

Threats to Civil Liberties: **VOTING**

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Voting Rights Restrictions

The US Constitution guarantees rights that Americans have fiercely defended for more than two centuries. For example, most Americans would never accept restrictions on free speech, free assembly, or freedom of religion. Occasionally, though, the extent of these rights has been tested and debated in court. The right to vote is among those civil rights that has undergone legal scrutiny. Politicians and judges have repeatedly sought limits on voting rights despite the fact that the Fifteenth Amendment to the Constitution declares that “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” These rights have been challenged—and sometimes jeopardized—whenever the political status quo was threatened by marginalized voters seeking equal representation.

One Million Prevented from Voting

The Fifteenth Amendment was added to the Constitution in 1870, five years after the Civil War put an end to slavery. The phrase “previous condition of servitude” referred to freed African American men who were granted the right to vote by the amendment. The Constitution was amended again in 1920, when the Nineteenth Amendment granted women the right to vote. But in recent years hundreds of state laws have been passed that have had the effect of abridging, or imposing restrictions on, voting rights. Since the right to vote in

elections is called the franchise, the effect of these laws is referred to as disenfranchisement.

According to a comprehensive study by political scientist Charles Stewart of the Massachusetts Institute of Technology, an estimated 16 million people—12 percent of the American electorate—encountered at least one problem voting in the 2016 presidential election. As a result, an estimated 1 million people were prevented from exercising their right to vote. Some problems were due to bureaucratic mix-ups. However, most disenfranchisement was due to voter restrictions that reduced the number of polling places, cut early voting opportunities, and required voters to show certain forms of government-issued identification (ID) before casting a ballot.

To understand why some states make it harder for people to vote, it helps to explore some basic facts about the political parties in the United States. According to the Pew Research Center, 48 percent of all registered voters in 2016 identified as Democrats or leaned Democratic. This compares with 44 percent who identified as Republican or leaned Republican. Although voters are closely split between the two major parties, there are major differences when pollsters examine how various groups vote. For example, nearly 90 percent of African Americans and 66 percent of Latino and Asian Americans identify as Democrats. Likewise, around 55 percent of millennial voters—people under the age of thirty—vote for Democratic candidates. The numbers for Republicans are almost a mirror opposite. White males over the age of forty-five make up around 63 percent of Republican voters.

Although Democrats have an advantage among young people and minority voters, some election observers maintain that Republicans have successfully preserved their electoral advantage by passing laws to limit the franchise for Democratic voters. Since 2010 Republicans in twenty-six state legislatures have passed hundreds of laws that make it harder to vote, including strict voter ID requirements. As Dale Ho, the director of the American Civil Liberties Union (ACLU) Voting Rights Project, explains, “We see

[voting] restrictions popping up like mushrooms in . . . states with large minority populations. . . . Laws that require you to have a particular ID to cast a ballot disproportionately impact . . . poorer voters who don't have the same access to documentation and IDs as the rest of us."¹ To critics like Ho, the result is the disenfranchisement of numerous voters who might tip elections.

Claims of Voting Fraud in the 2016 Presidential Election

Around half of the restrictive voting laws first went into effect before the 2016 presidential election. In the run-up to the election, Republican candidate Donald J. Trump repeated the unproven allegation that the American election system was "rigged" to favor his Democratic opponent, Hillary Clinton. As Trump stated at an August campaign rally, "The election is going to be rigged. . . . People are going to walk in and they're going to vote ten times, maybe. . . . The only way we can lose . . . is if cheating goes on."²

"The election is going to be rigged. . . . People are going to walk in and they're going to vote ten times, maybe. . . . The only way we can lose . . . is if cheating goes on."²

—Republican presidential candidate
Donald J. Trump

On election day Trump claimed victory after receiving a winning margin of votes from the electoral college. However, Clinton won the popular vote by around 3 million.

Perhaps because he lost the popular vote to Clinton, Trump continued to spin stories about election fraud, arguing that 3 to 5 million people illegally voted in the 2016 election. Trump based his notion on a 2012 report by the Pew Charitable Trusts that found millions of invalid names on voter registration rolls. These

included registrations for nearly 2 million people who were deceased but were still listed as voters. Additionally, around 2.7 million voters were registered in more than one state because they had moved. However, the author of the Pew report made it clear



that invalid registrations do not correlate to illegal votes. In fact, multiple nationwide studies have uncovered only a handful of incidents where noncitizens voted or where people actually voted more than once.

A 2014 study by Loyola Law School professor Justin Levitt supported the conclusion that voter fraud is a political illusion. Levitt studied more than 1 billion ballots cast between 2000 and 2014. He found that only 31 fraudulent votes were cast at polling places. This backs assertions by state election officials in both parties who say that noncitizens rarely, if ever, vote in American elections. Although voting fraud is rare, politicians continue to justify laws that make it harder to vote for some groups. As Ho says, “The kind of fraud that these laws are supposedly enacted to prevent happens less frequently than Americans being struck

The Voting Rights Act Is Outdated

In 2013 the Supreme Court struck down Section 4 of the Voting Rights Act, which required nine southern states, and cities and counties in seven other states, to seek federal approval before changing their voting laws. The court ruled that the provision was no longer relevant when Congress reauthorized the act in 2006. Chief Justice John Roberts wrote in the decision,

History did not end in 1965. By the time the [Voting Rights] Act was reauthorized in 2006, there had been 40 more years of it. . . . During that time, largely because of the Voting Rights Act, 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 . . . [Congress] ignores these developments, keeping the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs.

The Fifteenth Amendment [to the Constitution] commands that the right to vote shall not be denied or abridged on account of race or color, and it gives Congress the power to enforce that command. The Amendment is not designed to punish [states] for the past; its purpose is to ensure a better future.

Quoted in John Schwartz, "Shelby County v. Holder: Between the Lines of the Voting Rights Act Opinion," *New York Times*, June 25, 2013. www.nytimes.com.

to move a polling station from one church to another church across the street."¹²

Ellis filed a lawsuit against US attorney general Eric Holder, a case referred to as *Shelby County v. Holder*. Ellis argued that Sections 4 and 5 of the Voting Rights Act were unconstitutional. He sought a permanent injunction (ban) against enforcement of the provisions. After losing in lower courts, Shelby County appealed to the Supreme Court, which agreed to hear the case. In June 2013 the Supreme Court struck down Section 4 of the Voting Rights Act

The Voting Rights Act Is Still Needed

In 2013 Section 4 of the Voting Rights Act, which required certain jurisdictions to obtain federal permission to make changes in voting laws, was struck down by the Supreme Court. President Barack Obama released the following statement:

I am deeply disappointed with the Supreme Court's decision today. For nearly 50 years, the Voting Rights Act—enacted and repeatedly renewed by wide bipartisan majorities in Congress—has helped secure the right to vote for millions of Americans. Today's decision invalidating one of its core provisions upsets decades of well-established practices that help make sure voting is fair, especially in places where voting discrimination has been historically prevalent.

As a nation, we've made a great deal of progress towards guaranteeing every American the right to vote. But, as the Supreme Court recognized, voting discrimination still exists. And while today's decision is a setback, it doesn't represent the end of our efforts to end voting discrimination. I am calling on Congress to pass legislation to ensure every American has equal access to the polls. My Administration will continue to do everything in its power to ensure a fair and equal voting process.

Barack Obama, "Statement by the President on the Supreme Court Ruling in *Shelby County v. Holder*," White House, June 25, 2013. <https://obamawhitehouse.archives.gov>.

in a 5–4 decision. Lewis reacted to the judgment: "Today the Supreme Court stuck a dagger in the heart of the Voting Rights Act of 1965. . . . History is relevant because voting rights have been given in this country, and they have been taken away."¹³

Chief justice John Roberts wrote the opinion that explained why the provision was unconstitutional. He stated that Section 4 made sense when it was enacted in 1965. But Congress was wrong to use voting data from 1975 to justify renewal of the provision in 2006 because African Americans were now serving



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1. Quoted in Ari Berman, "How the GOP Rigs Elections," *Rolling Stone*, February 8–22, 2018, p. 29.
2. Quoted in Jonathan Blitzer, "Trump and the Truth: The 'Rigged' Election," *New Yorker*, October 8, 2016. www.newyorker.com.
3. Quoted in Berman, "How the GOP Rigs Elections," p. 29.
4. Quoted in Michael Wines, "Some Republicans Acknowledge Leveraging Voter ID Laws for Political Gain," *New York Times*, September 16, 2016. www.nytimes.com.

Chapter 1: The Voting Rights Act

5. Quoted in Charles Marsh, "God's Long Summer," *Washington Post*. www.washingtonpost.com.
6. Quoted in Marsh, "God's Long Summer."
7. John Lewis, "The Voting Rights Act: Ensuring Dignity and Democracy," *Human Rights*, Spring 2005, vol. 32, no. 2. www.americanbar.org.
8. Lewis, "The Voting Rights Act."
9. Quoted in Lewis, "The Voting Rights Act."
10. Quoted in Kenneth T. Walsh, "Voting Rights Still a Hot-Button Issue," *U.S. News & World Report*, August 4, 2015. www.usnews.com.
11. Lewis, "The Voting Rights Act."
12. Quoted in Ed Pilkington, "Texas Rushes Ahead with Voter ID Law After Supreme Court Decision," *Guardian* (US edition), June 25, 2013. www.theguardian.com.
13. Quoted in Nina Totenberg, "Supreme Court: Congress Has to Fix Broken Voting Rights Act," *All Things Considered*, NPR, June 25, 2013. www.npr.org.
14. Quoted in Lawrence Hurley, "Supreme Court Guts Key Part of Landmark Voting Rights Act," Reuters, June 25, 2013. www.reuters.com.
15. Quoted in Theodore M. Shaw and Vishal Agraharkar, "Voting Against Discrimination: The Crucial Step America Took 50 Years ago to Affirm Its Democratic Values Is Under Unprecedented Assault," *New York Daily News*, August 2, 2015. www.nydailynews.com.



American Civil Liberties Union (ACLU)

125 Broad St.
New York, NY 10004
www.aclu.org

The ACLU defends the rights and liberties guaranteed by the US Constitution. Lawsuits filed by the organization have been instrumental in ending discriminatory laws and policies designed to limit voting rights.

Brennan Center for Justice

120 Broadway
New York, NY 10271
www.brennancenter.org

The Brennan Center for Justice is a nonpartisan organization dedicated to democracy and equal justice. The center is one of the leading institutions defending voting rights and fighting efforts to purge voter rolls, shut down polling places, and disenfranchise minority voters.

League of Women Voters

1730 M St. NW
Washington, DC 20036
www.lwv.org

The League of Women Voters is a nonpartisan organization committed to helping women gain a larger role in political affairs. The league lobbies against voter ID laws, works to make voter registration easier, and supports efforts to extend the franchise to ex-felons and others shut out of the voting process.

Legal Defense and Educational Fund

National Association for the Advancement of Colored People (NAACP)
40 Rector St.
New York, NY 10006
www.naacpldf.org



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Zachary Michael Jack, *March of the Suffragettes: Rosalie Gardiner Jones and the March for Voting Rights*. San Francisco: Zest, 2017.

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Lynda Blackmon Lowery, *Turning 15 on the Road to Freedom: My Story of the 1965 Selma Voting Rights March*. New York: Penguin, 2016.

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