



A Voting Rights Story

Injustice in North Carolina

By Sam Fulwood III July 22, 2016

Poll taxes. Literacy tests. Hidden polling stations. Suppression. Nullification. And, at the darkest and most vile of times, the violence of hooded, cross-burning Ku Klux Klan intimidation.

Henry M. Michaux Jr. has witnessed it all.

Tallying up all of the time that he has lived in North Carolina—including serving nearly 50 years in its legislature—Rep. Michaux (D) witnessed the ugly and racist aspects of politics in his state. During his lifetime, state lawmakers worked overtime and often in cruelly ingenious fashion to prevent black and poor people from voting.

Michaux, now 85, has also seen a brighter day.

“Everyone calls me ‘Mickey.’ I don’t answer to any other name,” he told me in the first of our series of telephone interviews.¹ With a gravelly voice that sounds like a bass drum pounding along a dirt road, Mickey Michaux will proudly and with little-to-no prompting say that he played a major role in changing North Carolina laws to make voting fairer for everyone, especially for black and poor North Carolinians. First elected in 1972, he is the longest-serving member ever in the North Carolina House of Representatives.²

Representing more than mere tenacity in public service, Michaux’s career encapsulates the rise and fall of voting rights in his state and, potentially, in expanding swaths of the nation. Where states such as North Carolina once put measures in place to allow previously disenfranchised citizens increased access to voting, a troubling trend is erasing the hard-earned rights that have been Michaux’s legislative legacy.

Voting rights in retreat in North Carolina—and across the nation

On its surface, this is a story about Mickey Michaux and his lifetime accomplishments. But in its full truth, this story is about a simple and basic American right: voting.

More specifically, it's about North Carolina's current effort to retreat from the Voting Rights Act of 1965. This landmark legislative tour de force played a significant part in moving this nation closer to its founding ideals of political self-governance for every citizen of the land.³

Today, North Carolina is at the center of a national struggle to preserve what remains of the Voting Rights Act. In the U.S. Supreme Court's 2013 *Shelby County v. Holder* decision, the section of the Voting Rights Act that required all or parts of 15 states to get the approval of the federal government before making changes in voting law was effectively repealed.⁴ Since then, conservative legislators in the Tar Heel state have passed a set of laws that its proponents argue are needed to safeguard against voter fraud, but which actually rescinded voting rights in the state.⁵

North Carolina is not alone: Several state legislatures are insisting voters show photo identification or imposing other restrictions.⁶ One onerous law in Texas could affect more than a half million voters who lack proper ID.⁷ In Arizona, lawmakers imposed rules for registering, early voting, and provisional voting, which resulted in widespread confusion and long lines in March's presidential primary.⁸

But in North Carolina, the new restrictions did more than just require voters to present photo identification. It ordered reductions in the number of early-voting days, ended same-day registration, and ended preregistration policies that allowed teenagers to qualify to register to vote before their 18th birthday.⁹ None of this would have been possible if the Voting Rights Act were still functionally in place.

"This is not a photo ID bill," said the Rev. William J. Barber II, president of the North Carolina NAACP, one of the lead plaintiffs suing the state. "The court ruled on the most sweeping, retrogressive voter suppression bill that we have seen since the 19th century and since Jim Crow and the worst in the nation since the *Shelby* decision."¹⁰

Challenged by state's branches of the NAACP, the League of Women Voters, and other individuals and civil rights groups, the law is winding its way through the courts.¹¹ Most recently, the voting law was upheld in April by federal Judge Thomas D. Schroeder of the U.S. District Court for the Middle District of North Carolina.¹² In his decision, Schroeder disagreed with U.S. Justice Department lawyers, civil rights activists, and other plaintiffs in the case, saying minority voters are not disenfranchised by the new laws. "North Carolina has provided legitimate State interests for its voter-ID requirement and electoral system," he wrote.¹³

Barber and the other plaintiffs are pressing ahead to the U.S. Court of Appeal for the Fourth Circuit in Richmond, Virginia, where the law met with skepticism from the three-judge panel during oral arguments in June. Judge James Wynn openly wondered from the bench whether "race was used here as the basis for suppressing the minority vote."¹⁴ Another judge, Henry Floyd, was even more blunt, saying the law "looks pretty bad to me, in terms of purposeful discrimination."¹⁵ Legal analysts agree the case is unlikely to be settled without a hearing before the U.S. Supreme Court.¹⁶

To be sure, state efforts at restricting voting rights have encountered turbulence as they rise through the judiciary. The U.S. Circuit Court of Appeals for the Fifth Circuit ruled on Wednesday that Texas' photo ID law discriminates against African American and Latino voters and therefore violates Section 2 of the Voting Rights Act.¹⁷ Similarly, a federal judge in Wisconsin barred that state from requiring voters to comply with strict photo ID requirements and allowing people to vote in November by signing an affidavit.¹⁸

Liz Kennedy, Director of Democracy and Government Reform at the Center for American Progress, said in a statement following the Texas decision that such restrictive voting laws should never have been put in place because they threatened the franchise for qualified American voters.

“The freedom to vote for 1.2 million eligible Texas citizens who lack the specific forms of identification required by Texas' strict photo ID law, including 600,000 citizens already registered to vote, was vindicated,” Kennedy said, adding the same was true under Wisconsin's restrictive law. Kennedy explained:

When Wisconsin's strict photo ID law was passed, it was found that 9 percent of registered voters did not possess a government ID, and experts testified as the trial that 300,000 eligible voters could be stripped of their right to vote. Since those requirements started, the state has rejected almost 20 percent of those apply for voter ID, a startling 85 percent of whom are African American, Latino, or Native American.¹⁹

In the meantime, the voting in North Carolina proceeds under the burdensome restrictions and amid an atmosphere of hyperpartisan political angst. North Carolina is a rare Southern swing state where the electorate is almost evenly divided between Democrats and Republicans. For example, President Barack Obama won the state in 2008, but lost it four years later. The current governor, Pat McCrory, is a Republican and the man who signed the 2013 voting changes into law; he is in a fevered battle for reelection against the sitting attorney general, Roy Cooper, a Democrat.

Voting rights are a microcosm of U.S. race relations

This fight over voting rights in North Carolina may also be seen as a historical study in American race relations, which have ebbed and flowed, in fits and starts, for longer than the nation itself has existed. For every progressive development in the nation's struggle with race relations, there has been an equal or greater backlash. Consider, for example, the lofty ideals written into the U.S. Constitution and the inclusion of a compromising amendment to regard American slaves as three-fifths of a person; the end of slavery and Reconstruction's Black Codes; the civil rights movement and the “Southern Strategy” of retrenchment; the election of President Obama and the obstructionism of the Tea Party. So, too, this historic pattern continued with the rise and fall of the Voting Rights Act.

Under the federal provisions of the bill that President Lyndon B. Johnson signed into law, all states were allowed to establish election rules but were expressly forbidden from erecting any regulations preventing or making voting onerous for black and other minority voters. The act also required selected states—Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia—and parts of others states with an egregious history of racial disenfranchisement to seek preclearance from federal officials before making changes in state voting practices, to guarantee the changes would not discriminate against minority voters. Counties and municipalities in several other states, including North Carolina, were required to seek preclearance authority from the federal government before making local election changes. In most cases, that meant any local election changes had to adhere to state laws and, in effect, those states were bound by the preclearance requirement as well.

The law worked. Virtually overnight, the nation experienced a decrease in official, state-sanctioned discrimination in voting.²⁰ Some 250,000 black voters responded by registering to vote in 1965 and, more importantly, under the watchful eyes of federal examiners and poll administrators, they turned out to cast ballots on election days.²¹

Freed to participate in elections, black voters across the South sent their neighbors to elected offices. In the two decades following passage of the act, the number of African Americans elected to state legislatures in the former Confederate states rose from 3 to 176.²² Nationally, the number of black elected officials jumped from 1,469 in 1970 to 4,912 in 1980; by 2011, there were 10,500 blacks in elected offices.²³

Revisions in 1973 and 1992 to the Voting Rights Act added a separate special provision that required bilingual ballots and other election materials to assist voters for whom English is not a native language.²⁴ These, too, worked to bring rising numbers of Latinos and other minority voters into voting booths. In 1973, 35 percent of Latinos were registered to vote. The figure doubled by 2006. Asian Americans saw their registration numbers increase by 58 percent between 1973 and 2006.²⁵

By any honest and objective measure, the Voting Rights Act increased civic participation by people who had previously been excluded from voting. But the effects of the increased voting participation seemed to be a bridge too far for opponents of the law, who are largely archconservative legal scholars and activists who recoiled at the impact of racial minority voting power. From the moment of the bill's signing and for nearly the half-century that followed, conservative activists decried the Voting Rights Act as an unfair federal intrusion into the affairs of the affected states.

So toxic was the fight over the act that historic political alliances shifted. Outraged by the leadership of their party in Washington, white Southern Democrats fled in massive numbers to the GOP. As these voters left, black Democrats grew proportionately stronger within their party's establishment. While the nation's two major political parties realigned,

state legislatures redrew state and congressional legislative plots to concentrate likely black Democratic and likely white conservative Republican voters in separate and unequal districts.²⁶ In time, the slow drip of gerrymandered legislative districts yielded a bitter outcome.

In 2010, during the midterm elections following President Obama's first election, Republicans flipped 20 legislative chambers, netting the party control over 52 state Senate and House chambers.²⁷ Overall, Republicans controlled an additional 11 state legislatures and set about imposing new laws to curb what they claimed to be the dangerous threat of massive voter fraud. The conservative majority on the court, led by Chief Justice John G. Roberts Jr.—who as a conservative legal scholar clerking with Justice William Rehnquist had argued passionately against the Voting Rights Act—effectively eviscerated the law by allowing the nine states covered under the preclearance rules to change their election laws without federal approval.²⁸

The high court's decision released a half-century of pent-up demand for voting restrictions aimed at slowing black voter participation. As rapidly as black voters had rushed to vote following passage of the Voting Rights Act in 1965, conservative legislators rushed in 2013 to set up what writer Bob Cesca described in a Salon blog post as “the most Orwellian schemes” to disenfranchise black and Latino voters. “While appearing to stand up against fraud, which only exists about 0.0000013 percent of the time—that's 26 cases out of 197 million votes cast, according to a [George W.] Bush administration investigation—the [conservative activists are] stripping millions upon millions of Americans of their right to vote,” Cesca wrote.²⁹

Bitter road ahead for voting rights

For Mickey Michaux, all these changes are personal and disheartening. Born in 1930, he recalls vividly the strict segregation of Durham, his hometown. Those lessons have never strayed far and he has spent nearly 40 years as a state legislator learning, mastering, and using the levers of the state Capitol to expand voting access in his home state.

A career in politics was not his first choice. After earning a degree in biology in 1952 from North Carolina College, now North Carolina Central University, and doing some graduate studies in physiology and biochemistry at Rutgers University, he toyed with the idea of becoming a doctor or scientist. But such thoughts were banished from his mind after a family friend—the Rev. Martin Luther King Jr.—counselled him to become a lawmaker.

Michaux said he met King in 1956 when the civil rights leader was visiting Durham to speak at a function hosted by the city's black Chamber of Commerce. In those days, Durham was a rare oasis of black political and economic activity and King came to drum up support for his efforts to desegregate public facilities across the South.

“I talked to [King] about how relatively liberal, race-wise, Durham was, and he was impressed with the amount of freedom and success he saw black people having here,” Michaux said. “He wanted to know why other places weren’t doing as well and wondered what I could do to help.”

That conversation led to a friendship. “He and I got to be very close,” Michaux said. “Every time he was in the state, he would call to see if he could stay at my parents’ house. He’d call and ask, ‘What’s your mother cooking for dinner?’”

It was one of those conversations that rerouted Michaux’s life. At that moment, sometime in 1964 as he was finishing up law school at North Carolina College, King suggested Michaux ought to go into politics to bring about greater changes.

“I remember his exact words,” Michaux said. “He got really serious and said, ‘Mickey, we need that political power. If we’re going to participate in the economic success you see in Durham, we must be more involved in the political process. You know, Mickey, you’d make a good politician.’”

That was the first time anyone had even suggested such a thing to him.

“I said, ‘Martin, you’re out of your mind,’” Michaux recalled.

Later that year, with King still urging him on, Michaux mounted an unsuccessful run for the North Carolina State House. He lost by about 120 votes. He tried again in 1966 and lost once again. Determined to win, Michaux immediately began plotting his 1968 run, which he never mounted.

On April 3, King called Michaux to say he would not be staying at his parents’ home as planned. Instead, King told him to express regrets to his family and he would come soon to have that fried chicken dinner. But first he needed to attend a sanitation workers’ rally in Memphis, Tennessee. King was assassinated the next day.

“The fire went out of my belly,” Michaux said. “I said I’d never run again.”

Instead, Henry E. Frye of Guilford County ran and won, becoming the first black state legislator in North Carolina since Reconstruction.³⁰ Indeed, Frye’s path to the legislature may be viewed as a template for racial political progress, thanks to the Voting Rights Act. A lifelong trailblazer, Frye grew up in a Mayberry-like community in Richmond County, and sprouted from those small-town roots to attend North Carolina A&T University in Greensboro, and to rise to the rank of captain in the U.S. Air Force.³¹

After all that, Frye was unable to vote in North Carolina. As he described it last year in an interview with *The New York Times Magazine*, he returned home to Ellerbe at 26, a veteran of Korea, and on the morning of his wedding day in 1956, he attempted to register to vote.³² A white registrar demanded he pass a literacy test by answering impossible questions on the U.S. Constitution. Frye refused. The white registrar turned him away and Frye has remained angry about it ever since, despite going on to achieve still more firsts as a member of the North Carolina Supreme Court and, eventually, as its Chief Justice.

Two years after Frye was seated in Raleigh, Joy Johnson of Robeson County ran and won a seat in the ornate House chambers. Inspired by Frye and Johnson, Michaux changed his mind and mounted yet another run for the legislature in 1972. He won this time, becoming the third black American elected to the North Carolina House since Reconstruction.

When Mickey Michaux won his Durham County district seat in the North Carolina General Assembly, the state was on the edge of historic change. The three black legislators, along with a cadre of sympathetic white Democrats—indeed, in those days nearly every elected state official in the South was a Democrat—pushed for more progressive legislation that would expand voting access and rights for poor and racial minority North Carolinians.

“It didn’t come easily and it didn’t come quickly,” Michaux told me. “But slowly, too slowly if you ask me, we made some progress.”

Between 1972 and 2009, Michaux saw more and more black legislators come and go in Raleigh. Over time, the state passed laws that made it easier and more convenient to register voters at Departments of Motor Vehicles and public assistance offices; extend early voting dates; permit same-day registration and voting; empower 17-year-olds to register, if they would reach the legal voting age of 18 by Election Day; and deputize registrars to turn off-site locations into government offices and to pass out registration forms there.

The net effect was to increase voter participation, especially among black and poor North Carolinians. By 2008, North Carolina was a Southern showplace for voting rights, where black voter turnout was nearly equal to white voter turnout.³³

“North Carolina has gone from being a Jim Crow state to one of the more progressive,” Michaux said. “And, now, it seems to be repeating itself on a different plane.”

Indeed, a full-circle retreat appears underway in North Carolina with the new voting rules currently in place, a political turn that Michaux never saw coming. He said when the bill came to the floor for debate, only two sponsors spoke in favor and all the Democrats spoke against it. He admits he never thought there were enough votes for it to pass, until it was too late.

“I didn’t think something like these restrictive voting laws was going to happen,” he said. “I thought folks had some sense about voting. I just didn’t expect the Republicans to go overboard to that extent.”

As the final count was taken, he said, “All the Democrats stood up, held hands, and bowed our heads.”

“North Carolina is in a mess now,” Michaux said, his rocky-road voice growing more ruttled with each word. “Why would any politician want to impede people from going to the polls? They ought to be out there trying to get folks to vote for them.”

The struggle continues

A lot has changed in North Carolina during Mickey Michaux’s time in the state legislature. He is not happy about the more recent turns of events.

On March 23, the state became the nation’s first to ban people from using government-owned restrooms and locker facilities that do not match the gender inscribed on their birth certificate. House Bill 2, or H.B. 2, thrust the state into the center of yet another national political dispute, this time over transgender rights.³⁴ Attorneys in the U.S. Justice Department have entered the fray by issuing a brief urging a federal judge to halt implementation of the law.³⁵

“We’re the laughingstock of the country,” Michaux said. “And it’s beginning to hurt us and it will keep on hurting us because \$4.3 billion in federal Title IX money will be at risk.”

But more than the emotional and fiscal costs, Michaux is alarmed at the cavalier erasure of his life’s work to make the state fairer and more equitable for all its residents.

“I’ve lived long enough to see the good overcome the bad, and the bad come around again,” he said, words tumbling, sullenly. “My state and nation has changed more than I want to see. Now, we seem to be regressing, repeating the past but on a different level.”

At the same time, Michaux said, he remains ever hopeful, recalling what Dr. King told him that started him on his life’s journey.

“The only way all this is going to change,” Michaux said, “is to marshal our forces and to go back to the polls. The only way to change is through the political process by voting people out of office and replacing them with those who will do the right thing.”

“It’s the only way to go.”

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Endnotes

- 1 All content in this brief regarding Henry M. Michaux Jr. is from the author's personal communication with Rep. Michaux, April 25-28, 2016.
- 2 According to officials in the North Carolina House Principal Clerk's office, Michaux has served 18.5 years in the state House of Representatives. He was seated initially in 1973 and left in 1977. He was reelected in 1985 and has remained ever since. Former Rep. Harold Brubaker is the second-longest member, having served 17.5 terms, from 1977 to 2012.
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- 14 Richard Wolf, "Federal Appeals Court Skeptical of North Carolina Voting Restrictions," *USA Today*, June 21, 2016, available at <http://www.usatoday.com/story/news/politics/2016/06/21/federal-appeals-court-north-carolina-voting-restrictions/86177840>.
- 15 Ibid.
- 16 Sari Horowitz, "Federal Judge Upholds Controversial North Carolina Voting Law," *The Washington Post*, April 26, 2016, available at https://www.washingtonpost.com/world/national-security/federal-judge-upholds-controversial-north-carolina-voting-law/2016/04/25/97757236-0b4d-11e6-a6b6-2e6de3695b0e_story.html.
- 17 Jon Herskovitz and Lawrence Hurley, "U.S. appeals court finds Texas voter ID law discriminatory," July 20, 2016, available at <http://www.reuters.com/article/us-usa-court-texasvoting-idUSKCN1002KJ>.
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