

# Why The United States Is Not A True Democracy (Part One)

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Ask most people around the world what “democracy” means and they will tell you equal voting rights for all citizens, fair elections, and majority rule. None of those fully apply in the United States today, nor have they ever. Here is one key reason why the United States is not a true democracy: *the right to vote is constitutionally limited and has always been challenged.*

Americans believe they have a right to vote for all elected officials who represent them, including the President; but nowhere does the Constitution guarantee that as an absolute right. Throughout our history, that ambiguity has made it easy for politicians and parties to disfranchise people they do not want to vote. The Constitution requires the states to have a republican form of government, but that clause has never been understood to mandate universal suffrage. The Framers left voting and citizenship almost entirely up to the individual states, notably in Article One, Section Four, which specified that “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof” (although it stipulated that “the Congress may at any time by Law make or alter such Regulations”). From 1789 to 2019, both the legislative and judicial branches have been cautious about interfering in what is presumed to be the prerogative of the individual states.<sup>1</sup>

<sup>1</sup> The founding charter otherwise specified only the terms of office and qualifications of age and residency for the president, senators, and representatives, and that those who voted for Congress “shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.”

Since the Civil War, a series of constitutional amendments, acts of Congress, and Supreme Court decisions have extended the right to vote, but always through negative prohibitions on what a state or locality may do. The lack of affirmative guarantees of the right to vote has repeatedly created space for legal disfranchisement. The Fifteenth Amendment (1870) barred voter disfranchisement on the basis of *race or color*, just as the Nineteenth banned the use of *gender* (1920), and the Twenty-Sixth (1972) *age* (for anyone eighteen or older). The Twenty-Fourth Amendment (1965) outlawed requiring payment of a *tax* as a prerequisite for voting in federal (but not state or local) elections. Beginning with the 1962 *Baker v. Carr* decision, the Supreme Court required “one person/one vote” proportionality in allocating congressional, state, and local legislative districts. Finally, the Voting Rights Act (VRA) in 1965 gave the federal government the authority to intervene when state or municipal governments impeded voter registration or limited access to the polls.

It is the longer history that matters here. The VRA, the Twenty-Fourth Amendment, and related judicial decisions were extremely belated responses to sustained disfranchisement. Between 1890 and 1908, nearly all of the southern states circumvented the Fifteenth Amendment through formally race-neutral legislation, including literacy tests, poll taxes, and the grandfather clause. *All of these measures passed muster with the Supreme Court for many decades.* Nor were such measures limited to the South. During the Progressive Era, numerous northern and western states

mandated strict residency and registration regulations to limit voting by poor people, especially immigrants; further, although most people assume the VRA covered only the South, its pre-clearance provisions (meaning the Department of Justice must approve changes in voting laws) have also applied to parts of New York City and some western states with large Native American populations because of *prima facie* evidence of racial disfranchisement.

Most of the legal apparatus of disfranchisement was dismantled in the 1950s and 1960s. But recent history demonstrates that none of the constitutional, judicial, and legislative precedents established then have prevented states from again disfranchising large sections of their electorates. Since 2006, almost three dozen states have passed “voter identification” laws requiring documents that poor people, people of color, students, and older voters find expensive and difficult to procure. The result (and intent) is to disfranchise many thousands of otherwise-eligible voters, some of whom had voted for decades. In addition, unregulated purges of voting rolls based on arbitrary criteria have surged, also removing many from voter rolls. In all these instances, the Supreme Court has been wholly unwilling to intervene, and in 2013, its *Shelby County v. Alabama* decision gutted the VRA’s provision requiring Department of Justice pre-clearance.

Clearly, comprehensive voting rights legislation is needed. But legislation and separate court rulings will not be sufficient to truly guarantee the right to vote. *It is a mistake to assume that state-level voter suppression via legislation is the most basic form of denial of that right.* The larger problem is that voting is still under the authority of the 3,000 county boards of elections. These local bodies admin-

ister the state law as they see fit. The placement of the polls, recruitment of poll workers, choice of ballot-counting machines, overall supervision of election days, and post-election counting of ballots—all are in the hands of the officials who control a particular county. Partisans can and do routinely disfranchise voters who should be eligible to vote through manipulation of the rules and mechanisms for voting, and by simply ignoring the law. A good example is the Supreme Court’s 1976 *Symm v. United States* decision, which established that college students have a right to vote where they study. Despite what should be a definitive legal ruling, both secretaries of state (the officials responsible for electoral administration at the state level) and local election registrars routinely deny students’ right to vote by insisting they are residents of the states where their parents live.

Limiting or subverting the right to vote has served the interests of different ruling groups at different times, whether white supremacist Democrats in the Jim Crow South or nativist Protestant elites in the ante- and postbellum North. Currently, it is a main tool for the Republican Party to maintain control in cities, counties, states, and Congress. We need to break this long trajectory of disfranchisement by establishing an unequivocal, guaranteed right to vote at all levels that cannot be overturned by state legislatures, local judges, congressional action, or any other arbitrary and partisan body. This is a right enjoyed by quite literally billions of people around the world, from Ireland to India. It should also be a right for citizens of the United States.

*Subsequent broadsides will examine additional reasons why the United States is not a true democracy.*

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