

The Evolution of U.S. Voting Rights

1. Historically, states and localities have set their own requirements for the vote – limited by the following:
 - a. From 1787 thru 1828, states limited the franchise based on religion
 - b. From 1787 thru the 1850s, states required property ownership to vote
 - c. Ratification of the 15th Amendment, Black men could vote
 - d. Ratification of the 19th Amendment, women could vote
 - e. The Indian Citizenship Act of 1924 allowed Native Americans to vote
 - f. Ratification of the 23rd Amendment allowed D.C. residents to vote
 - g. Ratification of the 24th Amendment forbid poll taxes
 - h. The 1965 Voting Rights Act prohibited racial discrimination in voting
 - i. Ratification of the 26th Amendment allowed voting right for ages 18-21

2. Provisions of the 1965 Voting Rights Act
 - a. Section 2 – Contains the general prohibition against voting discrimination enforced through DOJ litigation. The 1982 Amendment to the Act clarified this provision to “prohibit any voting practice that has a discriminatory result.”
 - b. Section 5 – This section has come to be known as the “Preclearance” provision of the Act.
 - i. Section 5 provides that a three-judge panel of the U.S. District Court for D.C. must pre-approve any change to a “voting qualification or prerequisite to voting.”
 - ii. It applied to all states that had less than 50% of the voting age population voting in 1960 and/or 1964 presidential elections.
 - iii. Section 5 was recently challenged by a ***Texas Special District in Northwest Austin Municipal Utility District No. 1 v. Holder*** (2009). The U.S. Supreme Court declined to rule Section 5 unconstitutional, instead ruling that the waiver process for Section 5 preclearance should be streamlined.

3. Barriers Addressed by the Act

- a. Poll taxes – The 24th Amendment outlawed poll taxes for all federal elections. The Voting Rights Act extended this prohibition to all state and local elections.
 - i. ***Harper v. Virginia Board of the Elections***
- b. Paupers – The ***Harper*** decision, applying both the 14th Amendment and congressional authority under the 1965 Voting Rights Act outlawed state provisions that prevented the homeless from voting.
- c. Literacy – The Voting Rights Act disallowed the use of literacy tests to limit voting for southern states. This was extended to all states in 1970. The 1975 Voting Rights Act extended this provision to require bilingual ballots in areas with significant non-English-speaking populations.
- d. Residency Requirements – The 1970 amendments to the Voting Rights Act included a provision limiting the residency requirement to 30 days for a national election.
 - i. ***Carrington v. Rash*** (1965) overturned a Texas law that prevented members of the military from establishing residency in a state where they were based or deployed.

4. 18-21 Year Old Vote – In 1970, Edward Kennedy pretty much single-handedly managed to extend the voting age through a series of political maneuvers.
 - a. Late that year, Kennedy proposed extending the age in an amendment to the 1970 Voting Rights Act. While most Senators believed it was unconstitutional, Kennedy used his influence (and the broad support for other provisions of the Act) to get the age extension through the Senate.
 - b. This left the House in a quandary. Either vote for the Senate language or send it to a conference committee, where it would likely get filibustered. So, the House passed it.
 - c. President Nixon was not about to veto the Voting Rights Act.
 - d. The case quickly jumped straight to the U.S. Supreme Court in ***Oregon v. Mitchell*** (1971). There, a 4-1-4 decision left the amendment in effect, but only for national races, which meant a possible two-tiered system and hundreds of millions of dollars in additional expense for state election officials in the 1972 election.
 - e. Senator Kennedy then proposed a constitutional amendment to address the crisis. Three months later, the Senate, House, and 38 states approved the amendment.

5. Continuing Barriers

- a. Felons – Maine and Vermont are the only U.S. states to allow felon vote.
- b. Below the age of 18 – some states allow 17 year olds to vote in primary.
- c. Non-citizens
- d. Non-registrants

Judd Choate, Director of Elections, Colorado Secretary of State Office.
Remarks to teachers at Dec. 4, 2009 “Educating for Citizenship”
Conference, Lakewood, CO.