

Review: 'Give Us the Ballot' by Ari Berman

By **Scott Porch**

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In the two years since the Supreme Court struck down a portion of the Voting Rights Act in *Shelby County v. Holder*, 15 states have passed new legislation that makes it more difficult to vote. North Carolina, for example, passed a law that ended preregistration for voters who would be 18 on Election Day, ended same-day registration, shortened the early-voting period from 17 days to 10 days and instituted a requirement for a photo ID.

"Millions of North Carolinians would be affected by the new restrictions," Ari Berman writes in his new book, *"Give Us the Ballot: The Modern Struggle for Voting Rights in America."* "More than 2.5 million voted early in 2012, nearly 100,000 used same-day registration, 50,000 registered in high schools through preregistration in their civics classes, and 300,000 registered voters didn't have government-issued IDs." North Carolinians cast 4.5 million votes for president in 2012, and Mitt Romney edged out Barack Obama there by fewer than 100,000 votes.

When North Carolina legislators revised a then-pending voting bill just weeks after the Supreme Court had signaled its receptiveness to tighter voting restrictions in the *Shelby County* decision, Republican legislators significantly expanded a pending bill that moved quickly through the legislature. The U.S. Justice Department is challenging the North Carolina law and similar laws from other states in federal court.

"Something like 85 percent of the state thinks early voting is a good thing and shouldn't be shrunk," North Carolina State Sen. Josh Stein (D-16) told Berman. "Seventy-five percent have voted early at one point or another. Why are we eliminating a week of early voting?"

Good question. The legislators and governors in these states — nearly all of which are in the South and have Republican-controlled legislatures — argue that they are saving taxpayer dollars by shortening early voting and guarding the ballot box from fraud by strengthening the voter identification requirements. *"Give Us the Ballot"* suggests that there's more going on in those states than meets the eye.

During the post-Civil War period of the South's reintegration into the United States, known as Reconstruction, African-Americans registered to vote and voted in massive numbers in the states of the former Confederacy, but the gains did not last. Mississippi adopted a new state constitution in 1890 that included a poll tax and a literacy test, and black voter registration in the state dropped from 67 percent to less than 6 percent. After Alabama adopted its new state constitution with similar requirements in 1901, black voter registration fell from 182,000 to 4,000.

Berman's illuminating 50-year history of the Voting Rights Act begins with John Lewis' Student Nonviolent Coordinating Committee and Martin Luther King's Southern Christian Leadership Conference organizing the Selma, Ala., voting rights march on March 7, 1965, which resulted in the brutal attack of the marchers on the Edmund Pettus Bridge. This story has been told often, including in the recent film *"Selma,"* but it bears repeating.

A week later, President Lyndon Johnson urged a joint session of Congress to take up voting-rights legislation in a speech he famously ended by saying, "And we shall overcome." Johnson and civil rights activists applied pressure through the spring and summer, Congress passed the originally proposed bill with only minor changes, and Johnson signed the Voting Rights Act on Aug. 6, 1965.

The legal challenges came quickly. By January 1966 — a swift pace even then — the Supreme Court was hearing oral arguments in *South Carolina v. Katzenbach* asserting that literacy tests weren't discriminatory and that the "drastic and despotic legislation" in the Voting Rights Act was an unconstitutional infringement on the states. The Supreme Court rejected those arguments in an 8-1 decision. "Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live," Chief Justice Earl Warren wrote for the majority.

The Voting Rights Act itself intact, the next challenge was to the preclearance provision, which required Justice Department approval for changes to voting laws in states and counties that had a history of voter suppression. Between the *Katzenbach* decision and the 1966 midterm elections, the Mississippi legislature passed a comically brazen pile of bills that gerrymandered congressional and state legislative districts, changed numerous positions from elected to appointed and added new qualifications for candidates to run for office. The Supreme Court struck them down.

Conservative opposition to the Voting Rights Act has evolved over the last 50 years but always in the direction of curtailing or diluting African-American voter participation and, over time, Democratic voter participation in general. This gradual strategic shift has had the dual benefit of being less obviously motivated by race and more broadly calibrated to maintain political power.

"When I voted for the Voting Rights Act of 1965, I hoped that five years would be ample time," Rep. Bill McCulloch (R-Ohio), chairman of the House Judiciary Committee, said during the 1969 hearings on the first reauthorization of the law. "But resistance to the program has been more subtle and more effective than I thought possible. A whole arsenal of racist weapons has been perfected."

"Give Us the Ballot" is a smart compendium of election "reforms." Berman removes the facade of intellectual honesty — where voting-rights opponents even bothered to make an argument — and lays bare the many, many ways to game the outcome of an election. They are too numerous to mention comprehensively, but here are several:

There was gerrymandering: Even after the Supreme Court had rejected racially gerrymandered congressional districts in *Allen v. State Board of Elections*, many states tried again after the 1970 census. The Georgia legislature, for example, redrew the state's congressional districts to prevent majority-black Atlanta from having any majority-black congressional districts. The Justice Department rejected preclearance of the redistricting plan. After the legislature redrew the congressional districts, former MLK aide Andrew Young became the first African-American elected to Congress from Georgia since Reconstruction.

There were appeals to righteousness: During the 1980 presidential campaign, Ronald Reagan said that the Voting Rights Act's "vindictive, selective application" to Southern states was unconstitutional despite a decade of Supreme Court decisions upholding its constitutionality.

There were arguments as early as 1981 that preclearance was no longer necessary. Republican Rep. Henry Hyde said that year: "My view is that the handful of Southern States had been in the penalty box for nearly 17 years; they have improved their voting rights records, and hence ought to be treated like every other jurisdiction in the land." (Hyde, to his credit, eventually changed his mind and supported the reauthorization of preclearance.)

There were arguments that voting laws only violated the Voting Rights Act if the intent was to discriminate on the basis of race — even if the effect was discriminatory. When now-Chief Justice John Roberts was an attorney in the Reagan administration, he argued that considering the effect of a voting law "would establish essentially a quota

system for electoral politics" and was "the most intrusive interference imaginable by federal courts into state and local processes."

The central protagonist — and really the only person who figures into the full 50-year history of the Voting Rights Act — is Lewis, and "Give Us the Ballot" is in large part his biography. In 1965, Lewis was brutally beaten during the first Selma march. In the 1970s, he led the Voter Education Project, which registered voters and trained black candidates for office. Before and after he was first elected to Congress in 1986, Lewis advocated for every reauthorization of the Voting Rights Act. When the Supreme Court took up consideration of *Shelby County v. Holder*, Lewis filed his own brief in support of the preclearance provision, which Congress had strengthened during the most recent reauthorization in 2006 with bipartisan support.

Roberts' opinion in *Shelby County* whistles right past preclearance as a relic of the bygone days of 2006 when Congress decided that changes to election laws in states that had a history of race discrimination and manipulating elections should be reviewed by the Justice Department before going into effect. Since the 1960s, Roberts wrote, "voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African-Americans attained political office in record numbers. And yet the coverage formula that Congress reauthorized in 2006 ignores these developments, keeping the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs."

Despite our long and not-especially-glowing recent history of race and voting rights, which Berman documents quite convincingly, the *Shelby County* majority has an optimistic view of where we are as a multicultural nation and a strong faith in our ability to overcome. I hope they're right.

Scott Porch is writing a book about the rise of feminism and the fracturing of the civil rights movement in the 1960s and '70s. He writes frequently about books and American history for The Daily Beast and Kirkus Reviews.

"Give Us the Ballot"

By Ari Berman, Farrar, Straus and Giroux, 373 pages, \$28

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