

Voting Rights and Voter Protection

A. Scope

The League believes that voting rights are fundamental to our democracy. In this paper, we review the history of voting rights and examine the issue of fraud in voting and how the 2013 Supreme Court decision on the Voter Rights Act has changed voter rights.

B. What Are Voting Rights?

Voting rights encompass more than just the right to register to vote. In the interpretation of the Voting Rights Act in 1969, Supreme Court Chief Justice Earl Warren said that the right to vote governs everything that relates to making a vote effective. In other words, it isn't just about access to the ballot box; it's about the power of that vote.

C. History of the Voting Rights Act

African-American males have been able to vote since 1870 with ratification of the 15th amendment. Women, white and African-American, were not able to vote until the 19th amendment in 1920. So if everyone could vote why the need for the Voting Rights Act?

After the Civil War during Reconstruction, 700,000 emancipated slaves were registered to vote and many black men held office. Reconstruction, however, prompted a large and angry white backlash especially after the 1876 election of Republican Rutherford Hayes. Segregationists gained power and passed laws to limit the black vote. Literacy tests, character tests, poll taxes and other laws were passed especially, though not limited to, in the south.

After years of living under these oppressive conditions, Martin Luther King Jr. and other black leaders started on the path to change. There were three attempted marches over the Edmund Pettus Bridge in Selma, Alabama. The first attempt on March 7, 1965 was met by a large police force, and a violent attack ensued. Two days later, 2500 people were led to the top of the bridge by Martin Luther King Jr. When confronted once again by a large police force, and unwilling to see more people harmed, King turned the crowd around.

The third march began on March 21, 1965, when King led a large group over the bridge, accompanied by 3,000 military police and Army troops ordered there by President Lyndon Johnson. Many others joined the group to Montgomery, and by March 25, when marchers entered Montgomery, over 25,000 people had joined the ranks. This march from Selma to the capital Montgomery was considered by many to be the culmination of the movement.

On August 6, 1965, Congress passed the Voting Rights Act (VRA). The VRA prohibits discrimination on the basis of race or language-minority status. Section 2 of the Act bars practices and procedures that discriminate against members of a protected class. This section has been used to protect voters from restrictive voter requirements and the location of polling places in areas not accessible to minority voters.

Section 5 of the Act requires that covered jurisdictions receive federal approval, known as "preclearance", before these jurisdictions may make changes in voting practices or procedures. It provided the Department of Justice (DOJ) with the authority to appoint federal observers and examiners to monitor elections. At first it targeted literacy tests, poll taxes and discriminatory registration practices.

Backlash was immediate. Several southern states started changing their laws to stop newly registered black voters from voting.

During the 1970s and 1980s, “colorblind” laws became more popular because they did not specifically list any race. These laws held that the government should only pass laws that block obstacles to voter registration rather than electoral schemes that prevented minority voters from winning office. Some held that the VRA should relate only to intentional discrimination in voting. With DOJ observation and authority, between 1965 and 2013 over 3,000 discriminatory voting changes have been blocked because of the VRA.

In the November 2000 election many concerns were raised about minority voting rights. Across America, voters, especially minority voters, felt they had been denied the right to cast their ballot easily. Allegations such as a disproportionate use of outdated equipment in minority areas, lack of available language assistance, and complaints of having been purged from voter rolls were raised by predominately minority voters.

Examples of laws that were passed in state legislatures since 2000 include:

- Arizona – 2004, requires documentary proof of citizenship to register to vote. In 2013, the US Supreme Court invalidated this measure as it applied to federal voter registration forms, but it is still valid for state forms.
- Kansas – 2016, requires documentary proof of citizenship, photo ID
- Texas – 2013, required photo ID
- Nebraska – 2013, reduced early voting period from minimum of 35 days to no more than 30 days
- Mississippi – 2011, required photo ID
- Wisconsin – 2014, reduced early voting on weekdays and eliminated them on weekends, restriction on voter registration and photo ID requirement
- Alabama – 2011, required photo ID, documentary proof of citizenship
- Tennessee – 2011, required proof of citizenship, photo ID (acceptable ID’s issued by state or federal government only)
- Ohio - cut six days of early voting, changed absentee and provisional ballot rules
- Florida – 2011, cut early voting, curbed voter registration drives and made it harder for people with past criminal convictions to vote
- Virginia – 2014, required photo ID, restricted organizations seeking to register voters.

The Supreme Court, in a 2013 5-4 decision, ruled that the preclearance clause in Section 5 of the Voting Rights Act was unconstitutional. The court ruled that a new formula for deciding which parts of the country are subject to preclearance would be needed. The Voting Rights Advancement Act was introduced in the senate in 2013 to address the preclearance formula, however, no action has been taken on the bill.

D. Voting Rights and Citizenship

As we know from the experience of blacks and women, the right to vote, and even citizenship, have not been automatically granted to all those born in the U.S. The extension of these rights has been a gradual process:

- In 1948 the last state laws denying Native Americans the right to vote were overturned.

- In 1952 the McCarran-Walter Act granted the right of U.S. citizenship to Japanese Americans born in the United States.
- In 1974 the United States Supreme Court granted states the right to deny convicted felons of their right to vote. In 38 states and the District of Columbia, most ex-felons automatically gain the right to vote upon the completion of their sentence. In some states, ex-felons must wait for a certain period of time after the completion of their sentence before rights can be restored. In some states, an ex-felon must apply to have voting rights restored. In Oregon, felons lose their right to vote only while they are incarcerated, and the right is automatically restored after their release.
- In 1990 The passage of the Americans with Disabilities Act ensured that elections workers and polling sites provide a variety of services designed to ensure that persons with disabilities could vote.

E. Voter Fraud and Protections

What is voter fraud? Voter fraud occurs when individuals cast ballots knowing that they are ineligible to vote, in an attempt to defraud the election system. It is often conflated, intentionally or unintentionally, with other forms of election misconduct or irregularities. Many problems are improperly lumped under the umbrella of voter fraud: for example, voting machines may record inaccurate tallies due to fraud, user error, or technical malfunction, or an election official may believe that certain identification documents are required to vote when no such requirement exists. Some irregularities involve fraud or intentional misconduct perpetrated by actors other than individual voters: for example, flyers may spread misinformation about the proper locations or procedures for voting; thugs may be dispatched to intimidate voters at the polls; missing ballot boxes may mysteriously reappear. These are all problems with the election administration system, not “voter fraud.”

Voter fraud makes a popular scapegoat. In the aftermath of a close election, losing candidates are often quick to blame voter fraud for the results. Legislators cite voter fraud as justification for various new restrictions on the exercise of the franchise. Moreover, these claims of voter fraud are frequently used to justify policies that do not solve the alleged wrongs, but that could well disenfranchise legitimate voters. Overly restrictive identification requirements for voters at the polls is only the most prominent example.

Photo identification requirements have a predictable detrimental impact on eligible citizens. Such laws are only potentially worthwhile if they clearly prevent more problems than they create. If policymakers distinguished real voter fraud from the more common election irregularities erroneously labeled as voter fraud, it would become apparent that the limited benefits of laws like photo ID requirements are simply not worth the cost. There have been a handful of substantiated cases of individual ineligible voters attempting to defraud the election system. But by any measure, voter fraud is extraordinarily rare. Fraud by individual voters is a singularly foolish and ineffective way to attempt to win an election. Each act of voter fraud in connection with a federal election risks five years in prison and a \$10,000 fine, in addition to any state penalties. In return, it yields at most one incremental vote. That single extra vote is simply not worth the price. Instead, much evidence that purports to reveal voter fraud can be traced to causes far more logical than fraud by voters.

Lorraine Minnite of Columbia University concludes after research that voter fraud is exceedingly rare, and that the few allegations in the record usually turn out to be other than voter fraud: “A review of news stories over a recent two-year period found that reports of voter fraud were most often limited to local races and individual acts and fell into three categories: unsubstantiated or false claims by the loser of a close race, mischief and administrative or voter error.”

In Oregon when Kate Brown was Secretary of State, she was asked about voter fraud and responded that her office has been working hard to clean up the voter registration rolls in cooperation with the Department of Motor Vehicles and other secretaries of state. “We are using database matching to ensure the centralized voter registration database is secure and accurate,” she said.

According to Brown, there is no national voter database, and she doesn’t expect there to be one any time soon, so it is left up to the states to communicate and find any voters who may be registered in two states. An investigation by her office led to the Department of Justice prosecuting a man who had been voting in both Oregon and Washington. Voter fraud is rare in Oregon, but she did acknowledge an incident during the 2012 general election in which an election worker in Clackamas County was caught filling in blank spots on voters’ ballots. The worker was charged with a class C felony and sent to jail.

There have been no cases of intentional voting fraud in Lane County, according to Cheryl Betschart, Lane County Clerk. The only cases of inappropriate voting have been those where a relative has signed a ballot for another family member, as in a case where a mother signed the ballot for her son who was attending college out of state. In those few cases where a signature has been challenged, the ballot was not counted. Even if an individual holds the power of attorney for another person, the individual does not have the authority to sign a ballot for that person.

Recent concerns for voter fraud are linked to hacking. In Oregon, voter registration is considered a public record. Although there are exemptions to releasing certain details submitted by voters to the state, the public already has a right to access the dates of birth, home addresses, party affiliation and voting histories for most of the state’s registered voters. Although voters can access their own registration information online, members of the public seeking voter registration information must go to a county clerk’s office to view registration information. Current Oregon Secretary of State, Jean Atkins, says the risk of voters’ personal information being accessed is surreptitiously low. The database containing voter information is separate from the system that records votes, which is in turn not connected to the internet. The state’s information technology employee monitors who tries to access information and sudden changes in voter registration records.

The Lane County Elections office verifies every ballot signature by checking voters’ signatures against their registration record, using the procedures outlined in the “Vote by Mail Procedures Manual” published by the Oregon Secretary of State’s office. Signature viewers, which have been trained by FBI handwriting specialists, compare each ballot signature with the voter’s registration record. If the signatures appear to not match, then the ballot signature goes to another team for review. If the signatures are still determined to not match, then the Elections office sends a new registration form to the person. If a person’s signature changes, for example due to an injury to the writing hand, then the person must sign a new form and submit it to the County Clerk’s office. If a ballot is not signed, then the Elections office sends a notification postcard to the voter. A voter has 14 days after the

election to resolve both challenged signatures and unsigned ballots. If the issues are resolved, then the ballot is counted.

Purging of Oregon voter registration files is prescribed in state code 247.555. A county clerk may cancel the registration of an elector at the request of the elector; upon the death of the elector; if the elector has registered to vote in another county in this state or in another state; or if the elector has not voted in two consecutive general elections. The Lane County Elections office receives weekly notices of deaths from vital records and newspaper obituaries. Oregon also participates in the Electronic Registration Information Center (ERIC) which seeks to improve the integrity of voter rolls and promote voter confidence in the electoral process by sharing voter registration material to identify duplicate registrations in the 21 participating states.

F. Impediments to Voting in Oregon

In the 2016 Primary election, Oregon had 2,281,555 registered voters. However, only 53.9 percent voted. Registered voters in Oregon can mark their ballot at home and return it by U.S. mail, deposit it in a drop box, or deliver to the County clerk's office in any Oregon county.

Besides lack of motivation or the belief that a single person's vote won't make a difference, there may be other issues that might discourage a higher voter response.

1. Postage. Paying for and obtaining a stamp to mail in a ballot may discourage some voters. Many young potential voters may not have stamps available. In some households paying for one or two stamps may deter them from voting and returning a ballot; however, a drop site box can be used.
2. Mail Delivery. The Elections office recommends that ballots with a stamp be mailed at least five days before election day.
3. Drop boxes. Most counties have ballot drop boxes that do not require postage and some are available 24 hours a day. Most population centers have drop boxes in or near government offices or logical gathering places. In some counties, drop boxes are available during business hours only. Lane County has 20 drop box sites, but Mapleton, Oregon does not have even one. County election officials submit a security plan for ballot collection to the Secretary of State, but the plan cannot be disclosed under the Vote by Mail Procedures Manual.
4. Non-affiliated voters. As of 9/2016, the 642,595 non-affiliated voters comprised about 26 percent of all registered voters. These voters cannot vote in the primary election for partisan office contenders. This may be one reason that many feel unconnected to the voting process. They may be uninformed or don't understand the local issues, which may be a reason for low participation in the primary election.
5. There is no same-day voter registration in Oregon. Voters must register at least 21 days before the election.

Questions:

1. How are signatures verified in the case of serious injury, such as a stroke?
2. What is voter fraud? Have you experienced it in Oregon?
3. Should the state provide postage for ballots?
4. How have voter rights changed in your lifetime? How old were you when you first voted?
5. Are there other voting rights not discussed in this material?
6. What are the advantages/disadvantages of voting by mail?
7. What can league members do to help ensure and protect voters' rights locally, statewide, or nationally?

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