

§ 2 of the Voting Rights Act may obviate the further development of constitutional jurisprudence in this area, however.²⁷

Congressional Enforcement

Although the Fifteenth Amendment is “self-executing,”²⁸ the Court early emphasized that the right granted to be free from racial discrimination “should be kept free and pure by congressional enactment whenever that is necessary.”²⁹ Following ratification of the Fifteenth Amendment in 1870, Congress passed the Enforcement Act of 1870,³⁰ which had started out as a bill to prohibit state officers from restricting suffrage on racial grounds and providing criminal penalties and ended up as a comprehensive measure aimed as well at private action designed to interfere with the rights guaranteed under the Fourteenth and Fifteenth Amendments. Insofar as this legislation reached private action, it was largely nullified by the Supreme Court and the provisions aimed at official action proved ineffectual and much of it was later repealed.³¹ More recent legislation has been much more far-reaching in this respect and has been sustained.

State Action.—Like § 1 of the Fourteenth, § 1 of the Fifteenth Amendment prohibits official denial of the rights therein guaranteed, giving rise to the “state action” doctrine.³² Nevertheless, the Supreme Court in two early cases seemed to be of the opinion that Congress could protect the rights against private deprivation, on

²⁷ See Voting Rights Act Amendments of 1982, Pub. L. 97–205, 96 Stat. 131, amending 42 U.S.C. § 1973. The Supreme Court interpreted the 1982 amendments to section 2 in *Thornburg v. Gingles*, 478 U.S. 30 (1986), determining that Congress had effectively overruled the *City of Mobile* intent standard in returning to a “totality of the circumstances” results test.

²⁸ *Guinn v. United States*, 238 U.S. 347, 362–63 (1915).

²⁹ *Ex parte Yarbrough*, 110 U.S. 651, 665 (1884).

³⁰ 16 Stat. 140. Debate on the Act is collected in 1 B. SCHWARTZ, *STATUTORY HISTORY OF THE UNITED STATES: CIVIL RIGHTS* 454 (1971). See also *The Enforcement Act of 1871*, ch. 99, 16 Stat. 433.

³¹ Ch. 25, 28 Stat 36 (1894); ch. 321, 35 Stat. 1153 (1909). See R. CARR, *FEDERAL PROTECTION OF CIVIL RIGHTS: QUEST FOR A SWORD* 35–55 (1947), for a brief history of the enactment and repeal of the statutes. The surviving statutes of this period are 18 U.S.C. §§ 241–42, and 42 U.S.C. §§ 1971(a), 1983, and 1985(3).

³² See “State Action,” under the Fourteenth Amendment, *supra*. “The State . . . must mean not private citizens but those clothed with the authority and influence which official position affords. The application of the prohibition of the Fifteenth Amendment to ‘any State’ is translated by legal jargon to read ‘State action.’ This phrase gives rise to a false direction in that it implies some impressive machinery or deliberative conduct normally associated with what orators call a sovereign state. The vital requirement is State responsibility—that somewhere, somehow, to some extent, there be an infusion of conduct by officials, panoplied with State power, into any scheme by which colored citizens are denied voting rights merely because they are colored.” *Terry v. Adams*, 345 U.S. 461, 473 (1953) (Justice Frankfurter concurring).