

A Historical View of How Race and Politics Have Affected Voter Access

by Sheri Stewart

On July 17, 2020, Congressman John Robert Lewis—renowned civil rights and voting rights activist, died at age 80. In light of his death, some of his colleagues are calling for the passage of the “*John R. Lewis Voting Rights Act of 2020*.” However, what would be included in such a legislative proposal? At the outset, it is clear—we cannot have a conversation about voter suppression without honoring the legacy of Congressman John Lewis and his efforts to eradicate voter suppression.

Recently, I had the privilege of listening to the MPR News special, *Humankind Documentary: The Right to Vote: A History of Voting Rights in America*.¹ This documentary explored the long and tumultuous history of America’s decision regarding who gets the right to vote. In the early history of the U.S., if you were not a white male, over the age of 21, who owned property, you could not vote. The passage of the 15th Amendment occurred five years after the Civil War ended, which prohibited states from using race as a factor in determining voting rights. Specifically, Professor Gwendolyn Zoharah Simmons, an Assistant Professor of Religion at the University of Florida, opined that during Reconstruction there were a number of African-American men who became elected officials and were met with counter protest from Klansmen in the south who created “a reign of terror executed upon African-American men and their families in order to intimidate them from voting.” Some intimidation tactics included tarring, lynching, literacy testing, polling taxes, and grandfather clauses.² Additionally, northern states used similar tactics to suppress the right to vote, by implementing legislation that prevented immigrants (including the Irish, Italians and Chinese) from voting.

The 19th Amendment was formally certified on August 26, 1920 to become part of the U.S. Constitution, and 2020 marks 100 years since its ratification into the U.S. Constitution.³ The 19th Amendment was supposed to guarantee a citizen’s right to vote and prohibit the denial of voting privileges based upon gender. Although this law appeared to grant the right to vote to all women, “African-American women in many states remained as disenfranchised as their fathers and husbands due to the intimidation tactics mentioned above.”⁴ Congressman John Lewis and other activists risked their lives on Bloody Sunday for voting rights of all citizens, as they marched from Selma, to Montgomery, Alabama on

March 7, 1965. The images and footage of the brutal beating Congressman John Lewis suffered when he was hit on the head by state troopers and gassed among hundreds of marchers were seen around the world. This outrage catapulted the enactment of the Voting Rights Act of 1965, which was signed by President Lyndon B. Johnson on August 6, 1965. This Act required that states with a history of election procedures used to suppress the Black vote through intimidation and local voting rules be supervised by the federal courts. Therefore, if a state violated section 2 of the Act, the state could be sued for violating these rules.

In the summer of 2013, the Supreme Court in a 5-4 decision in *Shelby County v. Holder*, invalidated the key area of the Voting Rights Act regarding federal supervision of the nine covered states under section five of the Act,⁵ “which required jurisdictions with significant histories of voter discrimination to “pre-clear” any new voting practices or procedures, i.e., get federal approval from the U.S. Department of Justice, and show that they do not have a discriminatory purpose or effect.”⁶

The ACLU article entitled, *Block the vote: Voter Suppression*⁷, highlighted the numerous ways voter suppression evolved and increased after the *Shelby County v. Holder* decision:

1. Voter ID Laws
2. Voter Registration Restrictions
3. Voter Purges
4. Felony Disenfranchisement
5. Gerrymandering

The franchise was fundamental to Congressman John Lewis. In 2019 he said, “*The vote is precious. It is almost sacred. It is the most powerful non-violent tool we have in a democracy.*” As the ‘conscience’ of the nation, he continued to fight to keep its importance alive in spite of the insurgence of voter suppression.

The road to our current presidential election this November has seen recent historical examples of voter suppression that have continued to persist in new ways. For example, the 2020 Georgia Primary held on Tuesday, June 9, 2020, in the midst of the pandemic, displayed polling places with lines for hours in predominantly Black counties, polling places were consolidated, voting machines malfunctioned, staff were not properly trained and there were numerous complaints of absentee ballots not being received in time to vote by

mail.⁸ These realities highlighted a combination of new challenges and systematic voter suppression. Numerous lawsuits were filed to keep polling places open past midnight so that people could vote and as a result, judges ordered the polls to stay open at locations in 20 counties.⁹

As citizens, we have a duty to contribute as much as possible to promote voting rights by educating the public. As such, the Minnesota Chapter of the Federal Bar Association Diversity and Inclusion Committee hosted a webinar on October 1, 2020 entitled, *Voter Suppression and the Impact of COVID-19 on Voting Rights*. This idea bloomed during a Diversity & Inclusion (D&I) Committee Meeting when Colin Pasterski, an Attorney at Halunen Law, suggested a Voting Rights/Voter Suppression CLE. As a D&I committee member, I was excited to join the initiative and our voting rights subcommittee was formed.

In light of the country being in an election year for the presidency, the topic could not be more relevant especially considering the historical issues surrounding voter suppression that have evolved over the years. But when the pandemic hit, and the effects of COVID-19 became more apparent, we recognized our current way of life would change drastically. Therefore, we thought about the effects the pandemic would have on voting and sought out panelists who could demonstrate that it was pertinent to bridge the importance of voting rights, acknowledge the history of voter suppression in this country, and discuss how those intersect during COVID-19.

Panelists included: **Anastacia Belladonna-Carrera, David McKinney, David Schultz** and **Steve Simon**.

- **Belladonna-Carrera** is the Executive Director for Common Cause Minnesota who will provide a grassroots perspective as a leader at a nonprofit organization.
- **McKinney** is a staff attorney for the American Civil Liberties Union of Minnesota (ACLU-MN), who will share his work experience as a staff attorney at a nonprofit organization.
- **Schultz** is a national expert on election law, professional ethics, state constitutional law, eminent domain, and land use law.
- **Simon** is Minnesota's 22nd Secretary of State, who will share his perspective as an elected official who has administered elections.

Working to plan this event has reignited memories I had as a first-year student at Wellesley College when I took a Moral Philosophy class and fell in love with philosophy, which eventually became my major. I recall one of our assigned books for the course by Martin Luther King Jr. entitled, *Why We Can't Wait*. One particularly significant section of his letter from Birmingham Jail was the following, -

“An **unjust law** is a code that a numerical or

power majority group compels a minority group to obey but does not make binding on itself. ... **Sometimes a law is just on its face and unjust in its application...** It was a recurring pattern throughout history where the law could and had been used as a mechanism to exert power over minority groups in order to maintain power.”

This simple quote had a profound effect on me, and I began to see many laws through this lens as I immersed myself in learning about history and social movements, throughout college and in law school. In this particular situation, voting laws in America were used as sword and shield because they were tools that could be manipulated to exert power over minority groups while holding legitimacy under the guise of “the rule of law.” So even though many of these laws could appear just on their face, the vast unjust implications and unequal application they had on people of color were stinging and the ramifications have lasted for generations.

Congressman John Lewis said that he admired Martin Luther King Jr. who taught him **how to stand up, speak up and speak out, and how to get involved**. With the legacy of Congressman John Lewis in mind, the goal of this webinar is to educate people and help fuel a lasting discussion about why the right to vote is so essential for all to have access to especially those who have been systematically disenfranchised.



Sheri Stewart is a civil litigation attorney at Bassford Remele P.A. in Minneapolis, Minnesota. She has experience practicing in employment law, general liability, personal injury, and trusts and estates law.

As a member of the Minnesota Chapter of the Federal Bar Association Diversity and Inclusion Committee, she serves as the Liaison to the Minnesota State Bar Association for the Committee.

Endnotes:

¹ MPRNews, *Humankind Documentary: The Right to Vote- A History of Voting Rights in America*, July 22, 2020, <https://www.mprnews.org/story/2020/07/22/the-right-to-vote>

² “Grandfather clauses” are defined as a clause exempting certain classes of people or things from the requirements of a piece of legislation affecting their previous rights, privileges, or practices.

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³ Martha S. Jones, *For Black Women, the 19th Amendment did not end their fight to vote*, August 7, 2020, <https://www.nationalgeographic.com/history/2020/08/black-women-continued-fighting-for-vote-after-19th-amendment/#close>

⁴ *Id.*

⁵ The United States Department of Justice, *Jurisdictions previously covered by Section 5 at the time of the Shelby County decision*, March 11, 2020, <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>. Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, Virginia.

⁶ ACLU, *The Voting Rights Act*, <https://www.aclu.org/issues/voting-rights/voting-rights-act>

⁷ Block the Vote: Voter Suppression in 2020, February 3, 2020, <https://www.aclu.org/news/civil-liberties/block-the-vote-voter-suppression-in-2020/>

⁸ Zach Montellaro and Laura Barrón-López, *'A hot, flaming mess': Georgia primary beset by chaos, long lines*, June 9, 2020, <https://www.politico.com/news/2020/06/09/georgia-primary-election-voting-309066>

⁹ Rachel Glickhouse, *Electionland and 2020: Georgia's Chaotic Primary, NJ Mail Voting Problems, Election Legislation and More*, June 12, 2020, <https://www.propublica.org/article/electionland-2020-georgias-chaotic-primary-nj-mail-voting-problems-election-legislation-and-more>

IRS Income Tax Audits, A Primer

by Eric M. Bielitz¹

Although the IRS audit rates are at historic lows, audits do still happen, and can happen to anyone including individuals of all income levels, and businesses and organizations of all sizes.

This article's purpose is to provide some background on the law, procedures, evidence, and some best practices of income tax audits to attorneys who do not normally practice tax law.

This article is not exhaustive. While any lawyer admitted to practice in any state or territory can represent a client in an audit, one should do additional reading before doing so.²

Selected Fundamentals of Income Tax Law

To understand an income tax exam, one must understand two rules of income taxation. One, all income is presumed to be taxable.³ Two, tax benefits (deductions and credits) are a matter of legislative grace, and it is the taxpayer's burden to prove they are entitled to them.⁴

Essentially, an income tax return is a claim on the government. The taxpayer is claiming what monies they received are (and are not) taxable, and what tax benefits they are entitled to. For 99.55% of taxpayers, it ends there. The remainder is audited.⁵

IRS Audits

"Audit" is an obsolete term, but remains in popular use. The current, official, term used by IRS is "examination."

The purpose of an examination is to verify the claims made by the taxpayer on their income tax return. The IRS has the authority to examine any claim made on any income tax return filed within the past three years.⁶

The IRS will typically begin an exam with a discrete area of inquiry (e.g. "itemized deductions claimed on the 2017 income tax return") but can later choose to expand the inquiry to other items and other years that are open to examination. The initial scope of the exam will be provided, in writing, as part of the original exam notice.

There are four types of income tax examinations: automated under-reporter (AUR), correspondence, office, and field. AUR examinations are automated and done by mail. Correspondence examinations take place entirely by mail and are conducted by Tax Examiners (lowest level examiners). Office examinations are conducted by Tax Compliance Officers (mid-level examiners), and are conducted by correspondence and by in-person meetings at a local IRS office. Field audits are conducted by Revenue Agents (high-level examiners), and are conducted by correspondence, and in-person meetings at the local IRS office, the taxpayer's home or place of business, or the taxpayer's representative's office.

The taxpayer has the right, at their own expense, to be represented by an attorney, accountant, or enrolled agent during an audit.⁷ A representative enters their appearance by filing a form 2848, signed by the representative and the taxpayer, with the IRS. As a best practice, the form should be sent directly to the examiner, as well as faxed to the IRS CAF unit, per that form's instructions.

IRS examinations are a civil matter, not a criminal investigation. However, the examiner may refer a case for criminal investigation. There is a push in IRS examinations to refer more matters, especially fraud, to IRS Criminal Investigations.⁸