

Civil liberties: voting rights and equal representation



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One of the misconceptions we face in this country is a thorough understanding of civil liberties as they pertain to voting and representation. Many would believe that a country founded on the ideals of a republic would assuredly guarantee the right to vote for all its citizens. However, the ability to vote as we understand it today, was not initially expressed as an affirmative right in the United States Constitution. A central conflict in our nation's brief history has been a battle of ideologies between those who would restrain the rights of others in favor of a slim minority versus those who believe that government should reflect the will of the whole of its citizenry. Access to representation remains relevant today because we do not possess a federal right to vote. The constitution has failed to fulfill the democratic premise most believe is a fundamental right. Our history however, has shown us time and time again that we cannot be trusted to apportion civil liberties under the zeitgeist the constitution was written in. In Federalist Paper 84, Hamilton reasons against the provision of the Bill of Rights citing that the constitution is sufficient in providing liberty through the application of checks and balances (Hughes, 2013).

In our recent history, however, there has been an increased movement towards the enactment of voting laws aimed specifically, so it would seem, to restrict or curtail the right to vote. This institutional loophole prevents everyone from receiving the benefits afforded by our system of law. States have also established a long history of disenfranchising individuals convicted of felony crimes for the duration of their sentence and in some states for a period thereafter. In a handful of states, voting can only be restored by a petition to the court or governor's office. These circumstances point to the

need for a constitutional right to suffrage by means of a voting rights amendment or new act altogether.

When the Declaration of Independence was signed in 1786, the legal right to vote was a privilege exclusive to white males who owned property. The ramifications of this design would permeate through the nation for the next eighty years. With the passing of the Naturalization Act in 1790, immigrants of Asian descent were prevented from becoming naturalized citizens. In 1848, the treaty of Guadalupe-Hidalgo declared Mexican nationals living within the territories as United States citizens, while simultaneously imposing voting laws requiring property ownership, English literacy proficiency and other means of discriminatory acts. Following the Civil War and the subsequent abolishment of slavery by the Thirteenth Amendment in 1865, the Southern states “sought to perpetuate the economic and social subordination of African Americans through the adoption of the infamous Black Codes” (Rossum and Tarr, 2014, p. 50). Congress responded to this overt circumvention through the Civil Rights Act in 1866 and the Fourteenth Amendment. “The Civil Rights Act guaranteed to “black citizens” the same rights to make and enforce contracts, to inherit, purchase, lease, sell, hold and convey real and personal property” and to enjoy the “full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens” (Rossum and Tarr, 2014 p. 51).

The Fourteenth Amendment expanded constitutional authority to prevent further violations from the states, however, it addressed the issue generally, rather than enumerating the rights detailed in the Civil Rights Act. African American men were afforded the right to vote, if only technically speaking, <https://assignbuster.com/civil-liberties-voting-rights-and-equal-representation/>

through the passage of the Fifteenth Amendment in 1870 although they would continue to be disenfranchised by electoral rules and laws such as poll taxes, the so-called “ Grandfather Clause” statutes, as well as comprehension and literacy exams that were passed to make the regulations more restrictive. Concurrently, women were deprived of their right to vote until 1920. The United States continued to deny naturalization to ethnic groups as evidenced by the Supreme Court’s rulings in (*Takao Ozawa v. United States, 1922*) and (*Bhagat Singh Thind v. United States, 1923*). These blemishes on our nation’s history are important reminders of our failings in administering equality proportionately.

Increasingly since 2008, there has been a nationwide surge in laws aimed at suppressing voting through limitations on early voting, purges of voter rolls, and voter identification laws. Such enactments adversely affect the elderly, and minorities such as African American and Latino voters. In (*Shelby County v. Holder, 2013*), the Supreme Court ruled that the coverage formula in Section 4(b) of the Voting Rights Act (VRA), which was used to determine the states and political subdivisions subject to Section 5 preclearance, was unconstitutional. While the Court did not invalidate the preclearance mechanism in the Voting Rights Act per se , it effectively halted its use by invalidating the formula that determined which places were subject to the preclearance obligation (“ *Shelby County v. Holder,*” 2013).

“ Following the invalidation of the Voting Rights Act of 1965’s (VRA’s) preclearance scheme in *Shelby County v. Holder*, Section 2 proscribes any “ voting qualification or prerequisite to voting or standard, practice, or procedure . . . which results in a denial or abridgement of the right of any

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citizen . . . to vote on account of race or color.” Congress added the statute’s “ results” language in 1982 to clarify that section 2 violations do not require a showing of intentional discrimination – they can “ be proved by showing discriminatory effect alone.” Until recently, circuits have been sharply divided on the appropriate disparate impact test to apply to section 2 vote denial claims” (110, No, Stat, codified, & C, 2016). Per a Wisconsin federal court in 2014, three hundred thousand registered voters in that state lacked the forms of identification that Republican legislators deemed necessary to cast their ballots (Toobin, 2016). In June 2013, Texas passed (SB 14) which required voters to present one of six acceptable forms of identification to vote in person. Prior to this bill, residents could present voter registration certificates or sign an affidavit if they did not have one of the acceptable forms of identification available to them. Advocacy groups sought an injunction against the enforcement and in (*Veasy v. Abbott*, 2016), the fifth circuit court of appeals ruled against the bill as it would “ disproportionately burden black and Hispanic voters”, thereby violating the federal Voting Rights Act’s ban on racial discrimination in elections. There have been several other cases of the kind and it is likely that we will continue to see an increase of these laws and further discussion.

An issue that is not surprisingly on the forefront of everyone’s minds when it comes to voting rights is the disenfranchisement of those convicted of felony crimes. The Supreme Court ruled in (*Richardson v. Ramirez*, 1974) that the disenfranchisement of convicted persons was constitutional under Section 2 of the Fourteenth Amendment which states “ except for participation in rebellion, or other crime” (Rossum and Tarr, 2014 p. 892). However, when

considering that obligations have been or are being met while a sentence in being served, convicted felons should be guaranteed to the right to voice their opinion on laws that may very well affect them in their current conditions. Additionally, the disproportionate incarceration of minorities across the nations is further evidence that there is a systematic failure in our systems of law and the ability to impart justice equality. Thirty-four states strip the voting rights of persons convicted of felonies in the past, irrespective if they served probationary periods or prison time. The inability to vote on key legislation or in elections is an additional loss of benefits to convicted persons, it further marginalizes them and does little to reduce recidivism. Those able to freely engage in society and utilize their voice are more able to adapt and cope with the ramifications of their status such as the difficulty to find employment, the inability to work for the federal government, serve in the armed forces or seek political office. Every one of these examples is a reminder of past mistakes, the inability to vote should not be among them.

There have been recent surges towards voting restoration laws and the universal right to vote. In 2015, (HR 1459), the Democracy Restoration Act was re-introduced and subsequently referred to committee. Also, introduced in 2015, the Civil Rights Voting Restoration Act (S 457) and the Baltimore Act (S 1610), call for the restoration of voting privileges for those who have completed their prison terms. The creation of the Presidential Commission on Election Administration seeks to address some of the symptoms of the problems with our elections. But it cannot remedy the issue itself. This push towards access to the ballot reinforces the need for basic voting standards

through the building of legislative protections for inclusive participation in our democracy. What is inherently germane to the issue is the need for an act guaranteeing a universal right to vote for all Americans. Only then would we truly have a democracy that is representative of all its people without preclusions thereof. A country that prides itself on its democratic principles should provide such voting standards, for its rich culture, its people, and its future.

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