaking chamber. "Racial gerrymandering" in the form of majority-minority districts led to this Republican success. The gerrymanders failed to protect white Democratic incumbents in the south (204). Blacks were elected in

the majority-minority districts, but white Dems couldn't get elected in the rest - their vote was "cracked" into newly R-leaning districts.

- After R revolution of '94, R's held a majority of southern House seats for the first time since reconstruction, were the largest block of House Republicans, and were more conservative than the rest of the delegation (205).
- "Proponents of black voting rights have won the ballot but may be losing the war". "Herding black voters into their own 'majority-minority' districts is a boon to the GOP" (205)
- As blacks gained power in Dem party in the south, Southern whites shifted into the GOP. Ben Ginsberg called this "**Project Ratfuck.**" (206)

The Counterrevolution (II)

- Florida 2000 election was a travesty for voting rights. 58k "alleged felons" purged; blacks were 15% of electorate but 44% of purge list (littered w/ errors) (208).
- This **voter purge** was the "most consequential -- and least discussed" aspect of the Florida election debacle (209).
- In 1868, Florida passed law banning vote for anyone w/ criminal conviction, in order to prevent newly emancipated blacks from voting. Every southern state had similar law after Civil War and ¾ of entire country by 1920. 17 states restored these rights in 60's and 70s, but not Florida.
- In '97 there was some voter fraud in Miami mayoral election, and the FL legislature quickly passed a law requiring an annual purge of voter rolls by a **private entity**. Contract went to company **recommended by a conservative group** (209).
- For 2000 election, names added to purge list with only 70% match between voter file name and felon database. Voters deemed guilty until innocent. Littered w/ errors.
 - After the election, NAACP sued and the company reran the list using stricter criteria, **netting 12,000 voters who should not have been purged**. Bush won by 537 votes (210).
- The S.Ct. contributed to the debacle too. FL S.Ct ordered a manual recount, which favored Gore. Bush appealed to S.Ct, which halted recount and declared Bush winner.
- In '01, Civil Rights Commission found widespread voter disenfranchisement in FL and strong basis to conclude that violations of Section 2 of VRA occurred (213)
 - Black ballots 10x likely to be rejected as white ballots. Blacks cast more than 50% of the 180k "spoiled" ballots. And voter purge clearly discriminatory.
- But the Bush II DoJ prioritized prosecutions of **voter fraud** over investigations into disenfranchisement (214).
 - With Ashcroft as AG, "new right-wing voter fraud movement was born" (216). Major shift in priorities for civil rights division.
- Same problems that plagued FL in 2000 happened in Ohio in '04. Ohio SoS issued directives limiting availability of provision ballots and VR forms. Lines that year were insane - estimates that 3% (174k) of Ohio voters left without voting because of lines. Bush won by 118K. Blacks waited average of 52 mins to vote, vs 18 for whites. (221)
- **Voter fraud was hyped by GOP as a way to restrict the vote.**



- Voter ID was a key mechanism. GA was early, passing their bill in '04. GA submitted the law to DoJ for approval under Section 5.
- When GA legislator interviewed by DoJ about why she'd introduced the bill, she said "when black voters in her precinct are not paid to vote, they do not go to the polls." (228) - clear racial animus.
- Study by experts - voter ID reduced Hispanic turnout by 10% and black and Asian turnout by 6% in 2004 (233).
- DoJ had been purged of careerists and right wingers installed under Bush II. (Also firing of 12 US Attys - "Attorneygate" (231)). Voting section lost more than 50% of its lawyers during Bush (229).
- VRA was up again in '06 for reauthorization.
 - In TX, new challenge to majority-minority districts as unconstitutional racial gerrymanders (discriminating against white voters) - *Bush v Vera* (1996). S.Ct. agreed that it as an "unconstitutional racial gerrymander." (237)
 - The plaintiff became a crusader against VRA & lobbied against reauth in '05. The main focus was on **Section 5** -- argument that times had changed (238).
 - As in '70, 75, and 82, opponents of VRA failed to shatter the bipartisan consensus for the law in Congress and it passed (243).
 - But shortly after passing, case filed in TX challenging constitutionality of Section 5. "We needed 218 votes in the House, but we'll only need 5 votes on the Supreme Court." (244)

Old Poison, New Bottles

- 2008 electorate most diverse in US history. Obama lost white voters by 12 pts but won 75% of combined black, hispanic and asian vote. "Coalition of the ascendant" (247)
- Particularly dramatic in the South. Biggest increases in turnout in GA, NC, LA, MS, VA.
- Longtime critics of VRA argued Obama's win showed VRA no longer necessary. 2 months after election, S.Ct. agreed to hear TX challenge to Section 5 (249)
- John Roberts had said in confirmation hearings, "The existing VRA, the constitutionality has been upheld, and I don't have any issue with that." (250) But on the bench, had clear "color-blind" view.
- Conservative funders in Donors Trust funded the litigation. NAMUDNO decision punted but signified conservative majority was ready to strike Section 5. Opinion emboldened R's to feel more comfortable criticizing Section 5 (253).
- Court had also heard challenge to Indiana's voter ID law (passed in '05). Brennan Center study found that 11% of US citizens (21 million) did not have govt-issued photo ID, including 25% of blacks, 18% of seniors, and 15% making <\$35k/year.
 - Indiana said its law was reasonable to combat voter fraud. S.Ct. agreed, although conceded that the record had no evidence of any fraud (254)
 - *Crawford* meant that states could implement new voting restrictions simply by invoking the threat of voter fraud, without any evidence of fraud.
- Republicans were fixated with "voter fraud."



- In 2011 & 2012, 180 new voting restrictions were introduced in 41 states, with 27 new laws taking effect in 19 states, nearly all of them controlled by republicans. (260)
 - **The right to vote had become deeply politicized.**
 - The election of first black president and resurrection of barriers to vote not a coincidence.
 - Before 2010, only IN, GA, and MO had passed strict voter ID laws. After 2010, 9 Republican-controlled states joined: AL, KS, MS, PA, SC, TN, TX, VA, WI
- **Push for voter ID laws was long strategy of Heritage Foundation and ALEC.**
 - In Summer '09, ALEC drafted model voter ID legislation based on IN.
 - Of the 62 voter ID bills introduced in 37 states in 2011-2012, more than 50% were sponsored by ALEC, including TX. The bills were virtually identical (261)
- The bills went beyond voter ID -- including making registration harder, e.g. requiring proof of citizenship to register, repealing Election Day registration, and strict requirements for third-party registration groups (e.g. in FL, voter registration forms had to be returned within 48 hours or else \$1k fine and felony prosecution, 262).
- Other voting restrictions include - cutting early voting periods (more often used by lower-income and minority voters), banning voting on Sunday (to quell black church Souls to the Polls efforts) (262-263).
- Formerly incarcerated people lost right to vote (FL and IA).
- Closing and moving polling locations, making it hard to get ID (no DMV offices in 81 of 254 counties in TX, 266).
- In total, new restrictions made it harder for more than 5m Americans to vote, and these states accounted for 218 of 270 electoral votes needed to win presidency.
- **Not just concentrated in the South, and not just targeted at one group.**
- The new measures were more subtle but same goal: to control who could participate in voting and make it a privilege, not a right (264).
 - Of 11 states w/ highest lack turnout in 2008, 7 have new restrictions. (264)
- In the courts, activists and Holder's DoJ managed to block some restrictions. 2012 election lines were long but restrictions didn't swing the election (270).
- Then the S.Ct. agreed to hear *Shelby v. Holder*, a Section 5 challenge out of AL.
 - **Shelby County lost in district court and on appeal. By the time it reached S.Ct, "the bipartisan consensus that supported the VRA for nearly 50 years... had collapsed"** (273).
 - In 2011-2012, there were more lawsuits challenging constitutionality of Section 5 than in the previous 40 years combined.
 - Plaintiffs argued times had changed, Section 5 was out of date. DoJ argued that progress showed Section 5 was necessary. [DoJ didn't discuss the new voting restrictions since 2010 = why? Maybe DoJ couldn't bc, then why not apply everywhere, since new restrictions not just in Section 5 states?]
 - June 25, 2013, Roberts Court invalidated Section 4 (the formula), meaning no states were subject to Section 5.
 - Ginsburg's dissent: "Throwing out preclearance when it has worked...is like throwing away your umbrella in a rainstorm because you're not getting wet" (281)



- Roberts based *Shelby* on principle of ‘equal sovereignty’ among states, rooted in *Dred Scott (1857)*, S.Ct. held blacks could not be full citizens because that would violate the ‘equal sovereignty’ of slave states.” (284)
- The whole point of the Reconstruction Amendments were to make clear that federal govt interest in prohibiting racial discrimination trumped the sovereignty of states.

After Shelby

- After Shelby, NC GOP empowered to really push voting restrictions, free from “legal headaches” of having voting changes approved by DoJ (288). It was clear that after Shelby, “States now become national battles.” (289)
- Although prior Dem legislature in NC had passed a bunch of pro-voting reforms that had worked, after Shelby, ALEC legislator of the year in NC pushed voter ID bill stricter than the TX bill that had been blocked by the courts under Section 5 (294)
 - Shorten early voting; no same day reg & provisional voting at wrong precinct; no voting on Saturday; no extending poll hours, no voter reg and pre-registration for 16/17yos, no straight party voting, purge rolls more often (295).
- New R majority adopted the most conservative agenda in the country beyond just voting - eliminating EITC for 900k, declining Medicaid for 500k, ending unemployment benefits for 170k, cutting pre-K for 30k, shifting \$90m from public education to vouchers, slashing taxes for top 5% while raising taxes on bottom 80% (292)
- NC became case study for post-Section 5 world. Holder’s DoJ intervened.
- Lewis and Sensenbrenner introduced a House bill in ‘14 to restore Section 5. Modest bill, covering states w 5 voting rights violations in the past 15 years (GA, LA, MS, TX).
 - **They couldn’t find any GOP backers** (301). The “southernization” of the GOP that began when LBJ signed VRA and accelerated after ‘94 reached pinnacle after 2010 (302).
- **Without help in Congress, voting rights would have to go to the courts.**
- Without Section 5, DoJ would have to argue Section 2 violations, which are harder. Section 2 primarily applied to vote dilution cases, where blacks were prevented from being elected to office, not voting changes that restricted access to the ballot like voter ID laws (303).
- NC argued the voting changes were policy decisions, not discrimination. Just because other policies might help minorities and others and be better policies, that doesn’t mean folks are legally entitled to them. (304)
 - “What would have been a slam dunk for the DOJ and civil rights groups before Shelby had now become a long slog” (305)
 - Dems were 42% of the state’s registered voters, but 57% of those disenfranchised by the new rules (306).
 - S.Ct restored the new voting rights restrictions (306)
- GAO released study showing strict voter ID law in KS and TN had decreased turnout by 2-3 pts from 2008-2012 (122k fewer votes). Turnout dropped most among newly registered, young, and black voters (310).

- Nonetheless, S.Ct affirmed appeals court decision to uphold TX voter ID law in 2014. First time since 1982 that the Court had approved a voting law deemed intentionally discriminatory by a trial court (310).
 - It had been struck down by two courts, under two different sections of the VRA, but S.Ct. upheld it.
- 4 voting rights cases came before S.Ct. before 2014 election, and in 3 of 4, the court refused to block laws restricting voting rights (311).
- The loss of Section 5, combined w/ a hostile judiciary, made voting rights perilous.
- In 2014, 14 states faced new restrictions at the polls. In TX, turnout dropped by 270k votes compared to last midterm in '10. Only 28% of voters tuend out (311).
- Nationally, turnout was the lowest since 1942.
- In NC, restrictions affected the outcome of elections. ALEC legislator of the year Tillis won governorship by 48k votes. Nearly 5x that many were affected by voting restrictions. Estimated 30-50k kept from the polls. Voters affected exceeded margin of victory in Senate and governors races in NC, KS, VA, and FL (313).

Sister District Action Network (SDAN) is a 501(c)(4) organization that primarily focuses on nonpartisan education and advocacy on civic engagement issues. Specifically, SDAN aims to:

- *Educate voters on the importance of state and local elections;*
- *Train new leaders interested in becoming community activists;*
- *Conduct research in partnership with nonprofit and academic partners to test new methods to increase civic engagement and voter participation;*
- *Disseminate best practices for voter engagement and civic participation.*

SDAN is affiliated with the Sister District Project, but it is a separate legal entity.